

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: SB 410

INTRODUCER: Senators Garcia and Hutson

SUBJECT: Collateral Protection Insurance

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 410 creates a new statutory chapter part (Part XXII), Collateral Protection Insurance (CPI), to:

- Regulate CPI on real property;
- Establish a legal framework for the writing of CPI on real property in Florida;
- maintain separation between lenders or servicers, and insurers or insurance agents; and
- Minimize the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes are subject to Part XXII, with certain exceptions. The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor’s interest arising out of a credit transaction secured by the real property. CPI is triggered by the mortgagor’s failure to maintain insurance coverage required by the mortgage or other lending document. The bill provides the Office of Insurance Regulation (OIR or Office) with authority to develop rules related to the regulation of Part XXII.

The bill does not have a fiscal impact on state or local revenues or local government expenditures. Insofar as a data call is created for the annual report required in Section 10 of the bill,¹ the OIR may experience an increase in expenditures related to the technology need. To the extent the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

¹ The Office of Insurance Regulation (OIR), *Agency Analysis SB 410* (Jan. 31, 2023) (hereinafter cited as “OIR Agency Analysis of SB 410) (on file with Senate Committee on Agriculture, Environment, and General Government).

The bill has an effective date of July 1, 2023.

II. Present Situation:

Mortgages on Real Property

A mortgage is an agreement between a borrower and a lender that gives the lender the right to take the property if the borrower fails to pay the loan plus interest.² A mortgage is generally secured by a mortgage note, which is a note evidencing a loan for which real property has been offered as security.³ All mortgages require borrowers to maintain adequate homeowners' insurance on their property.⁴ Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market.⁵ If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.⁶

Lender-placed Insurance (LPI)

A LPI policy⁷ is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or when the bank or mortgage servicer deems it insufficient.⁸ In recent years, there has been significant media attention on the rates charged for LPI policies and whether insurers and lenders are making excess profits on this line of business.⁹ LPI typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage.¹⁰ Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.¹¹

In November 2020 order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states.¹² Its stated purpose includes creating a legal framework within which LPI on real property may be written in a particular state.¹³ The Model Act also contains provisions regarding terms of insurance policies, calculation of coverage and

² Consumer Financial Protection Bureau, *What is a mortgage?* [Mortgage answers | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/mortgage-answers/) (last visited March 27, 2023). The borrower and the lender are also referred to as the mortgagor and mortgagee, respectively.

³ Black's Law Dictionary (11th ed. 2019).

⁴ NAIC, *Lender-Placed Insurance*, <https://content.naic.org/cipr-topics/lender-placed-insurance> (last visited March 27, 2023) (hereinafter cited as "NAIC Lender-Placed Insurance")

⁵ *Id.*

⁶ *Id.*

⁷ LPI is also known as creditor-placed or force-placed insurance.

⁸ NAIC, *supra* note 3.

⁹ *Id.*; The Office of Insurance Regulation (OIR), *Agency Analysis SB 410* (Jan. 31, 2023) (hereinafter cited as "OIR Agency Analysis of SB 410") (on file with Senate Committee on Agriculture, Environment, and General Government).

¹⁰ *Id.*

¹¹ *Id.*

¹² NAIC Lender-Placed Insurance; the OIR *Agency Analysis of SB 410*.

¹³ The NAIC, *Real Property Lender-Placed Insurance Model Act*, Spring 2021, available at [Model Regulation Service—January 2006 \(naic.org\)](https://www.naic.org/model-regulation-service-january-2006) (last visited March 27, 2023) (hereinafter cited as "NAIC Model Act").

payment premiums, evidence of coverage, and filing, approval, and withdrawal of forms and rates, and penalties.¹⁴

Florida Laws

The Department of Financial Services and the Office of Insurance Regulation (OIR or Office) have general powers and duties, including, in part:

- Enforce the provisions of the Florida Insurance Code;
- Conduct investigations;
- Collect, propose, publish, and disseminate certain information; and
- Publish all orders.¹⁵

Collateral Protection Insurance

Florida law does not use the term LPI. Instead, it refers to collateral protection insurance (CPI), which is defined as:

[C]ommercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.¹⁶

This definition applies to a limited number of provisions, including ss. 215.55, F.S. (relating to the Florida Hurricane Catastrophe Fund), 627.311, F.S. (relating to joint underwriting and joint reinsurers), and 627.351, F.S. (relating to insurance risk apportionment plans). Further, s. 627.062, F.S., relating to insurance rates, provides for categories or kinds of insurance and types of commercial lines risks are not subject to certain provisions in the subsection regulating rates.¹⁷ One category is nonresidential property but the provision explicitly excludes CPI.¹⁸

Review of Insurance Policy Forms and Rates

In general, an insurer may not use forms to issue insurance policies in the state unless the forms have been filed with, and approved by, the OIR.¹⁹ Once filed, the OIR has 30 days to review insurance forms.²⁰ At the end of the 30-day period, forms will be deemed approved unless they have been affirmatively approved or disapproved by OIR.²¹

Property and casualty insurers must also file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these

¹⁴ *Id.*

¹⁵ Section 627.307, F.S.

¹⁶ Section 627.6085, F.S.

¹⁷ Section 627.062(3)(d)1., F.S.

¹⁸ Section 627.062(3)(d)1.j., F.S.

¹⁹ Section 627.410(1), F.S.

²⁰ Section 627.410(2), F.S.

²¹ *Id.*

documents, for approval by the OIR.²² The OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.²³ In doing so, the OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.²⁴

Insurers may make rate filings with the OIR on a file and use, or use and file basis. If a filing is made on a file and use basis, the OIR has 90 days²⁵ to review and approve the filing before an insurer may use the filed rate.²⁶ In contrast, a use and file rate may be used before filing, but must be filed within 30 days of the effective date.²⁷ A use and file rate is still subject to review and disapproval by the OIR.²⁸

The office may also require an insurer to provide all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria for rates under s. 627.062, F.S.²⁹

Consent Orders

The OIR has disapproved rates of two entities that offer CPI, including Praetorian Insurance Company (Florida's second largest LPI provider) and American Securities Insurance

²² Section 627.062(2)(a), F.S.

²³ Section 627.062(1), F.S.

²⁴ Section 627.062(2)(b), F.S.

²⁵ For motor vehicle insurance OIR has 60 days to review the filing. *See* s. 627.0651, F.S.

²⁶ Section 627.062(2)(a)1., F.S.

²⁷ Section 627.062(2)(a)2., F.S.

²⁸ *Id.*

²⁹ Section 627.062(2)(f), F.S.

Company.³⁰ The OIR issued consent orders³¹ (“Consent Orders”) with respect to these two companies which required the companies to implement the following business practices prohibiting:

- The payment of commissions to a mortgage servicer on LPI policies obtained by that servicer;
- The payment of contingent commissions based on underwriting profitability or loss ratios;
- The issuance of LPI policies on mortgaged property serviced by an affiliate;
- The issuance of reinsurance on LPI policies with a captive insurer of any mortgage servicer;
- The provision of free or below-cost outsourced services to a mortgage servicer; and,
- The payment of any incentive to a mortgage servicer as an inducement to secure LPI business.³²

III. Effect of Proposed Changes:

Section 1 creates a new statutory part of chapter 627, F.S. (Part XXII),³³ entitled Collateral Protection Insurance (CPI), and substantially adopts the Model Act.

Section 2 creates s. 627.9901, F.S., to:

- Regulate CPI on real property;
- Create a legal framework for the writing of CPI on real property in Florida;
- Maintain the separation between lenders and services, and insurers and insurance agents; and
- Minimize the possibilities of unfair competition practices in the sale, placement, or solicitation and negotiation of CPI.

Section 3 creates s. 627.9902, F.S., to provide Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes is subject to Part XXII except:

- Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes;
- Insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor’s option;

³⁰ Bogner, A., *Office Approves Praetorian Insurance Company’s Second Rate Filing for Lender-Placed Insurance* (Feb. 11, 2013) available at [FLOIR Press Release - Office Approves Praetorian Insurance Company’s Second Rate Filing for Lender-Placed Insurance](#) (last visited March 27, 2023); Bogner, A., *Office Disapproves American Security Insurance Company’s Lender-Placed Insurance Rate Filing and Issues Order to Decrease Rates by Approximately \$51 million*, (Oct. 8, 2013) available at [FLOIR Press Release - Office Disapproves American Security Insurance Company’s Lender-Placed Insurance Rate Filing and Issues Order to Decrease Rates by Approximately \\$51 Million](#) (last visited March 27, 2023).

³¹ *Id.*; See the OIR, *Consent Order* (Oct. 7, 2013), available at [AmericanSecurity141841-13-CO.pdf \(floir.com\)](#) (last visited March 27, 2023) (hereinafter cited as “Consent Order”).

³² *Id.* (noting these prohibitions and requirements shall be effective one (1) year from the date of the Consent Order, if certain conditions are met).

³³ The new statutory chapter part will be part XXII of chapter 627, F.S., and will contain ss. 627.9901-627.9913, F.S. (except for s. 627.9910, F.S.). It is similar to the NAIC Model Act, but is drafted in a way that will fit appropriately within the Florida Insurance Code. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. Section 624.01, F.S.

- Insurance purchased by a lender or servicer on real-estate owned property;³⁴ and
- Insurance for which no specific charge is made to the mortgagor or mortgagor's account.

Section 4 creates s. 627.9902, F.S., to define statutory definitions of CPI and several related terms. CPI has the same meaning as the definition in s. 624.6085, F.S., except the term applies only to mortgaged real property and not to personal property. Section 624.6085, F.S., defines CPI as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property.³⁵ CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document.

Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Section 5 creates s. 627.9904, F.S., and provides CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The date on which insurance acceptable under the mortgage agreement becomes effective.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers.
- The termination date of the policy.

Section 6 creates s. 627.9905, F.S., and provides CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the:

- Replacement cost of the real property serving as collateral as calculated by the insurer; or
- If the replacement cost is prohibited by other state or federal law, the unpaid principal balance of the mortgage loan.

In any event, a mortgagor must not be charged for CPI before the effective date of the CPI or for a term longer than the scheduled term of the CPI.

Section 7 creates s. 627.9906, F.S., and prohibits the following practices by insurers or insurance agents related to CPI:

³⁴ Real-estate owned property is often referred to as bank-owned property, and may be property that failed to sell during a foreclosure.

³⁵ This definition is similar to the definition of collateral protection insurance in s. 624.6085, F.S., discussed above, except that definition also includes coverage secured by personal property.

- Issuing CPI on mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property;
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer;
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI;
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost; and
- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

Section 8 creates s. 627.9907, F.S., and provides this part may not be construed to authorize an insurance agent or insurer solely underwriting CPI to circumvent the requirements of Part XXII. Any requirement, limitation, or exclusion provided in Part XXII applies to an insurer or insurance agent involved in CPI.

Section 9 creates s. 627.9908, F.S., and requires proof of CPI is provided in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically.³⁶ The individual policy or certificate of insurance must include all of the following information:

- Address and identification of the insured real property;
- Coverage amount, or amounts if multiple coverages are provided;
- Effective date of coverage;
- Term of coverage;
- Premium charged for the coverage;
- Contact information for filing a claim; and
- Complete description of the coverage provided.

Section 10 creates s. 627.9909, F.S., and provides, except as otherwise provided in Part XXII, rate and form filing requirements are subject to the Florida Insurance Code. The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by the OIR as provided in s. 627.062, F.S. As part of the rate review, the OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires insurers subject to Part XXII refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

An insurer must include its experience in existing programs in the associated filings upon the introduction of a new CPI program. Part XXII does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. An insurer may also rely on models, where

³⁶The Uniform Electronic Transaction Act, s. 668.50, F.S., provides the requirements for electronic delivery.

actuarially acceptable, or in the case of flood filings where applicable experience is not credible, on National Flood Insurance Program data.

By April 1 each year, each insurer with at least \$100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to the OIR for the prior calendar year:

- Actual loss ratio;³⁷
- Earned premiums;
- Any aggregate schedule rating debit or credit to earned premium;
- Itemized expenses;
- Paid losses; and
- Loss reserves, including case reserves and reserves for incurred but not reported losses.³⁸

The report must be separately produced for each CPI program and presented on both an individual-jurisdiction and countrywide basis. Except for CPI for flood insurance, an insurer experiencing an annual rate loss ratio of less than 35 percent in any collateral protection insurance program for two consecutive years, must submit a rate filing, either adjusting its rates or supporting their continuance, to the office no more than 90 days after the submission of the data required.

Section 11 creates s. 627.9911, F.S., and provides the OIR with the rights and powers to enforce Part XXII, and all proceedings brought pursuant to Part XXII will be conducted under the Florida Administrative Procedures Act.³⁹ Any penalties must be assessed in accordance with s. 624.4211, F.S.

Section 12 creates s. 627.9912, F.S., and provides the OIR with rulemaking authority so it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII.

Finally, **Section 13** creates s. 627.9913, F.S., and contains a severability clause so if any portion of Part XXII is held invalid, the remainder of the Part is not affected.

The OIR has reported the “majority of insurers in Florida are already in compliance with the requirements of the proposed law,” but smaller companies that are not yet complying with the model provisions could be impacted by the provisions of the bill.⁴⁰

Section 14 provides the bill is effective July 1, 2023.

³⁷ Loss ratio is an insurer’s actual claims paid plus loss adjustment expenses divided by total earned premiums.

³⁸ Incurred but not reported losses are estimated liabilities from losses that have taken place and not yet been reported to insurers as claims.

³⁹ The Florida Administrative Procedures Act is ch. 120, F.S.

⁴⁰ The Office of Insurance Regulation, *Agency Analysis SB 410* (Jan. 31, 2023) (on file with Senate Committee on Agriculture, Environment and General Government).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the requirements of Part XXII result in lower collateral protection insurance premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

C. Government Sector Impact:

The bill does not impact state revenues. However, the Office of Insurance Regulation (OIR) indicates a data call would need to be created for the annual report required in Section 10 of the bill,⁴¹ which may increase technology expenditures within the OIR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴¹ *Id.*

VIII. Statutes Affected:

This bill creates part XXII of ch. 627, F.S., including ss. 627.9901, 627.9902, 627.9903, 627.9904, 627.9905, 627.9906, 627.9907, 627.9908, 627.9909, 627.9911, 627.9912, and 627.9913 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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