

By Senator Davis

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1 A bill to be entitled
2 An act relating to examinations and investigations of
3 property insurers; amending s. 624.316, F.S.;
4 providing requirements for examinations of property
5 insurers by the Office of Insurance Regulation;
6 increasing the frequency of examinations of property
7 insurers; providing criteria for a risk-based
8 methodology for scheduling examinations for property
9 insurers; requiring the office to make publicly
10 available certain data; amending s. 624.3161, F.S.;
11 requiring the office to order property insurers to
12 file with the office claims-handling practices and
13 procedures under certain circumstances; requiring the
14 office to conduct additional market conduct
15 examinations of certain residential property insurers;
16 revising requirements for such examinations; requiring
17 the office to make publicly available certain findings
18 and information; amending s. 624.318, F.S.; requiring
19 certain entities to make certain documents and
20 information freely available to the Department of
21 Financial Services, the office, and their examiners
22 for examinations and investigations of property
23 insurers; authorizing the department, the office, and
24 their examiners to electronically scan certain
25 documents; amending s. 624.319, F.S.; requiring that
26 examination reports of property insurers contain
27 certain information; requiring the office to make
28 publicly available certain examination reports,
29 investigation reports, and work papers on property

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30 insurers; providing an effective date.

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32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Paragraph (a) of subsection (1), paragraph (a)
35 of subsection (2), and paragraph (b) of subsection (3) of
36 section 624.316, Florida Statutes, are amended, and subsection
37 (5) is added to that section, to read:

38 624.316 Examination of insurers.—

39 (1) (a) The office shall examine the affairs, transactions,
40 accounts, records, and assets of each authorized insurer and of
41 the attorney in fact of a reciprocal insurer as to its
42 transactions affecting the insurer as often as it deems
43 advisable, except as provided in this section. The examination
44 may include examination of the affairs, transactions, accounts,
45 and records relating directly or indirectly to the insurer and
46 of the assets of the insurer's managing general agents and
47 controlling or controlled persons ~~person~~, as defined in s.
48 625.012. For property insurers, the examination must also
49 include examination of:

50 1. The affairs, transactions, accounts, and records
51 relating directly or indirectly to the insurer, the insurer's
52 holding company, and the insurer's affiliate;

53 2. The assets, executive compensations, and ownership
54 dividends of the officers, directors, managing general agents,
55 and controlling persons, controlled persons, and controlling or
56 controlled persons, as those terms are defined in s.
57 625.012(5)(b), of the insurer, the insurer's holding company,
58 and the insurer's affiliate;

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59 3. The contractual agreements between the officers,
60 directors, agents, and persons described in subparagraph 2. and
61 the insurer, insurer's holding company, and insurer's affiliate;
62 and

63 4. The contractual agreements between the insurer's vendors
64 and the insurer.

65

66 The examination shall be pursuant to a written order of the
67 office. Such order shall expire upon receipt by the office of
68 the written report of the examination.

69 (2) (a) Except as provided in paragraph (f), the office may
70 examine each insurer as often as may be warranted for the
71 protection of the policyholders and in the public interest, but
72 must, at a minimum, examine:

73 1. High-risk insurers at least once every 3 years and high-
74 risk property insurers at least once every year.

75 2. Average- and low-risk insurers at least once every 5
76 years and average- and low-risk property insurers at least once
77 every 3 years.

78

79 The examination shall cover the number of fiscal years since the
80 last examination of the insurer, except for examinations of low-
81 risk insurers, in which case the examination need only cover at
82 least the preceding 5 fiscal years, and shall be commenced
83 within 12 months after the end of the most recent fiscal year
84 being covered by the examination. The examination may cover any
85 period of the insurer's operations since the last previous
86 examination. The examination may include examination of events
87 subsequent to the end of the most recent fiscal year and the

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88 events of any prior period that affect the present financial
89 condition of the insurer.

90 (3) The office shall create, and the commission shall adopt
91 by rule, a risk-based selection methodology for scheduling
92 examinations of insurers subject to this section. Except as
93 otherwise specified in subsection (2), this requirement does not
94 restrict the authority of the office to conduct examinations
95 under this section as often as it deems advisable. Such
96 methodology must include all of the following:

97 (b) Consideration of:

98 1. The level of capitalization and identification of
99 unfavorable trends;

100 2. Negative trends in profitability or cash flow from
101 operations;

102 3. National Association of Insurance Commissioners
103 Insurance Regulatory Information System ratio results;

104 4. Risk-based capital and risk-based capital trend test
105 results;

106 5. The structure and complexity of the insurer;

107 6. Changes in the insurer's officers or board of directors;

108 7. Changes in the insurer's business strategy or
109 operations;

110 8. Findings and recommendations from an examination made
111 pursuant to this section or s. 624.3161;

112 9. Current or pending regulatory actions by the office or
113 the department;

114 10. Information obtained from other regulatory agencies or
115 independent organization ratings and reports; ~~and~~

116 11. The impact of an insurer's insolvency on policyholders

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117 of the insurer and the public generally; and

118 12. With respect to property insurers:

119 a.(I) The assets, executive compensations, and ownership
120 dividends of the officers, directors, managing general agents,
121 and controlling persons, controlled persons, and controlling or
122 controlled persons, as those terms are defined in s.
123 625.012(5)(b), of the insurer, the insurer's holding company,
124 and the insurer's affiliate;

125 (II) The contractual agreements between the officers,
126 directors, agents, and persons described in sub-sub-subparagraph
127 (I) and the insurer, insurer's holding company, and affiliate;
128 and

129 (III) The contractual agreements between the insurer's
130 vendors and the insurer;

131 b. The policyholders' complaints against the insurer and
132 the reasons for which the complaints were confirmed or closed;
133 and

134 c. The fraud investigations and findings, if any, on the
135 insurer and the insurer's officers, board of directors, managing
136 general agents, controlling or controlled persons, and vendors.

137 (5) Except as otherwise provided in the Florida Insurance
138 Code, the office shall make publicly available, with respect to
139 each property insurer, the examination data obtained pursuant to
140 paragraph (1)(c).

141 Section 2. Subsections (6) and (7) of section 624.3161,
142 Florida Statutes, are amended, and subsection (10) is added to
143 that section, to read:

144 624.3161 Market conduct examinations.—

145 (6) Based on the findings of a market conduct examination

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146 that an insurer has exhibited a pattern or practice of willful
147 violations of an unfair insurance trade practice related to
148 claims handling which caused harm to policyholders, as
149 prohibited by s. 626.9541(1)(i), the office may order an
150 insurer, and shall order a property insurer, pursuant to chapter
151 120 to file its claims-handling practices and procedures related
152 to that line of insurance with the office for review and
153 inspection, to be held by the office for the following 36-month
154 period. Such claims-handling practices and procedures are public
155 records and are not trade secrets or otherwise exempt from the
156 provisions of s. 119.07(1). As used in this section, "claims-
157 handling practices and procedures" are any policies, guidelines,
158 rules, protocols, standard operating procedures, instructions,
159 or directives that govern or guide how and the manner in which
160 an insured's claims for benefits under any policy will be
161 processed.

162 (7) Notwithstanding subsection (1), any authorized insurer
163 transacting residential property insurance business in this
164 state:

165 (a) Must ~~May~~ be subject to an additional market conduct
166 examination after a hurricane if, at any time more than 90 days
167 after the end of the hurricane, the insurer is among the top 20
168 percent of insurers based upon a calculation of the ratio of
169 hurricane-related property insurance claims filed to the number
170 of property insurance policies in force;

171 (b) Must be subject to a market conduct examination after a
172 hurricane if, at any time more than 90 days after the end of the
173 hurricane, the insurer:

174 1. Is among the top 20 percent of insurers based upon a

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175 calculation of the ratio of hurricane claim-related consumer
176 complaints made about that insurer to the department to the
177 insurer's total number of hurricane-related claims;

178 2. Is among the top 20 percent of insurers based upon a
179 calculation of the ratio of hurricane claims closed without
180 payment to the insurer's total number of hurricane claims on
181 policies providing wind or windstorm coverage;

182 3. Has made significant payments to its officer; director;
183 managing general agent; controlling person, controlled person,
184 or controlling or controlled person as those terms are defined
185 in s. 625.012(5)(b); or vendor since the hurricane; or

186 4. Is identified by the office as necessitating a market
187 conduct exam for any other reason.

188
189 All relevant criteria under this section and s. 624.316 shall be
190 applied to the market conduct examination under this subsection.
191 Such an examination must be initiated within 18 months after the
192 landfall of a hurricane that results in an executive order or a
193 state of emergency issued by the Governor. The requirements of
194 this subsection do not limit the authority of the office to
195 conduct at any time a market conduct examination of a property
196 insurer in the aftermath of a hurricane. This subsection does
197 not require the office to conduct multiple market conduct
198 examinations of the same insurer when multiple hurricanes make
199 landfall in this state in a single calendar year. An examination
200 of an insurer under this subsection must also include an
201 examination of its officer; director; managing general agent;
202 and controlling person, controlled person, and controlling or
203 controlled person, as those terms are defined in s.

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204 625.012(5)(b), as if it were the insurer.

205 (10) Except as otherwise provided in the Florida Insurance
206 Code, with respect to each property insurer, the office shall
207 make publicly available:

208 (a) The findings of the market conduct examination,
209 including the results of the National Association of Insurance
210 Commissioners Market Conduct Annual Statement; and

211 (b) Detailed information on the policyholders' complaints
212 against the insurer received by the office or the insurer and
213 the reasons for which the claims were confirmed or closed.

214 Section 3. Subsection (2) and paragraph (a) of subsection
215 (7) of section 624.318, Florida Statutes, are amended to read:
216 624.318 Conduct of examination or investigation; access to
217 records; correction of accounts; appraisals.—

218 (2) (a) Every person being examined or investigated, and its
219 officers, attorneys, employees, agents, and representatives,
220 shall make freely available to the department or office or its
221 examiners or investigators the accounts, records, documents,
222 files, information, assets, and matters in their possession or
223 control relating to the subject of the examination or
224 investigation.

225 (b) In addition to paragraph (a), with respect to a
226 property insurer:

227 1. Every insurer being examined or investigated and its
228 vendors; and

229 2. The officers, directors, managing general agents, and
230 controlling persons, controlled persons, and controlling or
231 controlled persons, as those terms are defined in s.

232 625.012(5)(b), of the insurer, the insurer's holding company,

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233 and the insurer's affiliate,
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235 shall make freely available to the department or office or the
236 examiners the accounts; records; documents; files; information,
237 including, but not limited to, information on executive
238 compensations, ownership dividends, and contractual
239 arrangements; assets; and matters, as applicable, in their
240 possession or control relating to the subject of the examination
241 or investigation.

242 (c) An agent who provides other products or services or
243 maintains customer information not related to insurance must
244 maintain records relating to insurance products and transactions
245 separately if necessary to give the department or office access
246 to such records. If records relating to the insurance
247 transactions are maintained by an agent on premises owned or
248 operated by a third party, the agent and the third party must
249 provide access to the records by the department or office.

250 (7) (a) The department or office or its examiners or
251 investigators may electronically scan accounts, records,
252 documents, files, and information, relating to the subject of
253 the examination or investigation, in the possession or control
254 of the person being examined or investigated. With respect to a
255 property owner, the department or office or its examiners or
256 investigators may also electronically scan documents relating
257 to:

258 1. The assets, executive compensations, and ownership
259 dividends of the officers, directors, managing general agents,
260 and controlling persons, controlled persons, and controlling or
261 controlled persons, as those terms are defined in s.

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262 625.012(5)(b), of the insurer, insurer's holding company, and
263 insurer's affiliate;

264 2. The contractual agreements between the officers,
265 directors, agents, and persons described in subparagraph 1. and
266 the insurer, the insurer's holding company, and the insurer's
267 affiliate; and

268 3. The contractual agreements between the insurer's vendors
269 and the insurer.

270 Section 4. Present subsection (6) of section 624.319,
271 Florida Statutes, is redesignated as subsection (7), a new
272 subsection (6) is added to that section, and subsection (1) is
273 amended, to read:

274 624.319 Examination and investigation reports.—

275 (1)(a) The department or office or its examiner shall make
276 a full and true written report of each examination. The
277 examination report must ~~shall~~ contain ~~only~~ information obtained
278 from examination of the records, accounts, files, and documents
279 of or relative to the insurer examined or from testimony of
280 individuals under oath, together with relevant conclusions and
281 recommendations of the examiner based thereon. With respect to a
282 property insurer, the examination report must also contain
283 information relating to:

284 1. The assets, executive compensations, and ownership
285 dividends of the officers, directors, managing general agents,
286 and controlling persons, controlled persons, and controlling or
287 controlled persons, as those terms are defined in s.
288 625.012(5)(b), of the insurer, insurer's holding company, and
289 insurer's affiliate;

290 2. The contractual agreements between the officers,

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291 directors, agents, and persons described in paragraph (a) and
292 the insurer, the insurer's holding company, and the insurer's
293 affiliate; and

294 3. The contractual agreements between the insurer's vendors
295 and the insurer.

296 (b) The department or office must furnish a copy of the
297 examination report to the insurer examined at least 30 days
298 before filing the examination report in its office. If such
299 insurer so requests in writing within such 30-day period, the
300 department or office must grant a hearing with respect to the
301 examination report and may not file the examination report until
302 after the hearing and after such modifications have been made
303 therein as the department or office deems proper.

304 (6) Except as otherwise provided in the Florida Insurance
305 Code, the office shall make publicly available:

306 (a) The examination reports that have been filed;

307 (b) The investigation reports after the investigation is
308 completed or ceases to be active, except for any portion of the
309 report which remains confidential and exempt from s. 119.07(1)
310 and s. 24(a), Art. I of the State Constitution under
311 subparagraph (3) (a) 3.; and

312 (c) Work papers after the examination is filed or the
313 investigation is completed or ceases to be active.

314 Section 5. This act shall take effect July 1, 2024.