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2023 Legislature

1
 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;

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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
 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

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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
 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
 69 elected 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:

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- 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
 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
 95 affiliate thereof, holding a beneficial interest in loans
 96 secured by real 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

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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).

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

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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.

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.

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

153 (e) The termination date of the policy.

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

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

160 627.9905 Calculation of coverage and payment of premiums.—

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

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

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

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

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

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

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

190 627.9906 Prohibited practices.-

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

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

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

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201 or servicer that obtained the collateral protection insurance.

202 (4) An insurer or insurance agent may not offer contingent
 203 commissions, profit sharing, or other payments dependent upon
 204 profitability or loss ratios to any person affiliated with a
 205 servicer or the insurer in connection with collateral protection
 206 insurance.

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

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

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

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

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

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

- 236 (1) The address and identification of the insured
 237 property.
- 238 (2) The coverage amount, or amounts if multiple coverages
 239 are provided.
- 240 (3) The effective date of the coverage.
- 241 (4) The term of coverage.
- 242 (5) The premium charge for the coverage.
- 243 (6) Contact information for filing a claim.
- 244 (7) A complete description of the coverage provided.

245 Section 10. Section 627.9909, Florida Statutes, is created
 246 to read:

247 627.9909 Filing, approval, and withdrawal of forms and
 248 rates.—

- 249 (1) Except as otherwise provided in this part, all policy
 250 forms and certificates of insurance to be delivered or issued

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251 for delivery in this state are subject to the applicable
252 provisions of s. 627.410, and the schedules of premium rates
253 pertaining thereto are subject to the applicable provisions of
254 s. 627.062.

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

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

262 (4) All insurers writing collateral protection insurance
263 shall have separate rates for collateral protection insurance
264 and voluntary insurance obtained by a mortgage servicer on real
265 estate owned property.

266 (5) Upon the introduction of a new collateral protection
267 insurance program, the insurer shall reference its experience in
268 existing programs in the associated filings. This part does not
269 limit an insurer's discretion, as actuarially appropriate, to
270 distinguish different terms, conditions, exclusions, eligibility
271 criteria, or other unique or different characteristics.
272 Moreover, an insurer may, where actuarially acceptable, rely
273 upon models or, in the case of flood filings where applicable
274 experience is not credible, on National Flood Insurance Program
275 data.

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

281 (a) Actual loss ratio.

282 (b) Earned premium.

283 (c) Any aggregate schedule rating debit or credit to
284 earned premium.

285 (d) Itemized expenses.

286 (e) Paid losses.

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

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

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

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

304 Section 11. Section 627.9911, Florida Statutes, is created
305 to read:

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

311 Section 12. Section 627.9912, Florida Statutes, is created
312 to read:

313 627.9912 Rulemaking.—The commission may adopt rules to
314 administer this part.

315 Section 13. Section 627.9913, Florida Statutes, is created
316 to read:

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

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