

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 742

INTRODUCER: Senator Perry

SUBJECT: Insurance

DATE: March 8, 2021

REVISED: _____

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

I. Summary:

SB 742 amends several insurance-related statutes. Specifically, the bill:

- Directs the Florida Hurricane Catastrophe Fund to provide reimbursement for a loss under collateral protection insurance if the coverage is in an amount equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, equal to the coverage amount that the homeowner has been notified of, or equal to the coverage amount that the homeowner requests from the collateral protection insurer.
- Provides that service of process is valid and binding on an insurer upon delivery of the process documents to the insurer or upon the insurer receiving notice that the information is available on a secured network.
- Provides that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster for the purpose of adjusting claims.
- Requires an admitted and nonadmitted group health insurer's loss run statement to include certain information, requires an admitted and nonadmitted personal lines insurer to provide loss run statements within 15 days of an insured's request after first providing information on how to obtain a loss run statement from a consumer reporting agency, and authorizes an exemption for admitted and nonadmitted life insurers under the section.
- Allows a residential property insurer's rate filing to include a modeling indication that is the weighted or straight average of two or more models approved by the Florida Commission on Hurricane Loss Projection Methodology.
- Provides residential property insurers with discretion regarding whether to include positive and negative rate factors based on building code enforcement in rate filings for residential property insurance.
- Authorizes a residential property insurer to file premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization.

- Authorizes a property insurer to require a policyholder who is constructing or retrofitting a structure to provide evidence of compliance with windstorm mitigation standards prior to receiving premium discounts, credits, or rate reductions allowed under the rating plan.
- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates.
- Provides Citizens with discretion to offer wind-only policies to condominium associations when 50 percent or more of their units are rented more than eight times per year for a period of less than 30 days.
- Provides that the applicable laws and ordinances for purposes of determining law and ordinance coverage are those enacted on or before the date of the loss.
- Provides that the insured must request reimbursement for work to be performed or expenses incurred no later than the latter of 2 years from the date of loss or 1 year from the notice of the claim on a loss to dwelling or personal property.
- Provides that an agent may export a flood insurance policy or endorsement to an eligible surplus lines insurer without first making a diligent effort to seek coverage from three or more authorized insurers.
- Provides that s. 627.7152, F.S., governing assignment agreements, applies to instruments that assign or transfer post-loss benefits to a service provider that provides scopes of service or provides inspection services.
- Provides that an insurer may designate a name, mailing address, and email address to receive a notice to initiate litigation from an assignee.
- Authorizes the exemption of licensed personal lines and general lines agent from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and service agreement contracts.

The bill takes effect July 1, 2021, except as otherwise provided.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt¹ fund created in 1993² after Hurricane Andrew³ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)⁴ and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)⁵ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

¹ Section 215.555(1)(f), F.S.

² Ch. 93-409, Laws of Fla.

³ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

⁴ State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited March 8, 2021).

⁵ Section 215.555(2)(e), F.S.

All insurers admitted to do business in this state writing residential property insurance, that includes wind coverage, must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.⁶ The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.⁷ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent⁸ of the reimbursed losses for loss adjustment expenses.⁹

The FHCF must charge insurers the actuarially indicated premium¹⁰ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.¹¹ The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.¹² In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.¹³

When the moneys in the FHCF are or will be insufficient to cover losses, the law¹⁴ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.¹⁵ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.¹⁶

⁶ See s. 215.555(4)(a), F.S.

⁷ Section 215.555(4)(c)1., F.S.

⁸ Section 215.555(4)(b)1., F.S.

⁹ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

¹⁰ Section 215.555(5)(a), F.S.

¹¹ See, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited March 8, 2021).

¹² Section 215.555(2)(a), F.S.

¹³ [State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, 2016 Annual Report, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943) (last visited March 8, 2021).

¹⁴ Section 215.555(6), F.S.

¹⁵ Section 215.555(6)(b), F.S.

¹⁶ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis. See *Florida Hurricane Catastrophe Fund, Fiscal Year 2009-2010 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/SBA_CATF_Annual_ReportFHCF_Final.pdf?ver=2016-06-08-121900-647 (last visited March 8, 2021).

Reimbursement of Collateral Protection Insurance

Collateral protection insurance, sometimes referred to as “lender-placed” or “force-placed” insurance, is insurance that is placed by a lender, at the expense of the borrower, to protect the lender’s security interest in property pursuant to a loan, such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners’ insurance insufficient, usually because the borrower’s insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower’s and the lender’s financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.¹⁷

Service of Process

Florida’s Chief Financial Officer¹⁸ (CFO) is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., any unauthorized insurer under s. 626.906, F.S. or s. 626.937, F.S., domestic reciprocal insurers, fraternal benefit societies under chapter 632, F.S., warranty associations under chapter 634, F.S., prepaid limited health service organizations under chapter 636, F.S., and persons required to file statements under s. 628.461, F.S.¹⁹

Service of process on the CFO is made by mail, personal service, or internet-based transmission system created by the Department of Financial Services (DFS).²⁰ Upon receiving service of process, the CFO retains a record copy in paper or electronic form and promptly forwards one copy of the process documents to the insurer’s designated process agent by registered or certified mail.²¹ The CFO may also make the process documents available from a securing website created by DFS and provide notice of availability and retrieval instructions to the insurer’s designated process agent under s. 624.307(9), F.S.

Under current law, service of process is considered valid and binding service on the insurer at such time as the process documents are served on the CFO and sent or made available to the insurer pursuant to s. 624.307(9), F.S., rather than at such time the process documents are received by the insurer.²²

Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by the Department of Financial Services (DFS) and appointed by the appropriate entity or person²³ in order to adjust claims. General requirements for licensure include submitting an application; paying required fees;

¹⁷ Section 215.555(2)(c), F.S.

¹⁸ The CFO’s assistant, deputy, or another person in charge of the office may also serve as the agent for service of process.

¹⁹ Section 48.151(3), F.S.

²⁰ *Id.*

²¹ Section 624.423(1), F.S.

²² Section 624.423(3), F.S.

²³ *See* s. 626.015(4), F.S., defining “appointment” as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.²⁴

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters²⁵ company employee adjusters,²⁶ and public adjuster apprentices.²⁷ The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.²⁸ In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.²⁹

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.³⁰ Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.³¹

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.³²

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.³³

Loss Run Statements

Loss run statements are reports produced by an insurer or consumer reporting agency containing the claims history of a policyholder with an authorized or unauthorized insurer for the preceding 5 years or, if the claims history is less than 5 years, a complete claims history with the insurer.³⁴ Under Florida law, the reports must contain the policy number, period of coverage, number of claims, the paid losses on all claims, and the date of each loss.³⁵ Reports are not required to include supporting claims file documentation such as copies of claim files, investigation reports, evaluation statements, insureds' statements, and documents protected by a common law or

²⁴ Section 626.171, F.S.

²⁵ Section 626.855, F.S.

²⁶ Section 626.856, F.S.

²⁷ Section 626.8561, F.S.

²⁸ Section 626.864(2), F.S.

²⁹ Section 626.864(3), F.S.

³⁰ Section 626.854(1), F.S.

³¹ Section 626.8548, F.S.

³² Section 626.855, F.S.

³³ Section 626.856, F.S.

³⁴ See sections 626.9202 and 627.444, F.S.

³⁵ Sections 626.9202(1) and 627.444(1), F.S.

statutory privilege.³⁶ Upon receipt of the policyholder's written request, the insurer has 15 days to provide the loss run statement of information on how to obtain the loss run statement at no cost through a consumer reporting agency.³⁷

Release of Claims Experience Under Group Health Insurance Policies

In addition to the statutory provisions governing loss run statements described above, group health insurers must also provide the policyholder with claims experience information required for bid for the previous 3 years or for the entire period of coverage.³⁸ Required information includes, but is not limited to, claim experience, premiums paid, number of insureds on a monthly basis, and dependent status. The insurer is not required to disclose any information deemed confidential by law.³⁹ Upon receipt of the policyholder's written request, the insurer has 21 days to provide the claims experience.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law⁴⁰ governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.⁴¹ The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.⁴² Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies that "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁴³

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The office makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience.
- Past and prospective expenses.
- The degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer.
- The reasonableness of the judgment reflected in the rate filing.
- Dividends, savings, or unabsorbed premium deposits returned to policyholders.
- The adequacy of loss reserves.

³⁶ *Id.*

³⁷ Sections 626.9202(2) and 627.444(2), F.S.

³⁸ Section 627.6647(1), F.S.

³⁹ Section 627.6647(2), F.S.

⁴⁰ Section 627.011, F.S.

⁴¹ Section 627.021, F.S.

⁴² Section 627.062(1), F.S.

⁴³ Section 627.041, F.S.

- The cost of reinsurance.
- Trend factors, including trends in actual losses per insured unit for the insurer.
- Conflagration and catastrophe hazards.
- Projected hurricane losses.
- Projected flood losses, if the policy covers the risk of flood.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

Florida Commission on Hurricane Loss Projection Methodology

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology.⁴⁴ The commission consists of 12 members, with expertise in the elements, are used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the director of the FHCF; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.⁴⁵

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.⁴⁶ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.⁴⁷ Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,⁴⁸ which in turn may be used in rate filings under the Rating Law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance, root-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.⁴⁹

Workers' Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers' compensation insurers to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of worker's compensation experience for ratemaking purposes.⁵⁰ Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification.

⁴⁴ Section 627.062(2)(b)11., F.S.

⁴⁵ Section 627.0628(2)(b), F.S.

⁴⁶ Section 627.062(2)(j), F.S.

⁴⁷ Section 627.0629(1), F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Section 627.914(1), F.S.

- Manual premiums by classification.
- Standard premiums by classification.
- Losses by classification and injury type.
- Expenses.⁵¹

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.⁵²

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).⁵³ When an insurer goes into receivership due to insolvency, it ceases reporting to NCCI and, therefore, its data is no longer reported to OIR and not used in the determination and fixing of rates.

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.⁵⁴ Citizens is not a private insurance company.⁵⁵ Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an nine member Board of Governors⁵⁶ that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. The Governor appoints three members to the board, one of whom serves solely to advocate for consumers. Citizens is subject to regulation by the OIR.

⁵¹ Section 627.914(2), F.S.

⁵² Section 627.072(1), F.S.

⁵³ See Rule 69O-189.0055, F.A.C.

⁵⁴ Admitted market means insurance companies licensed to transact insurance in Florida.

⁵⁵ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

⁵⁶ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁵⁷ Assets may not be commingled or used to fund losses in another account.⁵⁸

- **The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.
- **The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.
- **The Coastal Account** offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁵⁹

Citizens Eligibility for Commercial Residential Wind-Only Coverage

In 2014,⁶⁰ the Legislature enacted changes to the statutes governing Citizens that prohibited residential condominium associations from obtaining commercial residential property insurance policies from Citizens that cover damage only from wind if 50 percent or more the condominiums in the association are rented more than eight times a year for less than 30 days. These changes were intended to provide clarity to the classification of transient occupancy risks and remove inconsistencies between commercial residential and commercial non-residential properties.⁶¹ Condominiums are presently able to obtain Citizens policies that cover damage from multiple perils, including wind.

Law and Ordinance Coverage

Under s. 3401.7.2.6 of the Florida Building Code, when repairs and alterations amounting to more than 50 percent of the value of the existing building are made during a 12-month period, the building or structure must be made to conform to the requirements for a new building or

⁵⁷ The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵⁸ Section 627.351(6)(b)2b., F.S.

⁵⁹ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

⁶⁰ Chapter 2015-140, L.O.F.

⁶¹ House Regulatory Affairs Committee, *House Bill 1089 Analysis* (June 16, 2014)

<https://www.flsenate.gov/Session/Bill/2014/1089/Analyses/h1089z1.IBS.PDF> (last visited February 8, 2021).

structure or be entirely demolished. As OIR's *Law and Ordinance Coverage* study⁶² noted, this can present significant insurance challenges to insurers and policyholders alike because the cost of reconstruction to ensure compliance with the current building codes usually exceeds policy limits.

Following a covered loss to a dwelling that requires repair or replacement, law and ordinance coverage pays the increased construction costs as the result of newer building code enforcement or ordinances. However, insurers are not required to pay the full costs associated with newer building code compliance. Under s. 6267.7011, F.S., governing law and ordinance coverage for homeowners' insurance policies, the insurer is required to offer the policyholder options for law and ordinance coverage limited to 25 percent or 50 percent of the dwelling value. If the policyholder does not provide a written rejection for law and ordinance coverage, the policy is deemed to provide law and ordinance covered limited to 25 percent of the dwelling value.

Replacement Cost Holdbacks Under Homeowner's Insurance Policies

Following a covered loss under a replacement cost policy, many states require the insurer to initially pay the actual cash value, and then provide the balance, or holdback, of the replacement cost once the insured has replaced or repaired the property. Under s. 627.7011, F.S., governing Florida homeowners' insurance policies, the treatment of holdbacks varies depending on whether the loss is to personal property or dwelling, and then whether the loss is total.

For personal property under a homeowners' insurance policy with replacement cost, the insurer must offer coverage whereby the insurer pays replacement cost without any holdback, whether or not the insured replaces the property. The insurer may also offer coverage in exchange for a premium credit or discount whereby the insurer initially pays the actual cost value of the insured loss, and then makes subsequent payments to the insured as receipts are received up to the policy limits for replacement costs.⁶³

For a dwelling under a homeowners' insurance policy with replacement, the insurer must initially pay at least the actual cash value of the insured loss, less any deductible. Any remaining amount necessary to perform repairs is paid by the insurer as work is performed and expenses are incurred. However, if the dwelling suffered a total loss, insurer must pay the replacement cost without any holdback.⁶⁴

Time Limits for Filing Claims and Statute of Limitations

Section 627.70132, F.S., currently requires insureds to notify an insurer of a windstorm or hurricane claim, supplemental claim, or reopened claim within 3 years after the hurricane first made landfall or the windstorm caused the covered damage. Section 627.706(5), F.S., currently requires insureds to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

⁶² Florida Office of Insurance Regulation, *Law and Ordinance Coverage* (January 2006), https://www.floir.com/siteDocuments/OIRLaw_Ordinance_Cov_Study_13006.pdf (last visited February 8, 2021).

⁶³ Section 627.7011(3)(b), F.S.

⁶⁴ Section 627.7011(3)(a), F.S.

For other types of property insurance claims, Florida law currently places a 5-year statute of limitations for bringing an action for the breach a property insurance contract that runs from the date of the loss.⁶⁵

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.⁶⁶ 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,⁶⁷ which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.⁶⁸ Rather, surplus lines insurers are “unauthorized” insurers,⁶⁹ but may transact surplus lines insurance if they are made “eligible” by the OIR. To be made eligible to transact insurance, a surplus lines insurer must meet the following requirements related to regulatory oversight in other jurisdictions and solvency:⁷⁰

- The surplus lines insurer is authorized in the state or county of its domicile as to the kind or kinds of insurance proposed to be placed with the insurer.
 - The insurer must have been an authorized insurer for at least the 3 preceding years. The OIR may waive the 3-year requirement if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year and has capital and surplus of not less than \$25 million.
- The surplus lines insurer or an agent requesting to export a policy to the surplus lines insurer must provide the OIR with a duly authenticated copy of the surplus lines insurer’s current annual financial statement, and also must provide any additional information regarding the insurer that the OIR requests.
- The surplus lines insurer must maintain a surplus as to policyholders of at least \$15 million.
 - Alien surplus lines insurers (insurers formed under laws other than those of Florida or any state, district, territory, or commonwealth of the United States) must also maintain in the United States a trust fund for the protection of policyholders deemed adequate by the OIR of at least \$5.4 million.
 - A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, F.S., and must be in compliance with ch. 625, F.S.

⁶⁵ Section 95.11(2)(e), F.S

⁶⁶ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

⁶⁷ Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

⁶⁸ Section 624.09(1), F.S.

⁶⁹ Section 624.09(2), F.S.

⁷⁰ Section 626.918, F.S.

- The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.
- The officers and directors of the insurer must be competent and trustworthy, meeting the requirements of s. 624.404(3), F.S.

Policies issued by an impaired or insolvent surplus lines insurer are not covered by any of Florida's guaranty associations.

Placement of Insurance With an Eligible Surplus Lines Insurer

“To export” a policy means an insurance agent,⁷¹ with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.⁷² Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.⁷³ “Diligent effort” means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is one million dollars or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁷⁴ The law further specifies that:⁷⁵

- 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,⁷⁶ the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

All licensed surplus lines agents are members of the Florida Surplus Lines Service Office (FSLSO), a nonprofit association created by statute and directed by a board of governors.⁷⁷ The FSLSO receives, records, and reviews all surplus lines insurance policies and documents, maintains records of such policies, produces monthly reports to the OIR, collects from surplus lines agents the surplus lines premium tax⁷⁸ and surplus lines service fee,⁷⁹ and other specified

⁷¹ 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.

⁷² Section 626.914(3), F.S.

⁷³ Section 626.916(1)(a), F.S.

⁷⁴ Section 626.914(4), F.S.

⁷⁵ Section 626.916(1), F.S.

⁷⁶ Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

⁷⁷ Section 626.921, F.S.

⁷⁸ See Section 626.932, F.S.

⁷⁹ See Section 626.9325, F.S.

duties.⁸⁰ Each surplus lines agent that transacts business during a calendar quarter must file an affidavit stating that all surplus lines insurance the agent transacted during that quarter has been submitted to the FLSO.⁸¹ The affidavit must also include the diligent efforts the agent made to place coverages with authorized insurers.

Notice of Claims and Litigations Under Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.⁸²

The Legislature in 2019 enacted s. 627.7152, F.S., which governs the execution of assignment of post-loss benefits under a property insurance policy, provides duties that assignees must meet when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for awarding attorney fees in such litigation.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage. The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards.

In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee’s failure to cooperate with the insurer in the claim investigation.

Agent Licensing

General Lines Agent

A general lines agent⁸³ is one who sells the following lines of insurance: property,⁸⁴ casualty,⁸⁵ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,⁸⁶ or a workers’ compensation self-insurance fund;⁸⁷ surety;⁸⁸ health;⁸⁹ and

⁸⁰ Section 626.921(3), F.S.

⁸¹ Section 626.931, F.S.

⁸² *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

⁸³ Section 626.015(5), F.S.

⁸⁴ Section 624.604, F.S.

⁸⁵ Section 624.605, F.S.

⁸⁶ As defined in s. 624.462, F.S.

⁸⁷ Pursuant to s. 624.4621, F.S.

⁸⁸ Section 626.606, F.S.

⁸⁹ Section 624.603, F.S.

marine.⁹⁰ The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.⁹¹ 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.⁹²

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.⁹³

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.⁹⁴ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.⁹⁵ 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.⁹⁶

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.⁹⁷ No person shall solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.⁹⁸

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

⁹⁰ Section 624.607, F.S.

⁹¹ Section 626.827, F.S.

⁹² Section 626.829, F.S.

⁹³ Section 626.015(17), F.S.

⁹⁴ Section 634.011(8), F.S.

⁹⁵ Section 634.031, F.S.

⁹⁶ Section 634.171, F.S.

⁹⁷ Section 634.301, F.S.

⁹⁸ 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.

handling in return for the payment of a segregated charge by the consumer.⁹⁹ 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.¹⁰⁰

III. Effect of Proposed Changes:

Collateral Protection Insurance

Section 1 amends s. 215.555, F.S., to require that the FHCF provide reimbursement for a loss under collateral protection insurance if the coverage is in an amount equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, equal to the coverage amount that the homeowner has been notified of, or equal to the coverage amount that the homeowner requests from the collateral protection insurer.

This section is effective June 1, 2021.

Service of Process

Section 2 amends s. 624.423, F.S. to provide that service of process is considered valid and binding on the insurer at the time the process documents are received by, rather than sent to, the insurer. Additionally, the section incorporates the secured network process provided for under s. 624.307(9), F.S., by providing that process is valid and binding upon being made available on the system.

This section is effective upon becoming law.

Company Employee Adjusters

Section 3 amends s. 626.856, F.S., revising the definition of a "company employee adjuster" in the Insurance Adjusters Law, to provide that an all-lines adjuster who is appointed and employed by an insurer's affiliate may serve as a company employee adjuster. for the purpose of ascertaining and determining the amount of an insurance claim, loss, or damage, or settling such claim, loss or damage.

Loss Run Statements

Section 4 amends s. 626.9202, F.S., to provide several provisions governing loss run statement requirements for nonadmitted insurers:

- The report must contain the paid loss on each claim, instead of all claims;
- Reports from group health insurers must also include premiums paid, number of insured on a monthly basis, and dependent status;

⁹⁹ Section 634.401(13), F.S.

¹⁰⁰ 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.

- Each insurer must designate an individual or entity to receive written requests for loss run statements from insureds;
- The personal lines insurer must provide the insured a loss run statement within 15 days of receiving the insured's written request subsequent to the insured providing the insurer with information on obtaining a loss run statement from a consumer reporting agency'
- Life insurers are exempted from this section;
- Under a group health insurance policy, only the group policyholder may request and be provided a loss run statement.

Section 9 amends s. 627.444, F.S., to provide several provisions governing loss run statement requirements for admitted insurers:

- The report must contain the paid loss on each claim, instead of all claims;
- Reports from group health insurers must also include premiums paid, number of insured on a monthly basis, and dependent status;
- Each insurer must designate an individual or entity to receive written requests for loss run statements from insureds;
- The personal lines insurer must provide the insured a loss run statement within 15 days of receiving the insured's written request subsequent to the insured providing the insurer with information on obtaining a loss run statement from a consumer reporting agency'
- Life insurers are exempted from this section;
- Under a group health insurance policy, only the group policyholder may request and be provided a loss run statement.

These sections are effective upon becoming law.

Florida's Rating Law

Hurricane Model Averaging and Weighting

Section 5 amends s. 627.062, F.S, to provide that a residential property insurer's rate filing may use a modeling indication that is the weighted or straight average of two or more models approved by the Commission on Hurricane Loss Projection Methodology.

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Section 6 amends. S. 627.0629, F.S., to provide residential property insurers with discretion regarding whether to include positive and negative rate factors based on building code enforcement in rate filings for residential property insurance.

The bill further provides that residential property insurer may file premium discounts, credits, and other rate differentials based on windstorm construction standards developed by an independent, not-for-profit, scientific research organization.

The bill allows property insurers to require policyholders who are constructing or retrofitting a structure to provide evidence of compliance with windstorm mitigation standards prior to receiving premium discounts, credits, or rate reductions allowed under the rating plan.

Workers' Compensation Reporting Requirements and Rating Factors

Section 7 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates..

Citizens Eligibility for Commercial Residential Wind-Only Coverage

Section 8 amends s. 627.351, F.S., governing Citizens, to provide that condominium associations where 50 percent or more of the condominium units are rented more than eight times per year for a period of less than 30 days may be eligible wind-only Citizens policies.

Homeowners' Insurance Policies

Section 11 amends s. 627.7011, F.S., governing law and ordinance coverage and replacement cost holdbacks for dwellings and personal property under a homeowners' insurance policy. The bill provides that the applicable laws and ordinances for purposes of determining law and ordinance coverage are those enacted on or before the date of the loss. The bill further provides that the insured must request reimbursement for work to be performed or expenses incurred no later than the latter of 2 years from the date of loss or 1 year from the notice of the claim on a loss to dwelling or personal property.

Diligent Effort Requirements Under Flood Insurance Policies

Section 12 amends s. 6267.715, F.S., to provide that an agent may export a flood insurance policy or endorsement to an eligible surplus lines insurer without first making a diligent effort to seek coverage from three or more authorized insurers.

This section is effective upon becoming law.

Notice of Claims Under Assignment Agreements

Section 13 amends s. 627.7152, F.S., governing residential property insurance and commercial property insurance assignment agreements. The bill adds the service of inspection to the list of services contemplated by the definition of "assignment agreement." The bill further provides the insurer may designate a name, mailing address, and email address to receive a notice to initiate litigation from an assignee.

This section is effective upon becoming law.

Agent Licensing

Motor Vehicle Service Agreements

Section 14 amends s. 634.171, F.S. to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell motor vehicle service agreements.

Home Warranty Contracts

Section 15 amends s. 634.317, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell home warranty contracts.

Service Warranty Contracts

Section 16 amends s. 634.419, F.S., to provide that a licensed personal lines or general lines agent is exempt from salesperson licensing requirements to solicit, negotiate, advertise, or sell service warranty contracts.

Conforming Change

Section 10 repeals s. 627.6647, F.S., to provide conforming changes necessitated by **Sections 4** and **9**.

Reenactment

Section 17 reenacts s. 627.153, F.S., to incorporate amendments made to s. 627.7152, F.S.

Effective Date

Section 18 provides that except as otherwise expressly provided in this act, and except for this section, which takes effect upon this act become law, this act is effective July 1, 2021.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 624.423, 626.856, 626.9202, 627.062, 627.0629, 627.072, 627.351, 627.444, 627.7011, 627.715, 627.7152, 634.171, 634.317, 634.419, and 627.7153.

This bill repeals section 627.6647 of the Florida Statutes.

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.