

By Senator Garcia

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1 A bill to be entitled
2 An act relating to collateral protection insurance;
3 creating part XXII of ch. 627, F.S., entitled
4 "Collateral Protection Insurance"; creating s.
5 627.9901, F.S.; providing legislative purpose;
6 creating s. 627.9902, F.S.; providing applicability;
7 creating s. 627.9903, F.S.; defining terms; creating
8 s. 627.9904, F.S.; specifying requirements for
9 collateral protection insurance policy terms;
10 providing a restriction on insurance charges made to
11 mortgagors; creating s. 627.9905, F.S.; providing for
12 the calculation of collateral protection insurance
13 coverages and premiums; requiring certain excess
14 replacement cost coverage to be paid to the mortgagor;
15 prohibiting insurers from writing collateral
16 protection insurance having certain premium rates;
17 creating s. 627.9906, F.S.; specifying prohibited
18 practices by insurers and insurance agents relating to
19 collateral protection insurance; creating s. 627.9907,
20 F.S.; providing construction relating to
21 noncircumvention; creating s. 627.9908, F.S.;
22 providing requirements for the delivery and contents
23 of policies or certificates of collateral protection
24 insurance; creating s. 627.9909, F.S.; specifying
25 requirements for the filing of policy forms and rates;
26 requiring certain insurers to file specified annual
27 reports with the Office of Insurance Regulation;
28 providing construction; creating s. 627.9911, F.S.;
29 specifying the office's authority to enforce the

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30 provisions of the part; specifying applicable
31 provisions for proceedings and for assessing
32 penalties; creating s. 627.9912, F.S.; authorizing the
33 Financial Services Commission to adopt rules; creating
34 s. 627.9913, F.S.; providing severability; providing
35 an effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Part XXII of chapter 627, Florida Statutes,
40 consisting of ss. 627.9901-627.9913, Florida Statutes, is
41 created and entitled "Collateral Protection Insurance."

42 Section 2. Section 627.9901, Florida Statutes, is created
43 to read:

44 627.9901 Purpose.—The purpose of this part is to:

45 (1) Promote the public welfare by regulating collateral
46 protection insurance on real property.

47 (2) Create a legal framework within which collateral
48 protection insurance on real property may be written in this
49 state.

50 (3) Help maintain the separation between the lenders and
51 servicers and the insurers and insurance agents.

52 (4) Minimize the possibility of unfair competitive
53 practices in the sale, placement, solicitation, and negotiation
54 of collateral protection insurance.

55 Section 3. Section 627.9902, Florida Statutes, is created
56 to read:

57 627.9902 Scope.—

58 (1) This part applies to insurers and insurance agents

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59 engaged in any mortgage transaction involving collateral
60 protection insurance.

61 (2) All collateral protection insurance written in
62 connection with mortgaged real property, including manufactured
63 and mobile homes, is subject to the provisions of this part,
64 except:

65 (a) Insurance associated with mortgage loans or other
66 extensions of credit made primarily for business, commercial, or
67 agricultural purposes.

68 (b) Insurance offered by the lender or servicer and elected
69 by the mortgagor at the mortgagor's option.

70 (c) Insurance purchased by a lender or servicer on real
71 estate owned property.

72 (d) Insurance for which no specific charge is made to the
73 mortgagor or the mortgagor's account.

74 Section 4. Section 627.9903, Florida Statutes, is created
75 to read:

76 627.9903 Definitions.—As used in this part, the term:

77 (1) "Affiliate" has the same meaning as in s. 624.10.

78 (2) "Collateral protection insurance" has the same meaning
79 as in s. 624.6085, provided that for purposes of this part, the
80 term applies only to mortgaged real property and not to personal
81 property.

82 (3) "Individual collateral protection insurance" means
83 coverage for individual real property evidenced by a certificate
84 of coverage under a master collateral protection insurance
85 policy or a collateral protection insurance policy for
86 individual real property.

87 (4) "Insurance agent" has the same meaning as the term

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88 "agent" in s. 626.015.

89 (5) "Insurer" has the same meaning as in s. 624.03,
90 provided that for purposes of this part, the term is limited to
91 an insurer, or an affiliate of the insurer, authorized to issue
92 collateral protection insurance on mortgaged real property in
93 this state.

94 (6) "Investor" means a person or an entity, or an affiliate
95 thereof, holding a beneficial interest in loans secured by real
96 property.

97 (7) "Lapse" means the date on which a mortgagor has failed
98 to comply with a mortgage agreement's requirements to maintain
99 valid and sufficient insurance upon mortgaged real property.

100 (8) "Lender" means a person or an entity, or an affiliate
101 thereof, making loans secured by an interest in real property.

102 (9) "Loss ratio" means the ratio of incurred losses to
103 earned premium.

104 (10) "Master collateral protection insurance policy" means
105 a group policy issued to a lender or servicer which provides
106 coverage for all loans in the lender's or servicer's loan
107 portfolio as needed.

108 (11) "Mortgage agreement" means the written document
109 setting forth an obligation or a liability of any kind secured
110 by a lien on real property and due from, owing by, or incurred
111 by a mortgagor to a lender on account of a mortgage loan, which
112 document includes the security agreement, the deed of trust,
113 other documents of similar effect, and any other document
114 incorporated by reference.

115 (12) "Mortgage loan" has the same meaning as in s.
116 494.001(25)(a).

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117 (13) "Mortgagee" means a person who holds mortgaged real
118 property as security for repayment of a mortgage agreement.

119 (14) "Mortgagor" means a person who is obligated on a
120 mortgage loan pursuant to a mortgage agreement.

121 (15) "Real estate owned property" means property owned or
122 held by a lender or servicer as a result of a foreclosure under
123 the related mortgage agreement or acceptance of a deed in lieu
124 of foreclosure.

125 (16) "Replacement cost value" means the estimated cost to
126 replace covered property at the time of loss or damage without
127 deduction for depreciation. Replacement cost value is not market
128 value but is the cost to replace covered property to its pre-
129 loss condition.

130 (17) "Servicer" means a person or an entity, or an
131 affiliate thereof, contractually obligated to service one or
132 more mortgage loans for a lender or an investor. The term
133 includes an entity involved in subservicing arrangements.

134 Section 5. Section 627.9904, Florida Statutes, is created
135 to read:

136 627.9904 Term of insurance policy.—

137 (1) Collateral protection insurance must become effective
138 no earlier than the date of lapse of insurance upon mortgaged
139 real property subject to the terms of a mortgage agreement or
140 any state or federal law requiring the same.

141 (2) Individual collateral protection insurance must
142 terminate on the earliest of the following dates:

143 (a) The date on which insurance acceptable under the
144 mortgage agreement becomes effective, subject to the mortgagor
145 providing sufficient evidence of such acceptable insurance.

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146 (b) The date on which the applicable real property no
147 longer serves as collateral for a mortgage loan pursuant to a
148 mortgage agreement.

149 (c) Such other date as specified by the individual policy
150 or certificate of insurance.

151 (d) Such other date as specified by the lender or servicer.

152 (e) The termination date of the policy.

153 (3) An insurance charge may not be made to a mortgagor for
154 collateral protection insurance before the effective date of the
155 collateral protection insurance or for a term longer than the
156 scheduled term of the collateral protection insurance.

157 Section 6. Section 627.9905, Florida Statutes, is created
158 to read:

159 627.9905 Calculation of coverage and payment of premiums.-

160 (1) Any collateral protection insurance coverage, and the
161 subsequent calculation of premium, should be based upon the
162 replacement cost value of the property, which is determined as:

163 (a) If known to the lender or servicer, the last known
164 coverage amount, which is the dwelling coverage amount set forth
165 in the most recent evidence of insurance coverage provided by
166 the mortgagee. The insurer shall inquire of the insured at least
167 once as to the last known coverage amount. If the insurer is
168 unable to obtain the last known coverage amount from the insured
169 or in another manner, the insurer may proceed according to
170 paragraph (b) or paragraph (c), as applicable.

171 (b) If the last known coverage amount is unknown, the
172 replacement cost of the property serving as collateral, as
173 calculated by the insurer, unless the use of replacement cost
174 for this purpose is prohibited by other state or federal law.

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175 (c) If the last known coverage amount is unknown and the
176 replacement cost is not available or its use is prohibited by
177 other state or federal law, the unpaid principal balance of the
178 mortgage loan.

179 (2) In the event of a covered loss, any replacement cost
180 coverage provided by an insurer in excess of the unpaid
181 principal balance of the mortgage loan must be paid to the
182 mortgagor.

183 (3) An insurer may not write collateral protection
184 insurance for which the premium rate differs from that
185 determined by the schedules of the insurer on file with the
186 office as of the effective date of any such policy.

187 Section 7. Section 627.9906, Florida Statutes, is created
188 to read:

189 627.9906 Prohibited practices.—

190 (1) An insurer or insurance agent may not issue collateral
191 protection insurance on mortgaged property that the insurer or
192 insurance agent, or an affiliate thereof, owns, performs the
193 servicing for, or owns the servicing right to.

194 (2) An insurer or insurance agent may not compensate,
195 including through the payment of commissions to, a lender, an
196 insurer, an investor, or a servicer on collateral protection
197 property insurance policies issued by the insurer.

198 (3) An insurer or insurance agent may not share collateral
199 protection insurance premium or risk with the lender, investor,
200 or servicer that obtained the collateral protection insurance.

201 (4) An insurer or insurance agent may not offer contingent
202 commissions, profit sharing, or other payments dependent upon
203 profitability or loss ratios to any person affiliated with a

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204 servicer or the insurer in connection with collateral protection
205 insurance.

206 (5) An insurer may not provide free or below-cost
207 outsourced services to lenders, investors, or servicers or
208 outsource its own functions to lenders, insurance agents,
209 investors, or servicers on an above-cost basis.

210 (6) An insurer or insurance agent may not make any
211 payments, including, but not limited to, the payment of expenses
212 to a lender, an insurer, an investor, or a servicer, for the
213 purpose of securing collateral protection insurance business or
214 related outsourced services.

215 Section 8. Section 627.9907, Florida Statutes, is created
216 to read:

217 627.9907 Noncircumvention.—This part may not be construed
218 to authorize an insurance agent or insurer solely underwriting
219 collateral protection insurance to circumvent the requirements
220 of this part. Any requirement, limitation, or exclusion provided
221 in this part applies to an insurer or insurance agent involved
222 in collateral protection insurance.

223 Section 9. Section 627.9908, Florida Statutes, is created
224 to read:

225 627.9908 Evidence of coverage.—Collateral protection
226 insurance must be set forth in an individual policy or
227 certificate of insurance. A copy of the individual policy,
228 certificate of insurance, or other evidence of insurance
229 coverage must be mailed, first-class mailed, or delivered in
230 person to the last known address of the mortgagor, or delivered
231 in accordance with s. 668.50. Notwithstanding any other
232 information required by general law or by rule, the individual

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233 policy or certificate of insurance coverage must include all of
234 the following information:

235 (1) The address and identification of the insured property.

236 (2) The coverage amount, or amounts if multiple coverages
237 are provided.

238 (3) The effective date of the coverage.

239 (4) The term of coverage.

240 (5) The premium charge for the coverage.

241 (6) Contact information for filing a claim.

242 (7) A complete description of the coverage provided.

243 Section 10. Section 627.9909, Florida Statutes, is created
244 to read:

245 627.9909 Filing, approval, and withdrawal of forms and
246 rates.-

247 (1) Except as otherwise provided in this part, all policy
248 forms and certificates of insurance to be delivered or issued
249 for delivery in this state are subject to the applicable
250 provisions of s. 627.410, and the schedules of premium rates
251 pertaining thereto are subject to the applicable provisions of
252 s. 627.062.

253 (2) With respect to any analysis of rates in accordance
254 with s. 627.062(1), the analysis must also include a
255 determination as to whether expenses included by the insurer in
256 the rate are appropriate.

257 (3) Notwithstanding s. 627.0645, insurers subject to this
258 part shall refile collateral protection property insurance rates
259 at least once every 4 years.

260 (4) All insurers writing collateral protection insurance
261 shall have separate rates for collateral protection insurance

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262 and voluntary insurance obtained by a mortgage servicer on real
263 estate owned property.

264 (5) Upon the introduction of a new collateral protection
265 insurance program, the insurer shall reference its experience in
266 existing programs in the associated filings. This part does not
267 limit an insurer's discretion, as actuarially appropriate, to
268 distinguish different terms, conditions, exclusions, eligibility
269 criteria, or other unique or different characteristics.

270 Moreover, an insurer may, where actuarially acceptable, rely
271 upon models or, in the case of flood filings where applicable
272 experience is not credible, on National Flood Insurance Program
273 data.

274 (6) By April 1 of each year, each insurer with at least
275 \$100,000 in direct written premium for collateral protection
276 insurance in this state during the prior calendar year shall
277 report to the office the following information for the prior
278 calendar year:

279 (a) Actual loss ratio.

280 (b) Earned premium.

281 (c) Any aggregate schedule rating debit or credit to earned
282 premium.

283 (d) Itemized expenses.

284 (e) Paid losses.

285 (f) Loss reserves, including case reserves and reserves for
286 incurred but not reported losses.

287
288 The report must be separately produced for each collateral
289 protection insurance program and presented on both an
290 individual-jurisdiction and countrywide basis.

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291 (7) Except in the case of collateral protection insurance
292 covering the peril of flood, to which this subsection does not
293 apply, if an insurer experiences an annual loss ratio of less
294 than 35 percent in any collateral protection insurance program
295 for 2 consecutive years, it must submit a rate filing, either
296 adjusting its rates or supporting their continuance, to the
297 office no more than 90 days after the submission of the data
298 required in paragraph (6) (f).

299 (8) Except as specifically set forth in this section, rate
300 and form filing requirements are subject to the Florida
301 Insurance Code.

302 Section 11. Section 627.9911, Florida Statutes, is created
303 to read:

304 627.9911 Enforcement; proceedings; penalties.—The office
305 has all rights and powers to enforce the provisions of this part
306 as provided by s. 624.307. All proceedings must be conducted in
307 accordance with chapter 120. Any penalty must be assessed in
308 accordance with s. 624.4211.

309 Section 12. Section 627.9912, Florida Statutes, is created
310 to read:

311 627.9912 Rulemaking.—The commission may adopt rules to
312 administer this part.

313 Section 13. Section 627.9913, Florida Statutes, is created
314 to read:

315 627.9913 Severability.—If any provision of this part or its
316 application to any person or circumstance is held invalid, the
317 invalidity does not affect other provisions or applications of
318 this part which can be given effect without the invalid
319 provision or application, and to this end the provisions of this

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320 part are severable.

321 Section 14. This act shall take effect July 1, 2023.