

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 503 Insurance

SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Gregory

TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Fortenberry	Luczynski
2) Commerce Committee	22 Y, 0 N, As CS	Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Florida Hurricane Catastrophe (FHCF) Coverage** – modifies when a collateral protection insurance policy is eligible for FHCF coverage.
- **Worker's Compensation Payroll Audits** – modifies the requirement that the annual audit for construction businesses be conducted onsite to only be onsite if the estimated annual premium is \$10,000 or more.
- **Investment in Insurers** – allows the Office of Insurance Regulation (OIR) to conduct background checks on persons who maintain citizenship from, reside in, or are domiciled in, the same jurisdiction outside the United States if the aggregate ownership by such persons exceeds 10 percent of either a newly established insurer applying for a certificate of authority from OIR or an existing stock insurer possessing a certificate of authority from OIR.
- **Meeting Requirements** – authorizes associations, trusts, and pools that provide self-insurance for public entities to use communications media technology to establish a quorum and conduct public business.
- **Adjusters and Agents** – adds an additional professional designation to the list of designations that exempt an applicant for all-lines adjuster licensure from the passage of a written examination before being licensed; adds an insurer's affiliate's adjusters to the definition of company employee adjuster; allows licensed general or personal lines agents to sell service agreements or warranties without a salesperson or sales representative license.
- **Hurricane Modeling** – provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
- **Commission on Hurricane Loss Projection Methodology (Commission)** – provides that a designee of the Director of the Division of Emergency Management may be a member of the Commission in lieu of the Director.
- **Mitigation Credits in Residential Property Insurance Rate Filings** – allows insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.
- **Automatic Withdrawal of Premium** – modifies the notice requirement for a change in the amount of premium by automatic bank withdrawal from an increase of any amount to increases greater than \$10 and also changes the number of days' notice that must be given from 15 to 10 to match federal law.
- **Citizens Property Insurance Corporation (Citizens)** – allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.
- **Policy Documents** – authorizes electronic transmission of policy documents and revises notice requirements for certain automobile insurance policies.
- **Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages** – permits the required statements related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, to be either personally written or typed by the policyholder.
- **Assignment Agreements** – adds inspection to the definition of assignment agreement, specifies that the list of services that is specified in the definition of assignment agreement is not exhaustive, specifies that fees charged by a public adjuster are not included in the definition of assignment agreement, and establishes where the pre-suit notice required before filing a suit over a claim with an assignment agreement must be sent, whether sent by certified mail or email.

The bill has no impact on state or local government revenues or expenditures. It has an unknown direct economic impact on the private sector.

The bill has an effective date of July 1, 2022, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0503c.COM

DATE: 2/25/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hurricane Catastrophe Fund – Collateral Protection Insurance

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

The FHCF reimburses participating insurers for losses under covered policies, subject to limitations.⁴ Covered policies include collateral protection⁵ insurance policies covering personal residences that protect both the borrower's and the lender's financial interest in an amount at least equal to coverage for the dwelling in place under a lapsed homeowner's policy, if such policies meet certain statutory conditions.⁶

Collateral protection insurance is placed by an insurer when a homeowner's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which makes the policy ineligible for FHCF coverage.

Effect of the Bill

The bill amends the conditions under which a collateral protection insurance policy can be considered a "covered policy" and, thus, eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for FHCF coverage if it is placed for the amount of the last known coverage, the amount that the homeowner was notified of by the collateral protection insurer, or the amount that the homeowner requests from the collateral protection insurer.

Workers' Compensation – Payroll Audit Procedures

The cost of workers' compensation insurance is based primarily upon an employer's payroll and the types of duties employees perform. Employers pay an estimated premium at the commencement of a workers' compensation policy and receive a refund or a bill for additional premium due at the end of the policy year, based on a payroll audit conducted by the insurance carrier.

¹ See s. 215.555, F.S.

²² See *id.*

³ *Id.*

⁴ S. 215.555(2)(d), F.S.

⁵ "Collateral protection insurance" means commercial property insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. Ss. 215.555(15) and 624.6085, F.S.

⁶ S. 215.555(2)(c), F.S.

The law requires that the Financial Services Commission⁷ establish by rule the minimum requirements for audits of payroll and classifications⁸ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall require payroll audits no less than every other year for non-construction businesses. Businesses in the construction industry that are large enough to have an experience rating factor applied to their premium (meaning the policy is based on Florida estimated annual premium of \$5,750 or more⁹) must be audited annually and the audit must take place at the employer's worksite.¹⁰

The Office of Insurance Regulation (OIR) has promulgated rules for payroll audits that were adopted by the Financial Services Commission. The rules require:

- An annual physical audit for policies with an estimated annual premium of \$10,000 or more, regardless of governing classification;
- An annual mail or physical audit for policies with an estimated annual premium of \$1 to \$9,999;
- A physical audit for all new businesses that have construction classifications, regardless of premium;
- An annual physical audit for renewal policies that have construction classifications if the estimated annual premium is \$5,000 or more;¹¹ and
- A mail or physical audit not less than every other year for per capita policies, which use the number of workers during the policy period to measure exposure.

Audits conducted by telephone are not permitted in lieu of mail or physical audits.¹²

Effect of the Bill

The bill requires in-person audits for construction businesses only if the construction business has an estimated annual premium of \$10,000 or more. Passage of the bill would require changes to OIR rules that require physical audits for all new construction businesses and for construction businesses that have an annual premium of \$5,000 or more.

Investment in Insurers

Control of an insurer is defined as the "direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise."¹³ Control is "presumed to exist if a person, directly or indirectly, owns, controls, or holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person."¹⁴

Section 628.051(2)(b), F.S., provides that written applications for permits to form an insurer must include the name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of an insurer. Each person with an ownership interest of 10 percent or more, or who will hold a position as an officer or director, must furnish a sworn biographical statement, legible copies of fingerprints, and authority for the release of

⁷ The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OIR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

⁸ Classifications, or classification codes, are three- or four-digit codes used to identify types of work so that risk can be estimated when establishing workers' compensation insurance rates. The Hartford, *Workers' Comp Class Codes*, <https://www.thehartford.com/workers-compensation/workers-comp-class-codes> (last visited Jan. 5, 2022).

⁹ OIR, 2020 Workers' Compensation Annual Report, p. 32 (Jan. 15, 2021), [2020WorkersCompensationAnnualReport.pdf \(floir.com\)](https://www.floir.com/2020WorkersCompensationAnnualReport.pdf) (last visited Jan. 5, 2022).

¹⁰ S. 440.381, F.S.

¹¹ R. 69O-189.003(4)(b)1, F.A.C.

¹² R. 69O-189.003(4)(b)3, F.A.C.

¹³ S. 624.410(3), F.S.

¹⁴ *Id.*

information regarding the investigation of such person's background.¹⁵ However, OIR does not have the authority to conduct background checks on persons who do not possess 10 percent or more of an insurer or applicant to become an insurer, but are from the same jurisdiction outside the United States and may collectively exert the equivalent of more than a 10 percent ownership interest.

Effect of the Bill

The bill allows OIR to conduct background checks on persons who maintain citizenship from, reside in, or are domiciled in, the same jurisdiction outside the United States if the aggregate ownership by such persons exceeds 10 percent of either:

- A newly established insurer applying for a certificate of authority from OIR; or
- An existing stock insurer possessing a certificate of authority from OIR.

The bill further allows OIR to apply these criteria to applications for various specialty acquisitions, permits for certain types of insurers, and special insurance arrangements that are provided for throughout the Florida Insurance Code. The bill also establishes that such persons who meet the 10 percent aggregate threshold are considered to have control of an insurer.

Meeting Requirements – Risk Management Mechanisms and Self-Insurance Pools

Current law does not address whether associations, trusts, and pools formed to provide self-insurance for public entities can establish a quorum, and conduct public business, virtually. The authority to conduct business virtually has become a greater issue as COVID-19 has forced private and public entities to work remotely.

Effect of the Bill

The bill authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum, and to conduct public business, through communications media technology.

Adjusters and Agents

All-lines Adjuster

Ordinarily, any applicant to the Department of Financial Services for licensure as an all-lines adjuster must pass a written examination in order to receive licensure. However, an applicant who has a professional designation listed in s. 626.221(2)(j), F.S., is exempt from the examination requirement.

Effect of the Bill

The bill adds an additional professional designation to the list of designations under which an applicant to become a licensed all-lines adjuster is exempt from the licensure examination requirement.

Company Employee Adjuster

A "company employee adjuster" is a licensed insurance adjuster who is appointed and employed on an insurer's adjusting staff or a wholly owned subsidiary of the insurer.¹⁶ The duties of such an adjuster include determining the amount of a claim, loss, or damage payable under an insurance policy, and settling the claim, loss, or damage.¹⁷

Effect of the Bill

¹⁵ S. 628.051(2)(b), F.S.

¹⁶ S. 626.856, F.S.

¹⁷ *Id.*

The bill adds adjusters employed by an insurer's affiliate to the definition of company employee adjuster.

Agent Licensing

General Lines Agent

A general lines agent¹⁸ is one who sells the following lines of insurance: property;¹⁹ casualty,²⁰ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,²¹ or a workers' compensation self-insurance fund;²² surety;²³ health;²⁴ and, marine.²⁵ The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. 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.²⁶

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.²⁷

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.²⁸ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson. 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.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.²⁹ 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.³⁰

Home Warranty Contracts

¹⁸ S. 626.015(5), F.S.

¹⁹ S. 624.604, F.S.

²⁰ S. 624.605, F.S.

²¹ S. 624.462, F.S.

²² S. 624.4621, F.S.

²³ S. 626.606, F.S.

²⁴ Ss. 624.603 and 627.6482, F.S.

²⁵ S. 624.607, F.S.

²⁶ S. 626.829, F.S.

²⁷ S. 626.015(17), F.S.

²⁸ S. 634.011(8), F.S.

²⁹ S. 634.401(13).

³⁰ S. 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. S. 634.401(12), F.S.

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. 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. No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.³¹

Effect of the Bill

The bill allows a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranty contracts, or service warranty contracts without being separately licensed as a sales representative or insurance representative, as applicable.

Commission on Hurricane Loss Projection Methodology

The Florida Commission on Hurricane Loss Projection Methodology (Commission) is a panel of experts created to provide “actuarially sophisticated guidelines as standards for projection of hurricane losses possible, given the current state of actuarial science.”³² The Commission consists of 12 members including the Director of the Division of Emergency Management (Director).³³ However, the Director has indicated that he is sometimes unavailable to attend meetings of the Commission and would like the discretion to send a designee to those meetings.

Effect of the Bill

The bill establishes that the Director may designate a full-time employee of the Division of Emergency Management to be a member of the Commission.

Use of Hurricane Models in Residential Property Insurance Rate Filings

The law regarding OIR’s review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.³⁴ It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.³⁵ The law also establishes criteria for the Commission’s consideration, and approval, of hurricane loss models and prescribes how those models affect OIR’s approval of property insurance rate filings.³⁶

Effect of the Bill

The bill provides parameters for OIR’s approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more hurricane loss models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

³¹ S. 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. S. 634.301(12), F.S.

³² S. 627.0628(1)(c), F.S.

³³ S. 627.0628(2)(b)4., F.S.

³⁴ S. 627.062(2)(j), F.S.

³⁵ S. 627.062(2)(b), F.S.

³⁶ Ss. 627.0628-627.06281, F.S.

Current law requires residential property insurers to include “positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses the risk of wind damage” in their rate filings that are filed with, and approved by, OIR.³⁷ Insurers utilize factors from statewide organizations’ building code rating factor plans that evaluate how building code enforcement in particular jurisdictions evaluate risk.³⁸ Often times these ratings are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.³⁹ Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.⁴⁰ Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazards beyond those required by building codes.⁴¹ Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds that are evaluated by, and comply with, code-plus standards established by independent, not-for-profit, scientific research organizations.⁴²

Effect of the Bill

The bill allows insurers to file a rating plan with OIR in which it offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization that meets the requirements of the rate filing statute.

Notification of Automatic Withdrawal of Insurance Premiums

Insurers issuing personal lines residential and commercial property policies are required to provide premium payment options for quarterly and semiannual payments. They may, but are not required to, offer monthly payment plans.⁴³ Insurers and policyholders may enter into automatic bank withdrawal agreements for paying insurance premiums.⁴⁴ Current law requires insurers to provide the policyholder with 15 days’ advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

Federal law gives consumers the option of receiving notice of a change in an automatic bank withdrawal only when the withdrawal differs from the most recent withdrawal by more than an agreed-upon amount.⁴⁵ Federal law also only requires that a policyholder receive 10 days’ notice as opposed to 15 days’ notice before a change in the amount withdrawn.⁴⁶

Effect of the Bill

The bill changes the written notice requirement of any increase in policy premiums to require the notice only if the increase in policy premiums results in the next automatic withdrawal being increased by

³⁷ S. 627.0629(2)(b), F.S.

³⁸ See, e.g., ISO Mitigation, *ISO’s Building Code Effectiveness Grading Schedule (BCEGS)*, <https://www.isomitigation.com/bcegs/> (last visited Dec. 16, 2021). BCEGS is a program that provides these rating factors.

³⁹ See s. 627.0629, F.S.

⁴⁰ See *id.*

⁴¹ Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, <https://www.wbdg.org/resources/code-plus-programs-disaster-resistance> (last visited Dec. 16, 2021).

⁴² See, e.g., Insurance Institute of Business & Home Safety, <https://ibhs.org/> (last visited Dec. 16, 2021).

⁴³ S. 627.4035(1)(a), F.S.

⁴⁴ S. 627.0665, F.S.

⁴⁵ 12 CFR 1005(10)(d).

⁴⁶ *Id.*

more than \$10. The bill also reduces the number of days' notice required before a change in a withdrawal from 15 days to 10 days to match federal law.

Citizens Property Insurance Corporation

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.⁴⁷ Citizens offers property insurance in three separate accounts: the personal lines account; the commercial lines account; and the coastal account. The commercial lines account offers commercial lines residential and nonresidential policies. Currently, residential condominiums are ineligible for coverage as "commercial residential" if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.⁴⁸

Effect of the Bill

The bill allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.

Delivery of Policy Documents

The law requires that an insurance policy be mailed, delivered, or electronically transmitted to an insured or other person entitled to receive the policy (designated person) within 60 days of the policy taking effect.⁴⁹ An insurer may allow a personal lines policyholder to elect delivery of policy documents by electronic means instead of by mail.⁵⁰ Electronic delivery of commercial risks constitutes delivery to the insured or designated person, unless the insured or designated person notifies the insurer that he or she does not agree to electronic delivery.⁵¹ However, if a policy is delivered electronically, the insurer must include with the policy, a notice of the right to receive the policy by mail rather than electronically.⁵² Additionally, an insurer must provide a paper copy of an insurance policy to an insured or designated person upon his or her request.⁵³

Effect of the Bill

The bill eliminates the requirement that an insurer provide notice with the policy of the right to receive the policy by mail. It also eliminates the requirement that a paper copy of a policy be provided to the insured or designated person upon request. The proposed change does not prevent an insured or designated person from requesting a paper copy of a policy; the insurer may, but would not be required to, provide a paper copy, unless the insured or designated person communicated to the insurer that he or she no longer agrees to delivery by electronic means.

Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages

With certain exceptions, prior to issuing a personal lines residential property insurance policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to \$500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits. For such policies covering a risk valued at less than \$500,000, a hurricane deductible may not be greater than 10 percent of the policy dwelling limits unless the policyholder personally writes and provides to the insurer, in his or her own handwriting the following statement: "I do not want the insurance on my home to pay for the first (specify dollar value) of the damage from hurricanes. I will pay those costs. My insurance will not."

⁴⁷ S. 627.351(6)(a)1., F.S.

⁴⁸ S. 627.351(6), F.S.

⁴⁹ S. 627.421(1), F.S.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

An insurer issuing a residential property insurance policy must provide windstorm coverage; however, the insurer must also make available, at the option of the policyholder, an exclusion for the windstorm coverage.⁵⁴ To exclude windstorm coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."⁵⁵

An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of contents coverage.⁵⁶ To exclude contents coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."⁵⁷

Effect of the Bill

For the above three provisions related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, the bill permits the required statements to be either personally written or typed by the policyholder. The proposed change should give insurers and policyholders more options for conducting business electronically.

Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows a policyholder to assign the post-loss benefits of the policy, such as the right to be paid, to another party. This assignment is often called an assignment of benefits (AOB). An assignment agreement is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.⁵⁸

Once an assignment agreement is executed, the assignee can take action to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee for a claim submitted under the policy, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least 10 business days before filing suit on a claim (pre-suit notice).⁵⁹ The pre-suit notice may not be served before the insurer has made a determination of coverage.⁶⁰ It must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed, written invoice or estimate of the work performed or to be performed.⁶¹

The law requires pre-suit notice to be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or email address where the pre-suit notice must be sent.⁶² The lack of a specific address may delay an insurer's or assignor's receipt of the notice, and thus reduce an insurer's time to respond to the notice.

Effect of the Bill

The bill adds inspection to the list of services included in the definition of assignment agreement to address the concern that certain individuals providing services, but who did not otherwise engage in protecting, repairing, restoring, or replacing insured property following a loss, were not subject to the

⁵⁴ S. 627.712(1)-(2), F.S.

⁵⁵ S. 627.712(2)(a)1., F.S.

⁵⁶ S. 627.712(3), F.S.

⁵⁷ *Id.*

⁵⁸ S. 627.7152(1)(b), F.S.

⁵⁹ S. 627.7152(9)(b), F.S.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *See id.*

requirements of s. 627.7152, F.S. The bill establishes that the list of services in s. 627.7152, F.S., is not exhaustive. The bill specifies that fees charged by a public adjuster are not included in the definition of assignment agreement. Additionally, the bill requires that the pre-suit notice, if sent by certified mail, be sent to the name and mailing address specified by an insurer in its policy forms, and if sent by email, be sent to the email address specified by an insurer in its policy forms.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage⁶³ must be stamped on the policy declarations page with the following language in a font larger than the largest font otherwise used in the declarations page (notice):

THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.

The stamping requirement is antiquated and prevents these types of policies from being delivered electronically.

Effect of the Bill

The bill eliminates the requirement that the notice be stamped on the declarations page of limited coverage automobile policies. Instead, the notice must accompany the declarations page and must be typed in a font at least as large as the font used in the declarations page. This change will allow these types of policies to be delivered electronically.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 2. Amends s. 440.381, F.S., relating to application for coverage; reporting payroll; payroll audit procedures; penalties.

Section 3. Amends s. 624.413, F.S., relating to application for certificate of authority

Section 4. Creates s. 624.46227, F.S., relating to meeting requirements.

Section 5. Amends s. 626.221, F.S., relating to examination requirement; exemptions.

Section 6. Amends s. 626.856, F.S., relating to “company employee adjuster” defined.

Section 7. Amends. s. 627.062, F.S., relating to rate standards.

Section 8. Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 9. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 10. Amends s. 627.0665, F.S., relating to automatic bank withdrawal agreements; notification required.

Section 11. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 12. Amends s. 627.421, F.S., relating to delivery of policy.

⁶³ S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.
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Section 13. Amends s. 627.701, F.S., relating to liability of insureds; coinsurance; deductibles.

Section 14. Amends s. 627.712, F.S., relating to residential windstorm coverage required; availability of exclusions for windstorm or contents.

Section 15. Amends s. 627.7152, F.S., relating to assignment agreements.

Section 16. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 17. Amends s. 634.171, F.S., relating to salesperson to be licensed and appointed.

Section 18. Amends s. 634.317, F.S., relating to license and appointment required.

Section 19. Amends s. 634.419, F.S., relating to license and appointment required.

Section 20. Reenacts s. 624.424, F.S., relating to annual statement and other information.

Section 21. Reenacts s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 22. Reenacts s. 626.865, F.S., relating to public adjuster's qualifications, bond.

Section 23. Reenacts s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications.

Section 24. Reenacts s. 627.7153, F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy.

Section 25. Provides an effective date of July 1, 2022, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

OIR has indicated that the bill may have a positive economic impact for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.⁶⁴

⁶⁴ OIR Agency Analysis of House Bill 815, p. 6 (Feb. 23, 2021). House Bill 815 from the 2021 Legislative Session is largely the same as this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill will require modification of the rule related to workers' compensation payroll audit procedures to reflect the changes to audits for businesses with construction classifications.⁶⁵

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Removed the section of the bill addressing service of process on an insurer.
- Added an additional professional designation to the list of designations under which an applicant to become a licensed all-lines adjuster is exempt from the written examination normally required to be passed to receive licensure.
- Made various formatting and minor technical wording changes for clarity.

On February 23, 2022, the Commerce Committee considered the bill, adopted three amendments, and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Allowed OIR to conduct background checks on persons who maintain citizenship from, reside in, or are domiciled in, the same jurisdiction outside the United States if the aggregate ownership by such persons exceeds 10 percent of either:
 - A newly established insurer applying for a certificate of authority from OIR; or
 - An existing stock insurer possessing a certificate of authority from OIR.
- Provided that a designee of the Director of the Division of Emergency Management may be a member of the Commission in lieu of the Director.
- Amended from 15 days to 10 days the number of days' notice that an insurer must give a policyholder before a change in the amount of premium automatically withdrawn from a policyholders' account, in order to match federal law.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.