

**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.)

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

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BILL: SB 1728

INTRODUCER: Senator Boyd

SUBJECT: Property Insurance

DATE: February 2, 2022

REVISED: \_\_\_\_\_

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

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**I. Summary:**

SB 1728 addresses contractor solicitations related to property insurance roof claims, the type of homeowners' insurance coverage that insurers must offer for roof losses, and various aspects of Citizens Property Insurance Corporation.

**Property Insurance Claims for Roof Damage**

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

The bill allows residential property insurers to offer only homeowners' insurance policies that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement that an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance

coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the Office of Insurance Regulation, but must also offer policies that provide replacement cost reimbursement.

Additionally, the bill allows an insurer to issue homeowners' policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof.

A homeowners' policy that utilizes a roof surface replacement schedule or provides roof coverage on a stated value basis must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

### **Citizens Property Insurance Corporation**

The bill increases the insurance expertise required of certain appointed members of the Citizens Board of Governors and to require that the Citizens executive director must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.<sup>1</sup> Other properties would be charged the actuarially indicated rate.

The bill provides that whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder's Citizens renewal premium.

The bill also:

- Provides that an eligible surplus lines insurer may participate in any depopulation, take-out, or keep out program adopted by Citizens in the same manner and on the same terms as an authorized insurer, if the surplus lines meets specified statutory requirements.
- Revises an existing public records exemption<sup>2</sup> under s. 626.916(1)(x)2., F.S., that allows authorized insurers, considering underwriting a risk held by Citizens, to access

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<sup>1</sup> The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

<sup>2</sup> Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

underwriting files and confidential claims files that would otherwise be exempt from public records requirements.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

### Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative \$1 billion.<sup>3</sup>

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with OIR approving 55 of those filings. In 2016, OIR approved only 6 rate increases of at least 10 percent.<sup>4</sup>

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.<sup>5</sup>

In 2020, OIR conducted a data call of Florida's domestic property insurers.<sup>6</sup> According to the State Insurance Commissioner, the results of the data call showed that the severity of non-weather water claims with litigation is nearly double claims that are closed without litigation.<sup>7</sup>

According to OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.<sup>8</sup> Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or

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<sup>3</sup> David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (September 22, 2021). [https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419\\_MeetingPacket\\_5252\\_2.pdf](https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf) (last accessed January 30, 2022).

<sup>4</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>5</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>6</sup> <https://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last visited Jan. 27, 2021).

<sup>7</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

<sup>8</sup> Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

at the time of its final disposal.<sup>9</sup> When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).<sup>10</sup> The bill addressed multiple aspects of the property insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens Property Insurance Corporation.

### ***Property Insurance Practices by Contractors***

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation. The law provides that the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibit licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending that the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a \$10,000 fine. Unlicensed persons not otherwise exempted from PA licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a \$10,000 fine per act and the criminal penalty for unlicensed activity.

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<sup>9</sup> International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/loss-development> (last visited Jan. 27, 2021).

<sup>10</sup> Ch. 2021-77, Laws of Florida.

### *Regulations of Commercial Speech*

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech<sup>11</sup> violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.<sup>12</sup> Justice Powell succinctly set forth the standards.

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.<sup>13</sup>

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.<sup>14</sup>

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted that state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights

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<sup>11</sup> Commercial speech is expression related solely to the economic interests of the speaker and its audience.

<sup>12</sup> 447 U.S. 557 (1980).

<sup>13</sup> See *Central Hudson Gas.*, 447 US. 557 at pg. 565.

<sup>14</sup> See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).

are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.<sup>15</sup>

The United States Supreme Court used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S. Justice Sotomayor* upheld disclosure requirements placed by federal upon debt relief agents that provide bankruptcy assistance for payment because, "...the disclosures are intended to combat the problem of inherently misleading commercial advertisements, and they entail only an accurate statement of the advertiser's legal status and the character of the assistance provided."<sup>16</sup>

### ***Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements***

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.<sup>17</sup> Within the law I, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement.
- (3): A contractor who violates this section is subject to a disciplinary proceeding through DBPR under s. 489.129, F.S., and is subject to a \$10,000 fine for each violation.
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to \$10,000 for each violation.

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the US Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

### **Replacement Cost and Actual Cash Value Loss Settlement Provisions**

There are two primary settlement options available when purchasing a homeowner's property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in

<sup>15</sup> *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).

<sup>16</sup> *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).

<sup>17</sup> *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.<sup>18</sup> Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair that property.<sup>19</sup> Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.<sup>20</sup>

By contrast, actual cash value is the cost to repair or replace the damage property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.<sup>21</sup> Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it. Florida law currently requires insurers writing homeowner's property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.<sup>22</sup> The OIR will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

### ***Fannie Mae and Freddie Mac Minimum Insurance Requirements***

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary mortgage market.<sup>23</sup> Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.<sup>24</sup>

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.<sup>25</sup> The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a

<sup>18</sup> National Association of Insurance Commissioners, *Glossary of Insurance Terms*, [https://content.naic.org/consumer\\_glossary.htm](https://content.naic.org/consumer_glossary.htm) (last visited January 4, 2021).

<sup>19</sup> See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))

<sup>20</sup> Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))

<sup>21</sup> National Association of Insurance Commissioner, *Glossary of Insurance Terms*, [https://content.naic.org/consumer\\_glossary.htm](https://content.naic.org/consumer_glossary.htm) (last visited January 4, 2021).

<sup>22</sup> Section 627.7011(1), F.S.

<sup>23</sup> Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, <https://www.fhfa.gov/about-fannie-mae-freddie-mac> (last visited January 28, 2022).

<sup>24</sup> Fannie Mae, *Selling Guide: Fannie Mae Single Family* (December 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited January 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited January 28, 2022).

<sup>25</sup> See Fannie Mae, *Selling Guide: Fannie Mae Single Family* (December 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited January 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.

separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.<sup>26</sup> For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.<sup>27</sup>

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.<sup>28</sup> The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.<sup>29</sup> For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- 80 percent of the full replacement cost of the insurable improvements.<sup>30</sup>

### ***Roof Surface Payment Schedules***

A roof surface payment schedule, sometimes referred to in residential property insurance policies as a roof surfacing loss percentage table, is a depreciation table that states upfront in either the individual policy or endorsement the cost the insurer will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material type over time.

#### **Roof Surface Payment Schedule<sup>31</sup>**

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited January 28, 2022).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, [http://doi.nv.gov/uploadedFiles/doinvgov/\\_public-documents/Consumers/Home/American\\_Family/HO\\_88\\_02\\_01\\_14.pdf](http://doi.nv.gov/uploadedFiles/doinvgov/_public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf) (last visited January 28, 2022).



The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system.								
Age of Roof in Years	Roof Surface Material Type							
	Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural Composition Shingles	All Other Composition or Solar Shingles	Wood Shingles or Shakes	Metal Shingles or Panels	Concrete Tile, Fiber Cement Tile, or Clay Tile	Slate	Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface	All Other Roof Types
0	100%	100%	100%	100%	100%	100%	100%	100%
1	97%	96%	97%	98%	98%	99%	95%	95%
2	94%	92%	94%	96%	96%	98%	90%	90%
3	91%	88%	91%	94%	94%	97%	85%	85%
4	88%	84%	88%	92%	92%	96%	80%	80%
5	85%	80%	85%	90%	90%	95%	75%	75%
6	82%	76%	82%	88%	88%	94%	70%	70%
7	79%	72%	79%	86%	86%	93%	65%	65%
8	76%	68%	76%	84%	84%	92%	60%	60%
9	73%	64%	73%	82%	82%	91%	55%	55%
10	70%	60%	70%	80%	80%	90%	50%	50%
11	67%	56%	67%	78%	78%	89%	45%	45%
12	64%	52%	64%	76%	76%	88%	40%	40%
13	61%	48%	61%	74%	74%	87%	35%	35%
14	58%	44%	58%	72%	72%	86%	30%	30%
15	55%	40%	55%	70%	70%	85%	*****	*****
16	52%	36%	52%	68%	68%	84%		
17	49%	32%	49%	66%	66%	83%		
18	46%	28%	46%	64%	64%	82%		
19	43%	**	43%	62%	62%	81%		
20	40%		40%	60%	60%	80%		
21	37%		37%	58%	58%	79%		
22	34%		34%	56%	56%	78%		
23	31%		31%	54%	54%	77%		
24	28%		28%	52%	52%	76%		
25	*		*	50%	50%	75%		
26				48%	48%	74%		
27				46%	46%	73%		
28				44%	44%	72%		
29				42%	42%	71%		
30				***	***	***		

\* 25% payable for 25 years or over; \*\* 25% payable for 19 years or over; \*\*\* 40% payable for 30 years or over; \*\*\*\* 70% payable for 30 years or over; \*\*\*\*\* 25% payable for 15 years or over

### ***Valued Policy Law***

Florida's Valued Policy Law (VPL)<sup>32</sup> has been in effect since 1899 and requires the insurer to set the value of the insured property in the event of a total loss.<sup>33</sup> In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid.<sup>34</sup> However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.<sup>35</sup>

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

### **Citizens Property Insurance Corporation—Overview**

Citizens Property Insurance Corporation (Citizens or corporation) 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.<sup>36</sup> Citizens is not a private insurance company.<sup>37</sup> Citizens was statutorily created in 2002 when the Florida 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 eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.<sup>38</sup> The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.<sup>39</sup> Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

### ***Citizens' Accounts***

*The Personal Lines Account (PLA)* offers personal lines residential policies that provide comprehensive, multi-peril 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

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<sup>32</sup> Section 627.702, F.S.

<sup>33</sup> *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).

<sup>34</sup> Section 627.702(1)(a), F.S.

<sup>35</sup> Section 627.702(1)(b), F.S.

<sup>36</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>37</sup> Section 627.351(6)(a)1., F.S.

<sup>38</sup> Section 627.351(6)(a)2., F.S.

<sup>39</sup> Section 627.351(6)(c)4.a., F.S.

the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.<sup>40</sup>

*The Commercial Lines Account (CLA)* offers commercial lines residential and non-residential 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 non-residential policies covering business properties.<sup>41</sup>

*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 multi-peril policies.<sup>42</sup>

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.<sup>43</sup> Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.<sup>44</sup>

### ***Current Policies***

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of \$232,502,323,529.<sup>45</sup> The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

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<sup>40</sup> See s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Jan 22, 2022).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Section 10, ch. 2013-60, L.O.F.

<sup>44</sup> Section 627.3518(2)-(3), F.S.

<sup>45</sup> Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, <https://www.citizensfla.com/-/20211231-policies-in-force> (last visited Jan. 22, 2022).

Account	Product Line	Policies In-Force	Total Exposure	Premium with Surcharges	
PLA	Personal Residential Multiperil (PR-M)	589,028	167,886,789,888	1,280,496,248	
Coastal	Personal Residential Multiperil (PR-M)	98,105	23,245,226,192	278,331,349	
Coastal	Personal Residential Wind-Only (PR-W)	67,342	28,784,726,623	178,916,825	
Coastal	Commercial Residential Multiperil (CR-M)	111	592,392,383	2,789,952	
Coastal	Commercial Residential Wind-Only (CR-W)	1,749	5,682,636,307	33,449,678	
Coastal	Commercial Non-Residential Multiperil (CNR-M)	39	48,588,500	569,765	
Coastal	Commercial Non-Residential Wind-Only (CNR-W)	2,212	1,837,291,826	23,692,614	
CLA	Commercial Residential Multiperil (CR-M)	580	4,289,395,010	17,091,136	
CLA	Commercial Non-Residential Multiperil (CNR-M)	139	135,276,800	879,248	
		Total	759,305	232,502,323,529	1,816,216,815

Source: Citizens Property Insurance<sup>46</sup>

These numbers do not reflect policies tagged for takeout via Citizens’ depopulation program but still serviced by Citizens.<sup>47</sup> From December, 2020 to December, 2021, Citizens’ policy count grew by nearly 40 percent, adding 216,566 total policies in force.<sup>48</sup> Citizens has expressed that it expects to exceed 1 million policies in force in 2022.<sup>49</sup>

**Citizens Glidepath Rates**

From 2007 until 2010, Citizens’ rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a “glidepath” to impose annual rate increases up to a level that is actuarially sound. Under the originally established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows:<sup>50</sup>

- 11 percent for 2022.
- 12 percent for 2023.

<sup>46</sup> *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.

<sup>47</sup> *Id.*

<sup>48</sup> Citizens Property Insurance Corporation, *Policies in Force*, <https://www.citizensfla.com/policies-in-force> (last visited Jan. 22, 2022).

<sup>49</sup> Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), available at: <https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations>.

<sup>50</sup> Section 627.351(6)(n)5., F.S.

- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.<sup>51</sup> In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.<sup>52</sup>

### *Citizens Financial Resources*

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.<sup>53</sup> In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.<sup>54</sup> Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments<sup>55</sup> on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.<sup>56</sup> Citizens may impose three assessment tiers and their sequence is as follows:<sup>57</sup>

*Citizens Policyholder Surcharge* – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.<sup>58</sup>

*Regular Assessment* – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate

<sup>51</sup> Section 627.351(6)(n)7., F.S.

<sup>52</sup> Section 627.351(6)(n)6., F.S.

<sup>53</sup> Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 22, 2022).

<sup>54</sup> Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Jan. 22, 2022).

<sup>55</sup> Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

<sup>56</sup> Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.

<sup>57</sup> Citizens Property Insurance Corporation, *supra* note 54.

<sup>58</sup> Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 54.

filing process of up to two percent of premium or two percent of the deficit, whichever is greater.<sup>59</sup> This assessment is not levied against Citizens' policyholders.

*Emergency Assessment* – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.<sup>60</sup>

### ***Eligibility for Insurance in Citizens***

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.<sup>61</sup>

### ***Eligibility Based on Premium Amount***

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more.<sup>62</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.<sup>63</sup>

### ***Eligibility Based on Value of Property Insured***

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.<sup>64</sup> Structures with a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.<sup>65</sup> However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents

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<sup>59</sup> Section 627.351.(6)(b)3.a., F.S.

<sup>60</sup> Section 627.351(6)(b)3.d., F.S.

<sup>61</sup> See Citizens Property Insurance Corporation *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan 22, 2022).

<sup>62</sup> Section 627.351(6)(c)5., F.S.

<sup>63</sup> Section 627.351(6)(c)5., F.S.

<sup>64</sup> Section 627.351(6)(a)3., F.S.

<sup>65</sup> Section 627.351(6)(a)3.d., F.S.

replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.<sup>66</sup>

### ***Citizens Depopulation***

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>67</sup> In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.<sup>68</sup> As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;<sup>69</sup>
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

### ***Access to Public Records – Generally***

The Florida Constitution provides the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>70</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>71</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in ss. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the

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<sup>66</sup> Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (available at <https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf>) (last visited Jan. 22, 2022). See also Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits*, November 12, 2019 <https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits>.

<sup>67</sup> Section 627.351(6)(q)3.a., F.S.

<sup>68</sup> Chapter 2016-229, L.O.F.

<sup>69</sup> Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

<sup>70</sup> FLA. CONST. art. I, s. 24(a).

<sup>71</sup> *Id.*

legislature.<sup>72</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>73</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### ***Confidentiality of Citizens' Underwriting and Claims Files***

Section 627.351(1)(x), F.S., establishes certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b., these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

The public records exemption authorizes the sharing of certain files and information for the purpose of depopulating Citizens. If an authorized insurer is considering underwriting a risk insured by Citizens, relevant underwriting files and confidential claims files may be released to the insurer if the insurer agrees in a sworn writing to maintain the confidentiality of the files. Citizens may also release such files to the staff and board of governors of the market assistance plan established by s. 627.3515, F.S., who also must maintain confidentiality, and may share such files with authorized insurers considering writing those risks if the authorized insurer agrees to maintain confidentiality. Citizens may also release the name, address, and phone number of a residential property owner or insured, the location of the risk, rating information, loss history, and policy type to an entity that has obtained a permit to become an authorized insurer, a reinsurer under s. 624.610, F.S., a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines agent. The recipient of such information must maintain confidentiality.

### **III. Effect of Proposed Changes:**

#### **Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage**

**Section 1** amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a

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<sup>72</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022), [https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022\\_Rules.pdf](https://www.flsenate.gov/UserContent/Publications/SenateRules/2020-2022_Rules.pdf) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022), and <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Reference&CommitteeId=&Session=2022&DocumentType=The+Rules+Of+The+House+of+Representatives&FileName=2020-2022+House+Rules+-+Edition+1.pdf> (last visited Jan. 22, 2022).

<sup>73</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).



contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the foregoing the definition by providing that a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

### **Citizens Property Insurance Corporation**

**Section 2** amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation, the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

#### ***Eligibility for Citizens Coverage – Determining Replacement Cost***

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the OIR, when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above \$700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County, structures and single condominium units are ineligible for Citizens if the replacement cost is \$1 million or more.

The bill also deletes unnecessary language related Citizens eligibility that ceased to be effective on January 1, 2017.

#### ***Eligibility for Citizens Coverage – Existing Citizens Policyholders***

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides that whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the

policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium.

The bill also deletes a provision in current law that allows a personal lines or commercial lines residential policyholder removed from the corporation through an assumption agreement to remain eligible for coverage from the corporation until the end of the assumption period. The bill instead provides that a policyholder removed through an assumption agreement is not eligible for Citizens coverage.

**Section 3** of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

***Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director***

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors and to require that the Citizens executive director must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the Board of Governors appointed by each appointing officer<sup>74</sup> must have “demonstrated expertise in insurance.” The bill specifies that the demonstrated expertise in insurance must be at least 10 years’ experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, or an insurance trade association.

The bill also specifies that the executive director of Citizens must have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements that a person must meet to be the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of success operation; or
- A person the OIR has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

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<sup>74</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer if any person who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:

- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation, or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of any state or country.

Under the bill, the executive director of Citizens would have to be a person who meets these requirements.

### ***Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath***

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens “glidepath” to personal lines residential policies covering an insured’s *primary residence* and any commercial lines residential policy. “Glidepath” is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.<sup>75</sup> This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in part V of this staff analysis.

### ***Depopulation of Citizens – Participation of Surplus Lines Insurers in Depopulation Programs***

The bill amends s. 627.351(6)(q)3., F.S., to provide that an eligible surplus lines insurer may participate in any depopulation, take-out, or keep out program adopted by Citizens in the same manner and on the same terms as an authorized insurer. However, surplus lines must comply with the following statutory requirements.

The surplus lines insurer must first obtain OIR approval of its depopulation, take-out, or keep out plan and comply with all Citizens requirements for such a plan that are applicable to admitted insurers. The OIR must determine whether a surplus lines insurer must meet certain requirements before approving its plan.

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<sup>75</sup> The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

The surplus lines insurer must meet requirements regarding solvency and financial strength. The surplus lines insurer must maintain surplus of \$50 million on a company or pooled basis; have a superior, excellent, exception, or comparable financial strength rating by a rating agency acceptable to the OIR; and maintain reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to the OIR for review for purposes of the takeout.

The surplus lines insurer must provide notice to the policyholder before assuming the policy that surplus lines policies are not covered by the Florida Insurance Guaranty Association (FIGA).

The surplus lines policy must provide policy coverage similar to Citizens coverage. Before assuming the policy, the surplus lines insurer must provide to the policyholder an outline of any substantial differences in coverage between the existing Citizens policy and the policy being offered to the insured.

The surplus lines insurer must file all of the following with the OIR:

- Information demonstrating compliance with s. 624.404(3), F.S., (which sets standards for officers, directors, and other persons who may exercise control over an authorized insurer) including biographical affidavits, fingerprints processed under s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.
- A service-of-process consent and agreement form executed by the insurer.
- Proof the insurer has been an eligible surplus lines insurer or an authorized admitted market insurer for at least 3 years.
- A duly authenticated copy of the insurer's current audited financial statement and any additional information relative to the insurer that the OIR may request or, if different from the foregoing, a complete certified copy of the insurer's latest official financial statement required by the insurer's domiciliary state.
- If applicable, a copy of the United States trust account agreement.

The bill specifies that the foregoing filing requirements do not subject the surplus lines insurer to requirements in addition to part VIII of ch. 626, F.S., which contains the Surplus Lines Law and other statutes applicable to unauthorized insurers.

The bill provides that surplus lines brokers making an offer of coverage pursuant to a Citizens depopulation program are exempt from complying with s. 626.916(1)(a), (b), (c), or (e), F.S., which requires a diligent effort to place business with an authorized insurer before exporting the coverage to a surplus lines insurer, requires that the surplus lines coverage be less favorable than in the admitted market, prohibits rates for surplus lines insurance that are lower than in the admitted market. The surplus lines broker is exempt from the requirement to disclose to the policyholder that surplus lines coverage is not covered by FIGA, but the bill requires that the surplus lines insurer must provide the policyholder notice of that fact.

The surplus lines insurer must submit to the Bureau of Collateral Management within the Department of Financial Services a special deposit equal to the unearned premium net of

unearned commissions on the assumed block of business. The special deposit is for paying claims or returning unearned premium if the surplus lines insurer goes insolvent. The deposit must be submitted within 10 days after the date the surplus lines insurer assumes the Citizens policies. Each quarter, the surplus lines insurer must report the unearned premium in force and must add additional funds if necessary or must receive a refund of any excess funds in the special deposit.

Surplus lines brokers must, before a surplus lines insurer assumes a Citizens policy, must obtain a statement from each producing agent stating the agent is willing to participate in the take-out program.

If a Citizens policyholder is selected for removal by a surplus lines insurer and an authorized insurer, Citizens must prioritize the offer of coverage from the authorized insurer.

A risk with a dwelling replacement cost of \$700,000 or more is not eligible for Citizens coverage upon receiving a surplus lines take-out offer at a premium that is not more than 20 percent above the Citizens premium. A risk with a dwelling replacement cost less than \$700,000 remains eligible for Citizens coverage regardless of any surplus lines take-out offer.

### ***Citizens Underwriting and Confidential Claim Files***

The bill revises an existing public records exemption<sup>76</sup> under s. 626.916(1)(x)2., F.S., that allows authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises activities that would allow such parties, including authorized insurers, to receive this information. In particular, relevant information from both the underwriting files and confidential claim files may be released to the parties seeking to underwrite or assist in underwriting a risk.

### ***Citizens Clearinghouse***

Section 3 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

### **Reimbursement of Roof Losses – Actual Cash Value Reimbursement**

**Section 4** amends s. 627.7011(5), F.S., to allow residential property insurers to offer only homeowners' insurance policies (form HO-3) that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement that an insurer

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<sup>76</sup> Public records, unless expressly stated to be confidential and exempt, are subject to s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the OIR, but must also offer policies that provide replacement cost reimbursement.

The bill requires that a roof surface type reimbursement schedule used to calculate the actual cash value coverage that is provided for the roof must provide reimbursement for the repair, replacement, and installation of a roof based on the annual age of the roof surface type. The annual depreciation amounts must be actuarially justified, meet the requirements of s. 627.062, F.S., (which governs homeowners' insurance rate filings) and may not exceed 4 percent unless actuarially justified. The roof surface type reimbursement schedule must be approved by the OIR.

Roof surface type reimbursement schedules must be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and must include the following notice at the top of the schedule in no smaller than 12-point uppercase and boldfaced type:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

A homeowners' policy that utilizes a roof surface replacement schedule must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

The bill clarifies that an insurer offering policies that provide roof coverage using a roof covering reimbursement schedule may also offer policies that provide roof reimbursement on the basis of replacement costs.

### **Reimbursement of Roof Losses – Stated Value Coverage**

Additionally, the bill allows an insurer to issue homeowner's policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notwithstanding the stated value of coverage, the homeowners' policy must provide full replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

An insurer utilizing a stated value sublimit of coverage must include in the policy documents at issuance and at renewal, in bold type of at least 12 points, the following statement:

**PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.**

The bill clarifies that an insurer offering policies that provide roof reimbursement at a stated value sublimit of coverage may also offer policies that provide roof reimbursement on the basis of replacement costs.

#### **Other Bill Sections**

**Sections 5, 6, and 7** of the bill reenact certain sections of the Florida Statutes for incorporating the amendments made by this bill.

**Section 8** provides an effective date of July 1, 2022.

#### **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:

Section 1 of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill,

such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. As such, it could be challenged as an allegedly unconstitutional infringement on commercial free speech, the determination of which is for the courts to decide. Background on United States Supreme Court cases relevant to this topic is included on pages 5 and 6 of this Staff Analysis.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 12 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.<sup>77</sup> Application of the 12 percent glidepath limit resulted in a proposed average rate increase of 8.6 percent.<sup>78</sup> Under the bill, an additional rate increase of 26.3 percent would be imposed on a non-primary residence.

### C. Government Sector Impact:

The provisions of the bill intended to depopulate Citizens – making current Citizens policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens renewal premium, limiting application of the Citizens glidepath, and authorizing surplus lines insurers to formulate take-out plans – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

## VI. Technical Deficiencies:

None.

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<sup>77</sup> Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (December 13, 2021). <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last accessed January 29, 2022).

<sup>78</sup> See *id.*



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.351, 627.3518, and 627.7011

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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