

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 505 Insurance

SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Berfield and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/CS/SB 418

FINAL HOUSE FLOOR ACTION: 110 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 505 passed the House on May 2, 2023, as CS/CS/CS/SB 418, as amended. The Senate refused to concur in the House amendment on May 3, 2023, and returned the bill to the House. The House receded and passed the bill on May 4, 2023.

The bill makes the following changes regarding insurance:

- **Livery Vessels:** changes the circumstances under which a renter or lessee must be provided insurance.
- **Group Self-Insurance Funds:** establishes that, where a local governmental entity is a member of a group self-insurance fund, only an elected official of the entity may be the entity's representative on the self-insurer's governing body.
- **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 designees of the Executive Director of Citizens Property Insurance Corporation and the Director of the Division of Emergency Management may be members of the Commission in lieu of the directors.
- **Mitigation Credits in Residential Property Insurance Rate Filings:** allows residential property insurers to give mitigation credit for compliance with building code-plus 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 insurance premium by automatic bank withdrawal from an increase of any amount to increases greater than \$10; and
 - changes the number of days' notice that must be given from 15 days to 10 days to match federal law.
- **Deductibles:** changes property insurance deductible requirements for policies providing dwelling limits over \$1 million.
- **Policy Documents:**
 - allows the electronic delivery of health insurance policy documents;
 - removes requirements regarding paper insurance policy documents; and
 - revises notice requirements for certain limited-coverage automobile insurance policies.
- **Declination of Wind and Contents Coverage:** allows policyholders to type their intent to decline wind and contents coverage in their property insurance policies, rather than requiring them to handwrite it, as is currently required.
- **Service Agreement Companies:** provides an additional exception to unearned insurance premium reserve requirements for service agreement companies.

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 was approved by the Governor on June 12, 2023, ch. 2023-217, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Livery Vessels

A livery is a person who advertises and offers a livery vessel¹ for use by another in exchange for any type of consideration when such person does not also provide the lessee or renter with a captain, a crew, or any type of staff or personnel to operate, oversee, maintain, or manage the vessel.²

A livery may not lease or rent, or offer to lease or rent, any livery vessel unless:³

- The livery first obtains a policy from a licensed insurance carrier in the state which insures the livery and the renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel;
- The livery's insurance policy provides coverage of at least \$500,000 per person and \$1 million per event; and
- The livery has proof of such insurance available for inspection at the location where livery vessels are leased or rented, or offered for lease or rent, and must provide to each renter the insurance carrier's name and address and the insurance policy number.

Effect of the Bill

The bill allows a livery to either facilitate a renter's or lessee's purchase of compliant insurance or obtain their waiver of insurance requirements, rather than only providing direct coverage purchased by the livery.

The bill adds additional requirements that a livery must meet before leasing or renting, or offering to lease or rent, a livery vessel. Specifically, the bill requires that, in addition to the above requirements, a livery must:

- Obtain a policy from a licensed insurance carrier in the state which insures the renter in the same manner and amounts of the policy required to be obtained by the livery, and provide to each renter the insurance carrier's name and address and the insurance policy number; or
- Present the renter with the opportunity to purchase coverage that insures the renter against any accident, loss, injury, property damage, or other casualty caused by the operation of the vessel of at least \$500,000 per person and \$1 million per event.

Where the livery chooses to present the renter with the opportunity to purchase coverage, and the renter chooses not to purchase the coverage, the livery must obtain a signed acknowledgement from the renter, which contains specific information about the insurance coverage being declined by the renter.

¹ A livery vessel is a vessel chartered, leased, or rented to another for consideration. S. 327.02(24), F.S.

² S. 327.54(1)(c), F.S.

³ S. 327.54(7), F.S.

Group Self-Insurance Funds

A group self-insurance fund is formed by two or more employers to pool specified risk.⁴ These funds must comply with administrative rules adopted by the Financial Services Commission⁵ relating to reserve requirements, organization, and operation.⁶ The rules relating to reserve requirements are to be maintained by such self-insurers to insure their financial solvency.⁷

A governmental entity may participate in a group self-insurance fund under one of two statutes.⁸ For those governmental entities that are organized under the statute specific to local government entities, the representative of the governmental entity on the group's governing body must be an elected official. For those governmental entities that are organized under the statute that allows any employer to organize as a group self-insurance fund, the statute is silent on who may serve on the group's governing body on behalf of the government member.

Effect of the Bill

The bill provides that, where a local governmental entity is a member of a group self-insurance fund, only an elected official of the local governmental entity may be the entity's representative on the group's governing body.

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."⁹ The Commission consists of 12 members including the Executive Director of Citizens Property Insurance Corporation (Citizens Director) and the Director of the Division of Emergency Management (Emergency Management Director).¹⁰ However, the Emergency Management Director has indicated that he is sometimes unavailable to attend the Commission's meetings and would like the discretion to send a designee to those meetings. The Citizens Director has indicated that he would like to be able to send a member of his senior management team or someone with actuarial experience to attend those meetings.

Effect of the Bill

The bill allows the Emergency Management Director to designate a full-time employee of the Division of Emergency Management to be a member of the Commission. It also allows the Citizens Director to designate a full-time employee with either actuarial science experience or senior operations management experience 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.¹¹ It sets forth the criteria under which OIR may disprove rate filings, including disproof of rates that it

⁴ General group self-insurance funds may be formed to pool workers' compensation liabilities. S. 624.4621, F.S. Local government entities may form group self-insurance funds to pool workers' compensation and property liabilities. S. 624.4622, F.S.

⁵ The Financial Services Commission is comprised of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. See Florida Office of Financial Regulation, *Financial Services Commission*, <https://flofr.gov/sitepages/financialservicescommission.htm> (last visited Apr. 20, 2023).

⁶ S. 624.4621(2), F.S.

⁷ S. 624.4621(2)(a), F.S.

⁸ Ss. 624.4621 and 624.4622, F.S.

⁹ S. 627.0628(1)(c), F.S.

¹⁰ S. 627.0628(2)(b), F.S.

¹¹ S. 627.062(2)(j), F.S.

determines to be excessive, inadequate, or unfairly discriminatory.¹² 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.¹³

Effect of the Bill

The bill amends the 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

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 filed with, and approved by, OIR.¹⁴ Insurers utilize factors that statewide organizations develop to indicate how building code enforcement units evaluate risk in particular geographical areas.¹⁵ However, these factors are often 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.¹⁶ Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.¹⁷ 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.¹⁸ Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds who comply with code-plus standards established by independent, not-for-profit, scientific research organizations.¹⁹

Effect of the Bill

The bill allows insurers to file a rating plan (plan) with OIR in which the insurer 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.²⁰ Insurers and policyholders may enter into automatic bank withdrawal

¹² S. 627.062(2)(b), F.S.

¹³ Ss. 627.0628-627.06281, F.S.

¹⁴ S. 627.0629(2)(b), F.S.

¹⁵ See, e.g., ISO Mitigation, *ISO's Building Code Effectiveness Grading Schedule (BCEGS)*, <https://www.isomitigation.com/bcegs/> (last visited Mar. 1, 2023). BCEGS is a program that provides these rating factors.

¹⁶ See s. 627.0629, F.S.

¹⁷ See *id.*

¹⁸ Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, <https://www.wbdg.org/resources/code-plus-programs-disaster-resistance> (last visited Mar. 1, 2023).

¹⁹ See, e.g., Insurance Institute of Business & Home Safety, <https://ibhs.org/> (last visited Mar. 1, 2023).

²⁰ S. 627.4035(1)(a), F.S.

agreements for paying insurance premiums.²¹ 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.²² 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.²³

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 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.

Deductible Amounts Applicable to Hurricane Losses

Generally, prior to issuing a personal lines residential property insurance policy, an 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, unless the specific percentage deductible is less than \$500.²⁴

The following requirements must also be met:²⁵

- The written notice of the offer must specify the hurricane deductible to be applied in the event that the applicant or policyholder fails to affirmatively choose a hurricane deductible.
- The insurer must provide such policyholder with notice of the availability of the deductible amounts offered in a form approved by OIR in conjunction with each renewal of the policy (and failure to provide such notice constitutes a violation of the Florida Insurance Code but does not affect the coverage provided under the policy).

The above requirements do not apply to a deductible program lawfully in effect on June 14, 1995, or to any similar deductible program, provided the deductible program requires a minimum deductible amount of no less than 2 percent of the policy limits.²⁶ Additional exceptions apply to a policy covering a risk with dwelling limits of at least \$100,000 but less than \$250,000.²⁷ Under those circumstances, the insurer may, in lieu of offering a policy with a \$500 hurricane deductible, offer a policy that the insurer guarantees it will not nonrenew for reasons of reducing hurricane loss for one renewal period and that contains up to a 2 percent hurricane deductible as required above.²⁸

Current law also provides an exception for a policy covering a risk with dwelling limits of \$250,000 or more.²⁹ The insurer need not offer the \$500 hurricane deductible, but must offer the other required hurricane deductibles.³⁰

Effect of the Bill

The bill authorizes the following alternative deductible amounts for the following policies, in addition to the current authorization for a policy covering a risk with dwelling limits of \$250,000 or more:

²¹ S. 627.0665, F.S.

²² 12 CFR 1005(10)(d).

²³ *Id.*

²⁴ S. 627.701(3)(a), F.S.

²⁵ *Id.*

²⁶ S. 627.701(3)(b), F.S.

²⁷ S. 627.701(3)(c), F.S.

²⁸ *Id.*

²⁹ S. 627.701(3)(d), F.S.

³⁰ *Id.*

- With respect to a policy covering a risk with dwelling limits of \$1 million or more, but less than \$3 million, the insurer may, in lieu of offering the 2 percent deductible, offer a deductible amount applicable to hurricane losses equal to 3 percent of the policy dwelling limits.
- With respect to a policy covering a risk with dwelling limits of \$3 million or more, the insurer need not offer the 2 percent deductible but must offer the other hurricane deductibles required by law unless another exception applies.

Electronic Transmission 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.³¹ An insurer may allow a personal lines policyholder to elect delivery of policy documents by electronic means instead of by mail.³² 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.³³ Current law does not include health insurance policies in the list of policies that may be delivered electronically.

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.³⁴ Additionally, an insurer must provide a paper copy of an insurance policy to an insured or designated person upon his or her request.³⁵

Effect of the Bill

The bill adds health insurance policies, and related documents, to the list of policies for which electronic delivery is permitted. It also removes requirements regarding the delivery of paper insurance policy documents.

Declination of Windstorm and Contents Coverage

Under current law, a policyholder may decline windstorm or contents coverage as part of a property insurance policy.³⁶ However, when a policyholder declines such coverage, the policyholder is required to write the intent to decline windstorm and contents coverage in his or her own hand.³⁷ This requirement is particularly antiquated when a policyholder elects to receive policy documents electronically.

Effect of the Bill

The bill allows policyholders to decline windstorm and contents coverage in their property insurance policies by typing it, rather than requiring them to handwrite it.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage³⁸ 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):

³¹ S. 627.421(1), F.S.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See s. 627.712, F.S.

³⁷ *Id.*

³⁸ S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.

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 appear on the policy declaration page in bold type. This change will allow these types of policies to be delivered electronically.

Service Agreement Companies

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the OIR.³⁹ A motor vehicle service agreement (or service agreement) is any agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle 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.⁴⁰ A service agreement includes any contract or agreement that provides costs associated with a covered loss, road hazard damage, minor cosmetic repair, and loss of electronic key fobs.⁴¹

Companies that sell such agreements are regulated by OIR, and must currently establish and maintain an unearned premium reserve equal to a minimum of 50 percent of the unearned gross written premium on each service agreement.⁴² These companies must maintain net assets of at least \$500,000.⁴³ In lieu of maintaining an unearned premium reserve, the company may secure and maintain a contractual liability insurance policy (CLIP),⁴⁴ which protects business owners against the financial consequences of liabilities assumed from entering a contract.⁴⁵

Effect of the Bill

The bill provides an additional exception to unearned premium reserve requirements for service agreement companies, namely, a CLIP which pays either 100 percent of claims as they are incurred or 100 percent of claims due in the event of failure of the service agreement company to pay such claims when due.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

³⁹ See ch. 634, F.S.

⁴⁰ S. 634.011(8), F.S.

⁴¹ *Id.*

⁴² S. 634.041, F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The Hartford, *Contractual Liability Insurance*, <https://www.thehartford.com/general-liability-insurance/contractual-liability-insurance#:~:text=Contractual%20liability%20insurance%20helps%20cover,with%20contracts%2C%20such%20as%20contractors> (last visited Mar. 20, 2023).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an unknown positive direct economic impact on the private sector through the application of mitigation credits to residential property insurance policies.

D. FISCAL COMMENTS:

None.