

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Fernandez-Barquin offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Part XXII of chapter 627, Florida Statutes,
6 consisting of ss. 627.9901-627.9913, Florida Statutes, is
7 created and entitled "Collateral Protection Insurance."

8 Section 2. Section 627.9901, Florida Statutes, is created
9 to read:

10 627.9901 Purpose.—The purpose of this part is to:

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

13 (2) Create a legal framework within which collateral
14 protection insurance on real property may be written in this
15 state.

16 (3) Help maintain the separation between the lenders and
17 servicers and the insurers and insurance agents.

18 (4) Minimize the possibility of unfair competitive
19 practices in the sale, placement, solicitation, and negotiation
20 of collateral protection insurance.

21 Section 3. Section 627.9902, Florida Statutes, is created
22 to read:

23 627.9902 Scope.-

24 (1) This part applies to insurers and insurance agents
25 engaged in any mortgage transaction involving collateral
26 protection insurance.

27 (2) All collateral protection insurance written in
28 connection with mortgaged real property, including manufactured
29 and mobile homes, is subject to the provisions of this part,
30 except:

31 (a) Insurance associated with mortgage loans or other
32 extensions of credit made primarily for business, commercial, or
33 agricultural purposes.

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

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

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

40 Section 4. Section 627.9903, Florida Statutes, is created
41 to read:

42 627.9903 Definitions.—As used in this part, the term:

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

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

48 (3) "Individual collateral protection insurance" means
49 coverage for individual real property evidenced by a certificate
50 of coverage under a master collateral protection insurance
51 policy or a collateral protection insurance policy for
52 individual real property.

53 (4) "Insurance agent" has the same meaning as the term
54 "agent" in s. 626.015.

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

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

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

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

68 (9) "Loss ratio" means the ratio of incurred losses to
69 earned premium.

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

74 (11) "Mortgage agreement" means the written document
75 setting forth an obligation or a liability of any kind secured
76 by a lien on real property and due from, owing by, or incurred
77 by a mortgagor to a lender on account of a mortgage loan, which
78 document includes the security agreement, the deed of trust,
79 other documents of similar effect, and any other document
80 incorporated by reference.

81 (12) "Mortgage loan" has the same meaning as in s.
82 494.001(25)(a).

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

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

87 (15) "Real estate owned property" means property owned or
88 held by a lender or servicer as a result of a foreclosure under
89 the related mortgage agreement or acceptance of a deed in lieu
90 of foreclosure.

91 (16) "Replacement cost value" means the estimated cost to
92 replace covered property at the time of loss or damage without
93 deduction for depreciation. Replacement cost value is not market
94 value but is the cost to replace covered property to its pre-
95 loss condition.

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

100 Section 5. Section 627.9904, Florida Statutes, is created
101 to read:

102 627.9904 Term of insurance policy.-

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

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

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

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

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

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

119 (e) The termination date of the policy.

120 (3) An insurance charge may not be made to a mortgagor for
121 collateral protection insurance before the effective date of the
122 collateral protection insurance or for a term longer than the
123 scheduled term of the collateral protection insurance.

124 Section 6. Section 627.9905, Florida Statutes, is created
125 to read:

126 627.9905 Calculation of coverage and payment of premiums.-

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

130 (a) If known to the lender or servicer, the last known
131 coverage amount, which is the dwelling coverage amount set forth
132 in the most recent evidence of insurance coverage provided by
133 the mortgagee. The insurer shall inquire of the insured at least
134 once as to the last known coverage amount. If the insurer is
135 unable to obtain the last known coverage amount from the insured

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

136 or in another manner, the insurer may proceed according to
137 paragraph (b) or paragraph (c), as applicable.

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

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

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

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

154 Section 7. Section 627.9906, Florida Statutes, is created
155 to read:

156 627.9906 Prohibited practices.-

157 (1) An insurer or insurance agent may not issue collateral
158 protection insurance on mortgaged property that the insurer or
159 insurance agent, or an affiliate thereof, owns, performs the
160 servicing for, or owns the servicing right to.

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

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

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

168 (4) An insurer or insurance agent may not offer contingent
169 commissions, profit sharing, or other payments dependent upon
170 profitability or loss ratios to any person affiliated with a
171 servicer or the insurer in connection with collateral protection
172 insurance.

173 (5) An insurer may not provide free or below-cost
174 outsourced services to lenders, investors, or servicers or
175 outsource its own functions to lenders, insurance agents,
176 investors, or servicers on an above-cost basis.

177 (6) An insurer or insurance agent may not make any
178 payments, including, but not limited to, the payment of expenses
179 to a lender, an insurer, an investor, or a servicer, for the
180 purpose of securing collateral protection insurance business or
181 related outsourced services.

182 Section 8. Section 627.9907, Florida Statutes, is created
183 to read:

184 627.9907 Noncircumvention.—This part may not be construed
185 to authorize an insurance agent or insurer solely underwriting

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

186 collateral protection insurance to circumvent the requirements
187 of this part. Any requirement, limitation, or exclusion provided
188 in this part applies to an insurer or insurance agent involved
189 in collateral protection insurance.

190 Section 9. Section 627.9908, Florida Statutes, is created
191 to read:

192 627.9908 Evidence of coverage.—Collateral protection
193 insurance must be set forth in an individual policy or
194 certificate of insurance. A copy of the individual policy,
195 certificate of insurance, or other evidence of insurance
196 coverage must be mailed, first-class mailed, or delivered in
197 person to the last known address of the mortgagor, or delivered
198 in accordance with s. 668.50. Notwithstanding any other
199 information required by general law or by rule, the individual
200 policy or certificate of insurance coverage must include all of
201 the following information:

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

204 (2) The coverage amount, or amounts if multiple coverages
205 are provided.

206 (3) The effective date of the coverage.

207 (4) The term of coverage.

208 (5) The premium charge for the coverage.

209 (6) Contact information for filing a claim.

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

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

211 Section 10. Section 627.9909, Florida Statutes, is created
212 to read:

213 627.9909 Filing, approval, and withdrawal of forms and
214 rates.-

215 (1) Except as otherwise provided in this part, all policy
216 forms and certificates of insurance to be delivered or issued
217 for delivery in this state are subject to the applicable
218 provisions of s. 627.410, and the schedules of premium rates
219 pertaining thereto are subject to the applicable provisions of
220 s. 627.062.

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

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

228 (4) All insurers writing collateral protection insurance
229 shall have separate rates for collateral protection insurance
230 and voluntary insurance obtained by a mortgage servicer on real
231 estate owned property.

232 (5) Upon the introduction of a new collateral protection
233 insurance program, the insurer shall reference its experience in
234 existing programs in the associated filings. This part does not
235 limit an insurer's discretion, as actuarially appropriate, to

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

236 distinguish different terms, conditions, exclusions, eligibility
237 criteria, or other unique or different characteristics.
238 Moreover, an insurer may, where actuarially acceptable, rely
239 upon models or, in the case of flood filings where applicable
240 experience is not credible, on National Flood Insurance Program
241 data.

242 (6) By April 1 of each year, each insurer with at least
243 \$100,000 in direct written premium for collateral protection
244 insurance in this state during the prior calendar year shall
245 report to the office the following information for the prior
246 calendar year:

247 (a) Actual loss ratio.

248 (b) Earned premium.

249 (c) Any aggregate schedule rating debit or credit to
250 earned premium.

251 (d) Itemized expenses.

252 (e) Paid losses.

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

255
256 The report must be separately produced for each collateral
257 protection insurance program and presented on both an
258 individual-jurisdiction and countrywide basis.

259 (7) Except in the case of collateral protection insurance
260 covering the peril of flood, to which this subsection does not

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

261 apply, if an insurer experiences an annual loss ratio of less
262 than 35 percent in any collateral protection insurance program
263 for 2 consecutive years, it must submit a rate filing, either
264 adjusting its rates or supporting their continuance, to the
265 office no more than 90 days after the submission of the data
266 required in paragraph (6) (f).

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

270 Section 11. Section 627.9911, Florida Statutes, is created
271 to read:

272 627.9911 Enforcement; proceedings; penalties.—The office
273 has all rights and powers to enforce the provisions of this part
274 as provided by s. 624.307. All proceedings must be conducted in
275 accordance with chapter 120. Any penalty must be assessed in
276 accordance with s. 624.4211.

277 Section 12. Section 627.9912, Florida Statutes, is created
278 to read:

279 627.9912 Rulemaking.—The commission may adopt rules to
280 administer this part.

281 Section 13. Section 627.9913, Florida Statutes, is created
282 to read:

283 627.9913 Severability.—If any provision of this part or
284 its application to any person or circumstance is held invalid,
285 the invalidity does not affect other provisions or applications

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

286 of this part which can be given effect without the invalid
287 provision or application, and to this end the provisions of this
288 part are severable.

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

290

291 -----

292 **T I T L E A M E N D M E N T**

293 Remove everything before the enacting clause and insert:

294 A bill to be entitled
295 An act relating to collateral protection insurance;
296 creating part XXII of ch. 627, F.S., entitled
297 "Collateral Protection Insurance"; creating s.
298 627.9901, F.S.; providing legislative purpose;
299 creating s. 627.9902, F.S.; providing applicability;
300 creating s. 627.9903, F.S.; defining terms; creating
301 s. 627.9904, F.S.; specifying requirements for
302 collateral protection insurance policy terms;
303 providing a restriction on insurance charges made to
304 mortgagors; creating s. 627.9905, F.S.; providing for
305 the calculation of collateral protection insurance
306 coverages and premiums; requiring certain excess
307 replacement cost coverage to be paid to the mortgagor;
308 prohibiting insurers from writing collateral
309 protection insurance having certain premium rates;
310 creating s. 627.9906, F.S.; specifying prohibited

069983

Approved For Filing: 4/13/2023 11:40:06 AM

Amendment No.

311 practices by insurers and insurance agents relating to
312 collateral protection insurance; creating s. 627.9907,
313 F.S.; providing construction relating to
314 noncircumvention; creating s. 627.9908, F.S.;
315 providing requirements for the delivery and contents
316 of policies or certificates of collateral protection
317 insurance; creating s. 627.9909, F.S.; specifying
318 requirements for the filing of policy forms and rates;
319 requiring certain insurers to file specified annual
320 reports with the Office of Insurance Regulation;
321 providing construction; creating s. 627.9911, F.S.;
322 specifying the office's authority to enforce the
323 provisions of the part; specifying applicable
324 provisions for proceedings and for assessing
325 penalties; creating s. 627.9912, F.S.; authorizing the
326 Financial Services Commission to adopt rules; creating
327 s. 627.9913, F.S.; providing severability; providing
328 an effective date.

069983

Approved For Filing: 4/13/2023 11:40:06 AM