

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 Appropriations

BILL: PCS/CS/SB 1598

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Gruters

SUBJECT: Consumer Protection

DATE: April 14, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson/Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Johnson</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1598 modifies provisions in several areas related to insurance that are regulated by the Department of Financial Services (DFS). The bill:

- Requires insurers to include information regarding the DFS's free financial literacy programs in its notice that a consumer's credit report or score is being requested.
- Requires an entity that is licensed or issued a certificate of authority by the DFS to respond to document requests from the DFS Division of Consumer Services.
- Eliminates the \$60 fee for a new or renewal adjusting firm license.
- Specifies that entities must comply with section 626.8696, Florida Statutes, with respect to possessing an adjusting firm license, but provides that an adjusting firm's branch place of business does not require licensure if it meets specified requirements.
- Revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.
- Authorizes the DFS to suspend, revoke, or refuse to issue the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent that makes a consumer's personal financial or medical information available to the public, or initiates in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

- Prohibits the sale of industrial life insurance policies, effective July 1, 2021.
- Increases to 10 days, the cooling-off period during which a consumer may cancel his or her contract with a public adjuster.
- Requires that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs. The public adjuster must provide the estimate to the claimant or insured within 60 days after the execution of the public adjuster contract.
- Prohibits a licensed contractor or subcontractor from advertising, soliciting, offering to handle, handling, or performing public adjuster services unless licensed and compliant as a public adjuster.
- Prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate on behalf of an insured or advertising services which require a public adjuster license.
- Requires disclosure that surplus lines insurance is not covered by the Florida Insurance Guaranty Association (FIGA) prior to placing coverage with a surplus lines insurer.
- Expands the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:
 - Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured.
 - Submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property; does not apply to renewals or collateral protection insurance.
- Applies the property insurance claim investigation and communication requirements of section 627.70131, Florida Statutes, to surplus lines insurers.
- Requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days.
- Requires insurers to provide to policyholders the adjuster's name and state adjuster license number when a claim investigation involves a physical inspection of the property and maintain a record of each adjuster who communicates with the policyholder.
- Requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate or making a claim payment that is not the full and final payment for the claim.
- Prohibits the inclusion of a foreign venue clause within any personal residential property insurance policy sold in Florida that insures only property located in this state. This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.
- Requires insurers to provide the Homeowner Claims Bill of Rights pursuant to any personal lines residential property insurance claim and adds notice regarding the right to receive interest and the utility of taking video of damages and repairs.
- Encourages insureds, under the Homeowner Claims Bill of Rights, to file all claims directly with their insurance company and to be aware of contractors or repair vendors offering incentives free inspections or no out-of-pocket expenses.
- Removes the insured's obligation to pay a \$100 deductible to the FIGA in order to receive payment on their claim through the FIGA.
- Revises the definition of a "covered claim" for purposes of the Florida Workers' Compensation Insurance Guaranty Association, to exclude the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Further, the bill prohibits a credit reporting agency from charging any fee to reissue a personal identifier or provide a new unique personal identifier to a consumer.

The bill has an insignificant indeterminate impact on state funds and expenditures. *See* V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective upon becoming a law.

II. Present Situation:

Department of Financial Services

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.¹ The DFS has a number of regulatory responsibilities over the Florida insurance market. The DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters under Part VI, ch. 626, F.S. The DFS conducts insurance-related consumer outreach through its Division of Consumer Services. The Division of Workers' Compensation within the DFS administers ch. 440, F.S., through enforcement of coverage requirements,² administration of workers' compensation health care delivery system,³ data collection,⁴ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.⁵ The DFS also administers insurer rehabilitation and liquidation in Florida under part I of ch. 631, F.S.

DFS Division of Consumer Services

The Division of Consumer Services (division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.⁶ The divisions' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.⁷

Section 624.307(10)(b), F.S., permits the division to impose an administrative penalty on a person who holds a license or certificate of authority from the DFS if that person fails to respond

¹ *See, e.g.*, Department of Financial Services (DFS), *What DFS Can Do For You*, <https://www.myfloridacfo.com/division/CFO/DFS.htm> (last visited March 18, 2021).

² Section 440.107(3), F.S.

³ Section 440.13, F.S.

⁴ Sections 440.185 and 440.593, F.S.

⁵ Section 440.191, F.S.

⁶ DFS, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF> (last visited March 18, 2021). *See also*, DFS, *Consumer Guides*, <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm> (last visited March 18, 2021).

⁷ Section 624.307(10)(a), F.S.

to the division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records⁸ that are required to be kept by law, but is not required to produce those not within the purview of statutes.⁹ Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.¹⁰

Discretion of the DFS to Act against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, engaging in unfair and deceptive trade practices.¹¹

DFS Licensure of Adjusting Firms

Current law authorizes, but does not require, licensure of adjusting firms.¹² The DFS does not currently license any adjusting firms.¹³ An adjusting firm license must be renewed every three years and requires a \$60 application fee.¹⁴ An adjusting firm license application must include:¹⁵

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.¹⁶

Chapter 626, F.S., provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.¹⁷

DFS Authority Regarding Misleading Insurance Agency Names

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states

⁸ Pursuant to s. 624.23, F.S., any personal financial and health information held by the DFS or the Office of Insurance Regulation relating to a consumer complaint or inquiry is confidential and exempt from public records.

⁹ *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).

¹⁰ *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla. Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).

¹¹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code."

¹² Section 626.8696, F.S.

¹³ Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, DFS, to Michelle Sanders, Legislative Analyst Senate Appropriations Subcommittee on Agriculture, Environment and General Government (March 18, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment and General Government)

¹⁴ Section 624.501(20), F.S.

¹⁵ Section 626.8696, F.S.

¹⁶ Section 626.8695, F.S.

¹⁷ Section 626.8697, F.S.

or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.¹⁸

The Social Security Act prohibits any person from using the terms “Medicare” or “Medicaid” in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.¹⁹

Industrial Life Insurance

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than \$5,000.²⁰ Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.²¹

Public Adjuster Contracts and Estimates of Damages

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.²² As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policyholder to cancel the contract within three business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to five business days from the date the contract was executed, if it was entered into during a state of emergency or during the one-year period after the date of loss.

The adjuster must disclose, in all of his or her contracts, the consumer’s right to cancel the contract, and the methods by which the consumer may send a cancellation.

Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of the insurance claim. The public adjuster must retain the estimate for at least five years and make it available to the claimant, insured, an insurer, or the DFS upon request.

¹⁸ Section 626.602(1)-(3), F.S.

¹⁹ 42 U.S. Code s.1320b-10(a)(1). Upheld by *United Seniors Ass’n Inc. v. SSA*, 423 F. 3d 397, 399 (4th Cir. 2005).

²⁰ Section 627.502, F.S. *See also*, DFS, *Life Insurance Overview: Types of Policies*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (last visited March 18, 2021).

²¹ DFS, *HB 717 Agency Analysis*, (Feb. 24, 2021) (on file with the Senate Committee on Banking and Insurance).

²² Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters. Rule 69B-220.201(4) and (5), F.A.C.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.²³ 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 (which 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,²⁴ which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.²⁵ Rather, surplus lines insurers are “unauthorized” insurers,²⁶ but may transact surplus lines insurance if they are made eligible by the OIR.

An insurance agent²⁷ may “export,” or place a policy with an unauthorized insurer under the Surplus Lines Law²⁸, with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.²⁹ A “diligent effort” requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:³⁰

- 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 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,³¹ the policyholder must be advised in writing coverage may be available and less expensive from Citizens Property Insurance Corporation.

²³ The admitted market is comprised of insurance companies authorized 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. *See also*, Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, <https://www.fslso.com/AboutGroup/about/surplus-lines-insurance> (last visited March 17, 2021).

²⁴ Section 626.914(2), F.S.

²⁵ Section 624.09(1), F.S.

²⁶ Section 624.09(2), F.S.

²⁷ Typically, the applicant’s usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See s.* 626.914(1), F.S.

²⁸ Sections 626.913-626.937, F.S., constitute the “Surplus Lines Law,” pursuant to s. 626.913(1), F.S.

²⁹ Section 626.916(1)(a), F.S.

³⁰ Section 626.916(1), F.S.

³¹ Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

Certain types of insurance, deemed “commercial risks,” including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.³²

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act³³ prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,³⁴ including:

- Misrepresenting the benefits, advantages, or terms of any insurance policy;
- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional (“sliding”).³⁵

A person who commits an act prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to \$20,000 for nonwillful violations, and up to \$200,000 total for willful violations.³⁶ However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.³⁷

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than \$75,000 per violation.³⁸

Property Insurance Claim Communications and Investigations

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer that has notified the insurer of a possible claim. Generally, the residential property insurer must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements

³² Section 626.916(3)(b), F.S.

³³ Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.

³⁴ Section 626.9541, F.S.

³⁵ Section 626.9541(1)(z), F.S. *See also, Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1st DCA).

³⁶ Each count of a nonwillful violation is limited to a fine of no more than \$5,000, and each count of a willful violation is limited to a fine of no more than \$20,000. Section 626.9521(2), F.S.

³⁷ *See, e.g.,* Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.

³⁸ Section 626.9521(3)(b), F.S.

from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90 days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.³⁹

The Homeowner Claims Bill of Rights

The Homeowner Claims Bill of Rights outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.⁴⁰ An insurance company must provide a consumer with a copy of the Homeowner Claims Bill of Rights within 14 days of receiving any communication about a claim.⁴¹ Florida law provides form language that the insurer must include in the Homeowner Claims Bill of Rights, which gives notice of the consumer's right to:⁴²

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;
- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;
- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the DFS for assistance.

The Homeowner Claims Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

Forum Venue Clauses

A forum selection clause is a contractual provision in which the parties agree upon the venue for possible future litigation between them.⁴³ Generally, ch. 47, F.S., provides civil actions must be brought in the Florida county where the defendant resides, where the cause accrued, or where the property in question is located.⁴⁴ If the defendant is an out-of-state (foreign) corporation, venue resides where the corporation has a representative, the action accrued, or where the property is located.⁴⁵ However, "a mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust."⁴⁶ In 2014, the Legislature codified case law on the matter, holding that a court could refuse to enforce a forum selection clause if it contravenes public policy, or is unjust and unreasonable.⁴⁷

³⁹ See further discussion of the Homeowner Claims Bill of Rights, *infra*.

⁴⁰ DFS, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2020), available at <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf> (last visited March 17, 2021).

⁴¹ Section 627.70131, F.S.

⁴² Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in s. 627.70131, F.S.

⁴³ Black's Law Dictionary (11th ed. 2019).

⁴⁴ Section 47.011, F.S.

⁴⁵ Section 47.051, F.S.

⁴⁶ *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.3d 820, 821 (Fla. 1st DCA 2014) (citing *Land O'Sun Mgmt. Corp. v. Commerce and Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla 1st DCA 2007)). Internal citations omitted.

⁴⁷ Section 61.0401, F.S. See also, *Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986) and *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 571 U.S. 49, 134 S. Ct. 568 (2013).

Several states, including Florida, have attempted to limit forum selection clauses in specific instances. Florida voids, as contrary to public policy, any contract that requires litigation against Florida contractors and related professions to be filed in non-Florida jurisdictions.⁴⁸

Federal and State Requirements Regarding Disclosure of Personal Medical Information

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)⁴⁹ requires health care providers, health plans, and health care clearinghouses⁵⁰ (covered entities) to protect the privacy of personal health information. The HIPAA Privacy rules cover protected health information that is created or received by a covered entity and requires covered entities to implement safeguards to protect health information from unauthorized access, use, or disclosure.⁵¹ The term, “protected health information,” (PHI) is broadly defined as individually identifiable information in any form or format—oral, paper-based, electronic—that “[r]elates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.”⁵²

The HIPAA Privacy rules prohibit a covered entity from using or disclosing PHI except as expressly permitted or required by the rule.⁵³ For all uses or disclosures of PHI that are not otherwise permitted or required by the rule, covered entities must obtain a patient’s written authorization.⁵⁴ Generally, third parties (business associates⁵⁵) of covered entities provide services and will need access to at least some patient information in order to perform those functions. Covered entities are required to obtain written agreements with their business associates that they will use PHI only for the purposes permitted or required by the contract; and implement appropriate safeguards to prevent misuse of PHI.⁵⁶

The Insurance Code requires health insurers to maintain strict confidentiality against unauthorized disclosure of confidential information regarding claims and records relating to the payment of psychiatric and psychotherapeutic services.⁵⁷ Additionally, s. 456.057, F.S., provides patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative.

⁴⁸ Section 47.025, F.S.

⁴⁹ P.L. 104-191, 110 Stat. 1936, August 21, 1996.

⁵⁰ 42 U.S.C. s. 1320d-1(a). A health plan is an individual or group plan that provides, or pays the cost of, medical care and includes private and government plans. A health care clearinghouse is an entity (e.g., billing service) that (1) receives nonstandard health information and processes, or facilitates the processing of, the information into a standard format required for electronic transaction; or (2) receives a standard transaction and processes, or facilitates the processing of, the information into nonstandard format for the recipient. A health care provider is a person (e.g., physician, nurse) or entity (e.g., hospital, clinic) who “furnishes, bills, or is paid for health care in the normal course of business and conducts one or more HIPAA-specified standard electronic transactions. 45 C.F.R. s. 160.103.

⁵¹ 45 CFR Part 164 Subparts A and E.

⁵² 45 CFR 160.103. The Privacy Rule implementing HIPAA creates standards for the protection of person health information.

⁵³ 45 CFR 164.502(a).

⁵⁴ 45 C.F.R. §164.508(a).

⁵⁵ 45 CFR 160.103.

⁵⁶ 45 C.F.R. 164.502(e), 164.504(e).

⁵⁷ Sections 627.4195, F.S., and 627.688, F.S.

Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information, date of birth, and court judgments.⁵⁸ Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in determining (i.e., whether to extend credit), set insurance rates, or employ the consumer.⁵⁹ A consumer may also review his or her credit report at no charge once every 12 months, from each of the credit bureaus.

Generally, the federal Fair Credit Reporting Act (FCRA)⁶⁰ regulates the activities of Credit Reporting Agencies (CRAs), the users of consumer reports, and those who furnish information to CRAs. In 2003, the FCRA was amended by the Fair and Accurate Credit Transactions Act (FACTA) to address identity theft, improve the accuracy of consumer records, and to increase consumer access to credit information.⁶¹ The FCRA includes several provisions preempting state laws. For example, the FCRA provides no requirement or prohibition may be imposed under the laws of any state with respect to any subject matter regulated under subsections (i) and (j) of Section 605A, which relates to a national security freeze and national protection for files and credit records of protected consumers, respectively.⁶²

In May 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act.⁶³ The law creates a national, free credit freeze and a national credit freeze for protected persons (for persons under 16 years of age and incapacitated adults). The law also establishes further requirements to protect minors. The “adult” freeze and the protected consumer freeze went into effect September 2018.⁶⁴

Security Freezes and the Keeping I.D. Safe (KIDS) Act

In Florida, The Keeping I.D. Safe (KIDS) Act⁶⁵ allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from

⁵⁸ 15 U.S. Code s. 1681 defines a “credit report” as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, ... general reputation, [or] personal characteristics... which is used...for the purpose of...establishing the consumer's eligibility for credit or employment purposes.... The Florida KIDS Act adopts this definition of a “credit report” in s. 501.0051(1)(a), F.S.

⁵⁹ Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, available at https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf (last visited March 17, 2021).

⁶⁰ Fair Credit Reporting Act, Pub. L. No. 91-508, codified as amended at 15 U.S.C. s. 1681-1681x.

⁶¹ Fair and Accurate Credit Transactions Act, Pub. L. No. 108-159 (2003).

⁶² 15 U.S.C. s. 1681t(b)(1)(J).

⁶³ Pub. L. No. 115-174, Title III.

⁶⁴ These changes created subsections (i) and (j) of Section 605A of the FCRA. 15 U.S.C. ss. 1681c-1(i) and 1681c-1(j).

⁶⁵ Section 501.0051, F.S.

charging any fee to place or remove a security freeze, they may charge up to \$10 to reissue a PIN.⁶⁶

Florida Telemarketer Act

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.⁶⁷ Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.⁶⁸

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.⁶⁹

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty claims⁷⁰ that would otherwise be left unpaid.⁷¹ FIGA does not offer a replacement policy, and coverage offered by FIGA is generally limited to a \$300,000 payment. A consumer may receive additional FIGA coverage of up to \$200,000 for damages to their home's structure or the contents thereof.⁷² Condominium and homeowner's association claims have a coverage cap of \$100,000 multiplied by the number of units in the association.⁷³ All claims filed with FIGA are subject to a \$100 deductible in addition to any deductible identified in the consumer's policy.⁷⁴

III. Effect of Proposed Changes:

Consumer Protections Related to Credit Reports

Section 1 amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a personal identification number (PIN) or provide a new unique PIN to a consumer.

Section 13 amends s. 626.9741(3), F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

The Department of Financial Services offers free financial literacy

⁶⁶ Section 501.0051(9), F.S.

⁶⁷ Section 501.604(7), F.S.

⁶⁸ Federal Trade Commission, *The Telemarketing Sales Rule*, <https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule> (last visited March 17, 2021).

⁶⁹ Section 626.854(5), F.S.

⁷⁰ A "covered claim" is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy." Section 631.54, F.S.

⁷¹ See generally, Part II, ch. 631, F.S., "Florida Insurance Guaranty Association Act." See also, Florida Insurance Guaranty Association, *Home*, <https://figafacts.com/> (last visited March 17, 2021).

⁷² Section 631.57(2), F.S.

⁷³ Section 631.57(3), F.S.

⁷⁴ Section 631.57(2), F.S., see also, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, <https://figafacts.com/frequently-asked-questions/> (last visited March 17, 2021).

programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com.

Insurer Responses to Requests from the Division of Consumer Services

Section 2 amends s. 624.307(10)(b), F.S., to create a duty for an entity that is licensed or issued a certificate of authority by the Department of Financial Services (DFS) to respond to the DFS' requests for documents. The response must include any requested documents not subject to attorney-client or work product privilege.

Claims Adjusting

Section 3 amends s. 624.501, F.S., to eliminate the \$60 fee for a new, or the renewal of an existing, adjusting firm license.

This section necessitates **Section 14**, which conforms a cross reference in s. 626.9953, F.S.

Section 4 amends s. 626.112, F.S., to specify entities that must comply with s. 626.8696, F.S., with respect to possessing an adjusting firm license for each place of business at which it performs activity for which it is necessary to be licensed as a claims adjuster.

The section provides that an adjusting firm's branch place of business is classified as a branch firm, and does not require licensure, if the branch:

- Transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- Designates with the DFS a primary adjuster operating the location as required by s. 626.8965, F.S.; and
- Submits the address and telephone number of the branch location to the DFS within 30 days after insurance transactions begin at the branch location.

The section requires the DFS to impose an administrative fine of up to \$10,000 if an adjusting firm is required to be licensed pursuant to this section but fails to apply for such licensure.

The bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.

Presently, s. 777.011, F.S., includes as a "principal in the first degree" a person who aids, abets, counsels, hires, or otherwise procures a criminal offense to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, the bill merely clarifies or restates existing law.

This section necessitates **Section 15**, which conforms a cross reference in s. 626.9957, F.S.

Prohibiting Misleading Insurance Agency Names

Section 5 amends s. 626.602, F.S., to authorize the DFS to disapprove an insurance agency's proposed use of a name which includes the words "Medicare" or "Medicaid." Insurance agencies that operate under such a name as of July 1, 2021, may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.⁷⁵

Taking Administrative Action against Applicants for Licensure and Licensees for Engaging in Prohibited Actions

Section 6 amends s. 626.621, F.S., to add two bases under which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; and
- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

Prohibiting the Sale of Industrial Life Insurance

Sections 7, 8, and 17 respectively amend ss. 626.782, 626.783, and 627.502, F.S., and **Section 9** repeals s. 626.796, F.S., to prohibit the sale of industrial life insurance policies, after July 1, 2021. Insurers may continue to service and collect premiums on industrial life policies written before that date. According to the DFS, industrial life insurance is not currently being sold in this state, and less than 10 percent of active life insurers maintain existing policies.

Expanding the Cancellation Period for Public Adjuster Contracts; Prohibiting Contractors from Soliciting an Insured to File a Claim

Section 10 amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with a public adjuster to 10 calendar days. Currently, the contract may generally be canceled within three business days after the contract is executed or the insurer is informed of the claim, whichever is later. Current law provides a cancellation period of five business days during, and for one year thereafter, a state of emergency declared by the Governor.

The bill also specifies the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies created in accordance with accepted industry standards. The public adjuster must provide the detailed written estimate to the claimant or insured within 60 days after the date of the contract.

The bill prohibits a licensed contractor or subcontractor from soliciting, advertising, offering to handle, handling, or performing public-adjuster services unless licensed and compliant as a

⁷⁵ Insurance agency licenses are indefinite. Section 626.382, F.S.

public adjuster. The prohibition does not preclude a contractor from suggesting or recommending the insured contact their insurer to determine if proposed repairs are covered under the insured's insurance policy.

The bill prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant. The bill retains current law which prevents persons other than a public adjuster or attorney from soliciting, investigating, or adjusting a claim on behalf of a public adjuster, insured, or third-party claimant.

The bill authorizes the DFS to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

Notice to Insureds that Surplus Lines Insurers Are Not Protected by the Florida Insurance Guaranty Association

Section 11 amends s. 626.916, F.S., to provide that insurance coverage is not eligible for export to a surplus lines insurer, unless the insured signs or provides documented acknowledgement of the following disclosure:

“You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.”

The bill deletes a disclosure that was required to export certain types of commercial lines insurance⁷⁶ to a surplus lines carrier without meeting the generally applicable requirements⁷⁷ to export a commercial policy. The deleted disclosure is similar to the one created by the bill, except the deleted disclosure states, “superior coverage may be available in the admitted market and at a lesser cost.”

This section is effective January 1, 2022.

Unfair Insurance Trade Practices

Section 12 amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and
- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent of the owner of the property that will be insured. However, it does not

⁷⁶ Those identified in s. 627.062(3)(d)1.

⁷⁷ Section 626.916(1)(a)-(d), F.S.

include cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

Residential Property Insurance Claim Investigations; Application to Surplus Lines

Section 18 amends s. 627.70131, F.S., to impose new requirements on residential property insurers during their claim investigations, and to apply the section's requirements to surplus lines insurers and policies providing personal residential property insurance coverage.

The bill clarifies the communication standards of the statute by referring to "representatives" of an insurer, rather than "an agent" of the insured. The term "representative" is defined in the same way the term "agent" is currently defined by this statute: "any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer." The current use of "agent" could confuse readers of the statute regarding whether the requirements of the section only apply to licensed agents.

The bill requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days. As under current law, the statutory time frame for beginning an investigation does not apply if any law or the insurance policy provides otherwise, if a claim investigation is not reasonably necessary, or if circumstances beyond the insurer's control reasonably prevent the investigation from commencing.

If the claim investigation involves a physical inspection of the property, the bill requires that the insurer's licensed adjuster must provide the policyholder a printed or electronic document containing the adjuster's name and state adjuster license number. All subsequent communications by an adjuster must include the adjuster's name and license number. The insurer must maintain a record of each adjuster who engages in the foregoing communications, and provide that list to the insured, the OIR, or the DFS upon request.

The bill requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate, or making a claim payment that is not the full and final payment for the claim. The insurer must include with any preliminary or partial estimate of damages, the following notice in 12-point bold, uppercase type:

**THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF
THE COVERED DAMAGES TO YOUR INSURED PROEPRTY AND
MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR
CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR**

ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE
ENCOURAGE TO CONTACT US.

The insurer must include with any claim payment which is not the full and final payment for the claim, the following notice in 12-point bold, uppercase type:

WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING
YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL
PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR
ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE
ENCOURAGE YOU TO CONTACT US.

The bill creates a new subsection (8) that applies the section to surplus lines insurers and authorized surplus lines insurance providing personal residential property insurance coverage.

This section is effective January 1, 2022.

Section 16 amends s. 627.062, F.S., to correct a cross reference to s. 627.70131(7), F.S., relating to insurer's rate standards. The insurer may not include any interest paid pursuant to s. 627.7013(7), F.S., in their rate base and may not be used to justify a rate or rate change.

Prohibition on Foreign Venue Clauses

Section 19 creates s. 627.7031, F.S., which prohibits the inclusion within any personal residential property insurance policy any clause that would require an insured to pursue litigation, arbitration, or mediation outside of Florida, if such policy was sold after July 1, 2021, in Florida, and insures only property located in this state.

This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.

Homeowner Claims Bill of Rights

Section 20 amends s. 627.7142, F.S., which contains the Homeowner Claims Bill of Rights which the insurer must provide the homeowner after receiving the initial communication regarding a personal lines residential property insurance claim. Currently, the Homeowner Claims Bill of Rights must be provided within 14 days after an insurer receives an initial communication on any personal lines residential property insurance claim. Additionally, the Homeowner Claims Bill of Rights currently include notice the consumer has the right to receive interest payments; these payments begin accruing when a consumer files a claim if the insurer does not deny the claim or pay the full settlement of the claim, or the undisputed portion of the claim, within 90 calendar days after a claim is filed.⁷⁸ Any payable interest must be paid when the claim, or undisputed portion of the claim, is paid.

The Homeowner Claims Bill of Rights is also amended to encourage insureds to take video of damage before and after any repairs, and specify the purpose of such videos or photographs is so

⁷⁸ See s. 627.70131(5)(a), F.S.

they can be provided to the insurer. In addition, insureds are encouraged to file claims directly with their insurance company and to be aware of contractors or repair vendors who offer incentives for free inspections or promise to coordinate with insured's insurance company to repair the insured's home with no out-of-pocket expense paid by the insured.

This section is effective January 1, 2022.

Elimination of the \$100 Florida Insurance Guaranty Fund Deductible

Section 21 amends s. 631.57, F.S., to remove the insured's obligation to pay a \$100 deductible to FIGA in order to receive payment on their claim through FIGA. The insured remains obligated to pay their original insurer's deductible.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) Covered Claims

Section 22 amends s. 631.904(2), F.S., to revise the definition of a "covered claim" for purposes of the FWCIGA, to exclude from the definition the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Effective Date

Section 23 provides the bill, except as otherwise provided, is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Credit Bureaus will no longer be permitted to charge a fee to re-issue a personal identification number to consumers. *See Section VII, Related Issues.*

Consumers who seek to have their claims covered by Florida Insurance Guaranty Association (FIGA) will no longer be required to pay the \$100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the Department of Financial Services (DFS) and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

C. Government Sector Impact:

The bill has an insignificant indeterminate impact to state funds and expenditures.

The elimination of the \$60 fee for a new or renewal adjusting firm license may have an insignificant impact on future state revenues. In addition, eliminating the \$100 FIGA deductible may have an insignificant financial impact on FIGA.

Sections 4, 10 and 12 increase the DFS's authority to take administrative action and impose administrative fines, which may result in an insignificant indeterminate increase in administrative fines collected.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. Section 5 of the bill revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly and abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license. A person who does so

commits a third degree felony. **Section 12** of the bill amends the Unfair Insurance Trade Practices Act (Act). The new violations under **Section 12** are punishable as administrative violations under the general provisions of the Act. However, the underlying acts which give rise to the administrative violations may give rise to charges under s. 626.9541(1)(ee), F.S., which is punishable as a third degree felony.

VI. Technical Deficiencies:

Section 6 of the bill amends s. 626.621, F.S., to authorize the Department of Financial Services (DFS) to suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant for taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; however, it is unclear what information would be considered financial or medical information. These terms are undefined. For purposes of HIPAA, protected health information is defined. Further, s. 624.23, F.S., defines the term, "personal financial and health information," as it relates to consumer complaints and inquiries received by the DFS.

Section 10 of the bill amending s. 626.854(19), F.S., appears intended to prohibit a person that is not an attorney or licensed public adjuster from, on behalf of a public adjuster, advertising, providing advice regarding a claim, or assisting in the adjustment of a claim. This bill section also creates a new subsection (20) to s. 626.854, F.S., to authorize the DFS to take administrative actions and impose fines for unlicensed public adjusting or claims adjusting activity; however, DFS will have difficulty enforcing such a fine or taking administrative action when the violator is not a licensee of the DFS.

VII. Related Issues:

Section 1 of the bill may be federally preempted pursuant to 15 U.S.C. s. 1681t. This federal law prohibits states from imposing laws with respect to any subject matter regulated under subsections (i) and (j) of section 605A relating to security freezes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 624.501, 626.015, 626.112, 626.602, 626.621, 626.7315, 626.782, 626.783, 626.7845, 626.8305, 626.854, 626.916, 626.9541, 626.9741, 626.9953, 626.9957, 627.062, 627.502, 627.70131, 627.7142, 631.57, and 631.904.

This bill creates section 627.7031 of the Florida Statutes.

This bill repeals section 626.796 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on March 24, 2021:

The committee substitute:

- Clarifies contractors may recommend that policyholders contact their insurance company, but may not initiate, manage, or handle the claim for the policyholder; but does not prohibit or preclude a contractor from recommending the policyholder contact the insurer to determine if proposed repair is covered under the insured's insurance policy;
- Clarifies the surplus lines 90-day provision would apply only to personal residential properties;
- Clarifies no person other than an attorney at law or a licensed public adjuster, may offer to initiate or negotiate a claim or advertise services which require a public adjuster license on behalf of a public adjuster, an insured, or a third-party claimant
- Includes a provision in the Homeowner Claims Bill of Rights encouraging a consumer to file claims directly with their insurer and to be aware of incentives offered by contractors or repair vendors for free inspections or promises to coordinate repairs; and
- Removes the definition of claims adjusting and the respective cross-references.

CS by Banking and Insurance on March 16, 2021:

The committee substitute:

- Prohibits persons other than a public adjuster or attorney from advertising, providing advice, or assisting the adjustment of a claim on behalf of a public adjuster, insured, or third-party claimant.
- Authorizes the Department of Financial Services to take administrative actions and impose fines against persons performing without the necessary licensure claims adjusting or any of the public adjusting services detailed in s. 626.854, F.S.

- B. **Amendments:**

None.