HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1611 Insurance
SPONSOR(S): Commerce Committee and Insurance & Banking Subcommittee, Stevenson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1622

FINAL HOUSE FLOOR ACTION: 112 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1611 passed the House on March 4, 2024, as amended. The bill was amended in the Senate on March 6, 2024, and returned to the House. The House concurred in the Senate amendments, and passed the bill, as amended in the Senate, on March 7, 2024.

- **Data reporting:** requires that the information that property insurers were reporting to the Office of Insurance Regulation (OIR) on a quarterly basis be reported on a monthly basis; and, that the data must be reported based on zip code rather than county.
- **Property insurance policy nonrenewals:** provides the Financial Services Commission with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.
- **Public housing authority (PHA) self-insurance trust funds:** revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and meets certain additional criteria.
- **Prohibition on cancellation of property insurance policies:** restricts the ability of surplus lines insurers to cancel or nonrenew personal and commercial lines residential insurance policies due to unrepaired damage after a hurricane or wind-loss following a declared emergency;
- **Hurricane modeling:** specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.
- **Citizens Property Insurance Corporation:** eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined to be unsound or place into receivership.
- **Roof Inspections:** adds roofing contractor to the list of authorized inspectors that an insurer may approve to conduct the inspection of a roof for determining its remaining useful life.
- **Reciprocal Insurers:** updates the statutory chapter regarding reciprocal insurers to align it with OIR's existing authority to license and regulate other types of insurers, including significant changes to the application and acquisition processes.
- **Birth-related Neurological Injury Compensation Association (NICA):** creates reporting requirements for NICA and modifies the calculation of reserve estimates related to limitations on ongoing enrollment.

The bill has no impact on local or state government revenues. It may have positive impact on local government expenditures, a negative impact on state government expenditures. It has an indeterminate direct economic impact on the private sector.

The bill was approved by the Governor on May 10, 2024, ch. 2024-182, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

DATA REPORTING

Background

Each insurer doing business in Florida must file a report containing certain information with the Office of Insurance Regulation (OIR) on a quarterly basis.[1] The report must contain premium information for each of the property lines of business.[2] It must also contain the following information for each county on a monthly basis:

- Total number of policies in force at the end of each month.
- Total number of policies canceled.
- Number of policies canceled due to hurricane risk.
- Number of policies nonrenewed due to hurricane risk.
- Number of new policies written.
- Total dollar value of structure exposure under policies that include wind coverage.
- Number of policies that exclude wind coverage.
- Number of claims open each month.
- Number of claims closed each month.
- Number of claims pending each month.
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution (ADR), and specifying which form of ADR was invoked. [3]

OIR is required to aggregate this data on a statewide basis and make it available to the public on its website.[4] OIR uses this data to track market trends and shares it with the Florida Division of Emergency Management after natural disasters to help determine where emergency response is most necessary.[5]

While the data is reported on a county-by-county basis, insurers already collect data that would allow them to report on a zip-code basis instead.[6]

Effect of the Bill

Pursuant to the bill, the information that property insurers were reporting to OIR on a quarterly basis must be reported on a monthly basis instead. Additionally, the bill requires that the data is reported based on zip code rather than county. These changes will allow OIR to receive more accurate data on an expedited basis.[7]

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[1] S. 624.424(10)(a), F.S. For the purpose of these reports, the property insurance lines include personal and commercial residential property insurance.
[2] *Id.*
[3] *Id.*
[4] S. 624.424(10)(b), F.S.
[5] Office of Insurance Regulation (OIR), Agency Analysis of 2024 House Bill 1611, p. 2 (Jan. 21, 2024).
[6] *Id.*
[7] OIR has indicated that the data is constantly changing and that it is outdated by the time they receive it on a quarterly basis.

PROPERTY INSURANCE POLICY NONRENEWALS

Background

Any property insurer planning to nonrenew more than 10,000 residential property insurance policies in Florida within a 12-month period must give written notice to OIR 90 days before the issuance of any notices of nonrenewal.[8] While the notice is for informational purposes only, it must include:

- the insurer's reasons for the action;
- the effective dates of nonrenewal; and
- any arrangements the insurer has made for other insurers to offer coverage to the affected policyholders.[9]

The law regarding this notice does not contain a grant of rulemaking authority to allow the Financial Services Commission (FSC)[10] to adopt rules and forms to administer it.

Effect of the Bill

The bill provides the FSC with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.

PUBLIC HOUSING SELF-INSURANCE TRUST FUND

Background

Florida law provides for a public housing authority (PHA) in each city and county in the state where the local governing body has declared the need for such an authority based upon the lack of safe or sanitary dwellings within the city or county.[11] Two or more PHAs in Florida may form a self-insurance fund to pool and spread their members' casualty and real or personal property risks, as long as the self-insurance fund:[12]

- has annual premiums that exceed $5 million;
- uses a qualified actuary:
    - to determine rates and submits an annual certification to OIR that the rates are actuarially sound and not inadequate;
    - to establish loss and loss adjustment expense reserves and submits an annual certification to OIR that such reserves are adequate; and
    - maintains a continuing program of excess insurance coverage and reserve evaluation to protect the self-insurance fund's financial stability, as determined by the actuary.

At a minimum, the PHA self-insurance program must purchase excess insurance from authorized insurance carriers or eligible surplus lines carriers, but cannot retain liability of more $350,000, per occurrence. However, if the excess insurance is not available at such terms or is especially costly, a PHA self-insurance fund has limited ability to comply with the statute.

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[8] S. 624.4305, F.S.
[9] *Id.*
[10] The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of OIR for the purposes of rulemaking.
[11] Ss. 421.04 and 421.27, F.S.
[12] S. 624.46226, F.S.

Effect of the Bill

The bill revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and, at a minimum:

- includes a net retention selected by the fund administrator, ratified by the fund's governing body, and certified by a qualified actuary;
- includes reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- is certified by a qualified, independent actuary as to the program's adequacy.

PROHIBITION ON CANCELLATION OF SURPLUS LINES PROPERTY INSURANCE POLICIES

Background

An authorized insurer may not cancel or nonrenew any personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida, including but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

- For 90 days after the dwelling or residential property has been repaired, if the property has been damaged as a result of a hurricane or wind loss that is the subject of a declaration of emergency and the filing of an order by the Insurance Commissioner.[13]
- Until the earlier of when the dwelling or residential property has been repaired or one year after the insurer issues the final claim payment, if the property was damaged by a covered peril, but not a hurricane or wind loss.[14]

However, an authorized insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- Upon 10 days' notice for nonpayment of premium; or
- Upon 45 days' notice for:
    - A material misstatement or fraud related to the claim;
    - If the insurer determines that the insured has unreasonably caused a delay in the repair; or
    - If the insurer has paid policy limits.[15]

If an insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice that the insurer intends to nonrenew the policy 90 days after the property has been repaired.[16] A structure is considered repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in Florida.[17]

Section 626.9201, F.S., governs the cancellation or nonrenewal of personal and commercial residential property insurance policies issued by surplus lines insurers, but it does not include specific language regarding cancellation or nonrenewal following hurricane or wind damage a declared state of emergency or damage from another covered peril unrelated to a hurricane or wind loss.

[13] S. 627.4133(2)(e)1.a., F.S.
[14] S. 627.4133(2)(e)1.b., F.S.
[15] S. 627.4133(2)(e)2., F.S.
[16] S. 627.4133(2)(e)3., F.S.
[17] S. 627.4133(2)(e)5., F.S.

Effect of the Bill

The bill amends s. 626.9201, F.S., to better align the cancellation and nonrenewal requirements with those currently in law for admitted insurers. Upon a declaration of emergency and the issuance of an order by the Insurance Commissioner, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida that has been damaged as a result of a hurricane that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. The bill establishes that a dwelling or residential property is deemed repaired when it is substantially completed and restored such that it is insurable by another insurer writing policies in Florida.

Additionally, a surplus lines insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- with 10 days' notice for nonpayment of premium; or
- with 45 days' notice:
  - for a material misstatement or fraud related to the claim;
  - if the insurer determines that the insured has unreasonably cause a delay in the repair of the dwelling or residential property;
  - if the policyholder fails to adequately respond (must be sent within 30 days and be responsive) following an insurer's reasonable written inquiry on the status of repairs; or
  - if the insurer has paid policy limits.

Pursuant to the bill, if the surplus lines insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insurer that it intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

HURRICANE MODEL AVERAGES

Background

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.[18] It sets forth the criteria under which OIR may disprove rate filings, including disproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[19] 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.[20] 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.[21] The law does not require consistency in the model used, which potentially allows insurers to use different models to produce rates in various parts of the state.[22]

Effect of the Bill

The bill specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.

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[18] S. 627.062(2)(j), F.S.
[19] S. 627.062(2)(b), F.S.
[20] Ss. 627.0628-627.06281, F.S.
[21] S. 627.062(2)(j), F.S.
[22] OIR, *supra* note 5, at 3.

Background

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under this glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [23]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The "glidepath," which functions as a rate cap, is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.[24]

Until December 2022, Citizens' rates did not differ based upon whether the property is a policyholder's primary residence, a policyholder's second home (e.g., a vacation home), or occupied by a long-term tenant.[25] During Special Session 2022A, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023. The rate for these residences must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[26]

In addition to non-primary residences, the "glidepath" normally imposed on Citizens year-to-year rate growth does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.[27] Instead, these risks must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[28] The limitation on Citizens rate increases for non-primary residences and policies assumed from unsound insurers applies on a year-over-year basis, rather than being attached to a fixed date (i.e., the rate in effect the year before the date of application for coverage).

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[23] S. 627.351(6)(n)5., F.S.
[24] S. 627.351(6)(t), F.S. *See also* s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.
[25] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home.
[26] S. 627.351(n)8., F.S.
[27] *Id.* In practical effect, this means that such policyholders might continue to pay the premium amount that they paid their prior insurer, not a lower premium that they might otherwise be charged by Citizens if subject to the rate increase limitations.
[28] *Id.*

Effect of the Bill

The bill eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined to be unsound or place into receivership.[29] The applicable rate would thus be subject to the glidepath limitation on rates.

ROOF INSPECTIONS

Background

During the 2022D Special Session, the Legislature established prohibited an insurer from refusing to issue or refusing to renew a homeowners' policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.[30] For a roof that is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowners' expense before requiring a homeowner to replace a roof as a condition of issuing or renewing a homeowners' insurance policy.[31] Additionally, if an inspection of the roof performed by an authorized inspector shows that the roof has at least 5 years of useful life remaining, the insurer may not refuse to issue or renew a homeowners' policy solely because of roof age.[32] The age of the roof is determined using either:[33]

- The last date for which 100 percent of the roof's surface was built or replaced in compliance with the building code in effect at the time, or
- The initial date of a partial roof replacement when subsequent partial builds or replacements were completed that resulted in 100 percent of the roof's surface being built or replaced.

Authorized inspectors include an inspector approved by an insurer who is any of the following:[34]

- A licensed home inspector;
- A certified building code inspector;
- A licensed general, building, or residential contractor;
- A licensed professional engineer;
- A licensed professional architect; or
- Any other individual or entity that the insurer recognizes as possessing the necessary qualifications to properly complete a general inspection of a residential structure insured with a homeowners' insurance policy.

Effect of the Bill

The bill adds roofing contract to the list of authorized inspectors that an insurer may approve to conduct the inspection of a roof for determining its useful life.

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[29] OIR maintains that treating these policyholders differently because they were previously insured by an unsound, impaired, or insolvent insurer is unfairly discriminatory and, therefore, does not meet the rating standards in s. 627.062, F.S.
[30] S. 627.7011(5)(b), F.S.
[31] S. 627.7011(5)(c), F.S.
[32] *Id.*
[33] S. 627.7011(5)(d), F.S.
[34] S. 627.7011(5)(a), F.S.

RECIPROCAL INSURERS

Reciprocal insurance exchanges are a form of insurance organization in which businesses and individuals exchange insurance contracts and spread the risks associated with such contracts among themselves.[35] Policyholders of a reciprocal insurance exchange are known as "subscribers."[36]

Chapter 629, F.S., governs the regulation of reciprocal insurers in Florida. A reciprocal insurer may transact any kind of insurance other than title insurance in Florida.[37]

Typically, an advisory board manages a reciprocal insurance company.[38] The board is responsible for choosing and monitoring the attorney-in-fact, approving rates, and providing oversight of the operations of the reciprocal.[39]

Florida law provides that the advisory committee of a domestic reciprocal insurer exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[40] Not less than two-thirds of such committee may be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.[41]

The committee must:

- Supervise the finances of the insurer;
- Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- Have such additional powers and functions as may be conferred by the subscribers' agreement.[42]

Definitions

Background

The term "reciprocal insurance" is currently defined under ch. 629, F.S., as insurance resulting from an interexchange among subscribers of reciprocal agreements of indemnity, with the interexchange being effectuated through an "attorney in fact" common to all such parties.[43]

Additionally, the term "reciprocal insurer" is currently defined under ch. 629, F.S., as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.[44]

Effect of the Bill

The bill creates definitions for the following terms in ch. 629, F.S.:

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[35] Julia Kagan and Eric Estevez, *Reciprocal Insurance Exchange: Definition, How It Works, Example* (last updated Sep. 28, 2023), Investopedia, https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 29, 2024).
[36] *Id.*
[37] S. 629.041(1), F.S. Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact directly. *See* s. 629.041(2), F.S.
[38] *See id.*
[39] *See id.*
[40] S. 629.201(1), F.S.
[41] S. 629.201(2), F.S.
[42] S. 629.201(3), F.S.
[43] S. 629.011, F.S.
[44] S. 629.021, F.S.

- "Affiliated person" of another person means any of the following:
    - The spouse of the other person.
    - The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants.
    - A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.
    - A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.
    - A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.
    - A person who is a director, officer, trustee, partner, owner, manager, joint venturer, or an employee, or another person who is performing duties similar to those of a person in one of the aforementioned positions.
    - If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.
    - If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.
    - A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring or limiting the disposition of:
        - Securities of an attorney in fact or controlling company that is a stock corporation; or
        - An ownership interest of an attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.
- "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer, and may be an individual, a corporation, or another person.
- "Controlling company" means any person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

The bill amends the current definition of "reciprocal insurer" to mean an insurer that is an incorporated aggregation of subscribers domiciled in this state operating individually and collectively through an attorney in fact to provide reciprocal insurance to such subscribers.

The bill retains the current definition of "reciprocal insurance."

Organization of Reciprocal Insurer

Background

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for a certificate of authority to transact insurance.[45] The proposed attorney must fulfill the requirements of, and must execute and file with OIR when applying for a certificate of authority, a declaration that sets forth:

[45] S. 629.081, F.S.

- The name of the insurer;
- The location of the insurer's principal office, which must be the same as that of the attorney and must be maintained within Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original subscribers;
- The designation and appointment of the proposed attorney and a copy of the power of attorney;
- The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;
- The powers of the subscribers' advisory committee, and the names and terms of office of the members thereof;
- That all moneys paid to the reciprocal must, after deducting any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A copy of the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that has been filed with and approved by OIR;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as described above is on hand; and
- A copy of each policy, endorsement, and application form it then proposes to issue or use.[46]

Effect of the Bill

The bill clarifies that twenty-five or more persons domiciled in Florida who wish to organize as a domestic reciprocal insurer may make an application to OIR for a permit to do so. The bill provides that a domestic reciprocal insurer may not be formed unless the persons so proposing have received a permit from OIR. Additionally, the permit application must be in writing and made in accordance with forms prescribed by the Commission.

The bill provides that the following information must be included in an application for a permit in addition to the current required information (which is in also in addition to any applicable requirements of s. 628.051, F.S.,[47] or other relevant statutes):

- The background information as specified in the proposed s. 629.227, F.S., for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.
- The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.
- The proposed charter of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information for each proposed member.
- A copy of the proposed subscribers' agreement; and
- Any other pertinent information and documents reasonably requested by OIR.

The bill removes certain other information currently required to be included in permit application and relocates such information to the provision of Florida law relating to certificates of authority for reciprocal insurers.

The bill requires that a filed application must be accompanied by the application fee[48] and such other pertinent information and documents as reasonably requested by OIR. The bill provides that OIR must

[46] S. 629.081(2), F.S.
[47] S. 628.051, F.S., codifies Florida's laws governing domestic stock insurers, mutual insurers, and captive insurers. *See* s. 628.011, F.S.
[48] The application fee is $1,500. *See* s. 624.501(1)(a), F.S.

evaluate and grant or deny permit applications in accordance with ss. 628.061,[49] 628.071,[50] F.S., and other relevant provisions of the Florida Insurance Code.

Certificate of, and Continued Eligibility for, Certificate of Authority

Background

Current law provides that the certificate of authority of a reciprocal insurer must be issued to its attorney in the name of the insurer.[51]

Effect of the Bill

The bill provides that, in applying for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from OIR may file an application in accordance with forms prescribed by the Commission which, in addition to applicable requirements of other relevant statutes, consists of all of the following:

- Executed copies of any proposed documents required as part of the permit application.
- A statement affirming that all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at the rate that was filed with and approved by OIR.
- A copy of the required bond.
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand.
- Such other pertinent information or documents as reasonably requested by OIR.

If the reciprocal insurer intends to issue nonassessable policies, and if OIR determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, OIR shall grant the authorization. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies.

To maintain its eligibility for a certificate authority, the bill requires that a domestic reciprocal insurer continue to meet all conditions required to be met under the Florida Insurance Code and the rules adopted thereunder for the initial applications for a permit and certificate of authority.

[49] S. 628.061, F.S., relates to the investigation of proposed domestic stock insurers, mutual insurers, and captive insurers.
[50] S. 628.061, F.S., relates to the granting and denial of permits for proposed domestic stock insurers, mutual insurers, and captive insurers.
[51] S. 629.091, F.S.

Power of Attorney

Background

Under Florida law, the rights and powers of the attorney of a reciprocal insurer are as provided in the power of attorney given to it by the subscribers.[52] The power of attorney must set forth:

- The powers of the attorney;
- That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
- The general services to be performed by the attorney;
- The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
- Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than five times nor more than ten times the premium or premium deposit stated in the policy.[53]

Currently, the power of attorney may:

- Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
- Contain other lawful provisions deemed advisable.[54]

The terms of any power of attorney or agreement collateral must be reasonable and equitable, and no such power or agreement may be used or be effective in Florida unless filed with OIR.[55]

Effect of the Bill

The bill establishes that, in addition to current requirements, the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer. The bill also requires that a power of attorney must also set forth the place where the office of the attorney in fact is maintained.

Acquisitions

Background

Florida law does not currently provide specific statutory authority for the acquisition of a reciprocal insurer.

[52] S. 629.101(1), F.S.
[53] S. 629.101(2), F.S.
[54] S. 629.101(3), F.S.
[55] S. 629.101(4), F.S.

Effect of the Bill

The bill creates a new statutory section providing details regarding the acquisition of a reciprocal insurer. No one may, individually or in conjunction with an affiliated person, directly or indirectly acquire 10 percent or more of the ownership interest in a reciprocal insurer unless all of the following conditions are met:

- The person or affiliated person must file with OIR and send to the reciprocal insurer and its attorney in fact a letter notifying them of the transaction no later than five days after the offer is proposed or no later than five days after the acquisition of securities or ownership interest if no offer is involved.
- The person or affiliated person must file an application with OIR within 30 days after the offer is proposed or the acquisition occurs.
- OIR has approved the offer or acquisition.

If there is no change in the ultimate controlling shareholders, no change in the ownership percentages of the ultimate controlling shareholders, and no acquisition of direct or indirect interest in the attorney in fact, OIR may waive the filing of the letter of notification and the application upon request.

The application, if required, must contain all of the following information and any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the applicant:

- identity and background information of each person by whom, or on whose behalf the acquisition is being made, and any other persons who control these individuals;
- the source and amount of funds or other consideration used in making the acquisition;
- plans or proposals that applicants may have to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make other major changes in the business, business structure, or management;
- the nature and extent of the controlling interest which the person, or affiliated person, proposes to acquire;
- the number of shared or other security that the person, or affiliated person, proposed to acquire; and
- information as to any contract, arrangement, or understanding with any party relating to the transfer of any of the securities, option arrangements, puts or calls, or giving or withholding of proxies.

The bill requires that an application be accompanied by an application fee.[56] If any material change occurs in the facts provided in the application or the background information, an amendment must be filed with OIR immediately and sent to the principal offices of the reciprocal and its attorney in fact.

OIR must review the application in accordance with the Administrative Procedures Act.[57] Pursuant to the bill, while OIR is reviewing the acquisition, the acquiring person may not make any material change to the operation of the attorney in fact or controlling company unless OIR specifically approves the change. Additionally, the acquiring person may not make any change in the management of the attorney in fact unless advance notice is provided to OIR. The bill provides relevant definitions of material change in the operation and the management of the attorney in fact.

The bill permits OIR to disapprove any acquisition of the interest in a reciprocal by any person, or affiliated person, who:

- willfully violates the law regarding acquisition of interest in a reciprocal; or

[56] The current fee for acquisition is $1,500. S. 624.501(1)(a), F.S.
[57] Chapter 120, F.S., codifies Florida's Administrative Procedure Act, which provides uniform procedures for the exercise of specified authority.

- fails to divest himself or herself of interest in a reciprocal acquired in violation of the law, when ordered to do so by OIR.

The bill places the burden of proof regarding an acquisition application on the applicant. However, the bill provides criteria, which, if met, require OIR to approve the application as long as no administrative proceeding has been requested under ch. 120, F.S.

The bill establishes that any vote by a stockholder that acquired stock in a reciprocal in violation of the acquisition statute created by the bill is not valid. Additionally, any acquisition contrary to the same statute is void. The circuit court for the county in which the principal office of the attorney in fact for the reciprocal insurer may order an injunction or issue another order to enforce the statute. The bill also creates a private right of action for the attorney in fact and the controlling company to enforce the acquisition statute.

The bill provides that approval of an acquisition application by OIR does not constitute a recommendation of an acquisition or an offer for an acquisition. It is third-degree felony for anyone to represent that OIR has made such a recommendation.

According to the bill, any person may rebut the presumption of having control of a reciprocal insurer by filing a disclaimer of control with OIR on a form prescribed by the FSC or by filing a copy of a Schedule 13G filed with the Securities and Exchange Commission.

The bill gives OIR the authority to suspend or revoke a reciprocal insurer's certificate of authority if necessary to protect the public interest when the interest was acquired in violation of the acquisition statute. If a reciprocal insurer is subject to suspension or revocation on this basis, the attorney in fact is deemed to be in such a condition, or to be using or have been subject to methods or practices as to render its further transaction or insurance hazardous. OIR may offer the reciprocal insurer the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to OIR.

Filing of Background Information

Background

Florida law does not currently provide for filing of background information on reciprocal insurers, their attorneys in fact, nor their subscribers.

Effect of the Bill

The bill creates statutory criteria for background information that must be submitted to OIR regarding certain individuals involved in the creation or acquisition of reciprocal insurers. The information must include, but is not limited to:

- A sworn biographical statement with information for the past twenty years regarding:
  - occupations, positions of employment, and offices held;
  - convictions of crimes other than traffic violations;
  - license revocation proceedings;
  - bankruptcy proceedings, either personal or of a business where the individual held a significant position; and
  - injunction proceedings involving federal or state law regulating insurance, securities, or banking.
- Each individual's fingerprints;
- Authorizations allowing background investigations regarding each individual; and
- Any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the individual.

Prohibitions on Attorneys in Fact, Officers, and Directors

Background

Florida law does not currently provide express prohibitions on who can serve as an attorney in fact, officer, or director of a reciprocal insurer.

Effect of the Bill

The bill establishes that any person who serves as an attorney in fact, or as an officer, director, or manager of an attorney in fact, a member of a subscribers' advisory committee of a reciprocal insurer doing business in Florida, or an officer or director of any other insurer doing business in Florida, and served in that capacity within two years prior to the date such insurer or reciprocal insurer became insolvent, may not thereafter:

- Serve as an:
  - Attorney in fact;
  - An officer, director or manager of an attorney in fact;
  - A member of a subscribers' committee of a reciprocal insurer doing business in Florida; or
  - An officer or director of any other insurer doing business in Florida; or
- Have direct or indirect control over the selection or appointment of:
  - An attorney in fact;
  - An officer, director, or manager of an attorney in fact;
  - A member of the subscribers' advisory committee of a reciprocal insurer doing business in Florida; or
  - An officer or director of any insurer doing business in Florida.

However, the bill also provides that these prohibitions may be overcome if someone demonstrates that his or her personal actions or omissions did not significantly contribute to the insolvency of the insurer or reciprocal insurer.

Merger or Conversion

Background

Current law provides that a domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of OIR of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.[58] Such a stock or mutual insurer is subject to the same capital or surplus requirements and have the same rights as a like domestic insurer transacting like kinds of insurance.[59]

OIR may not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with applicable law, and a reasonable length of time within which to exercise such right.[60]

Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is considered to be a merger for the purposes of these provisions.[61]

[58] S. 629.291(1), F.S.
[59] S. 629.291(2), F.S.
[60] S. 629.201(3), F.S.
[61] S. 629.201(4), F.S.

Effect of the Bill

The bill requires that all plans to merge a reciprocal insurer with another reciprocal insurer or to convert a reciprocal insurer to a stock or mutual insurer must be filed with OIR on forms adopted by the FSC and must contain all information that OIR reasonably requires to evaluate the merger or conversion.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if all of the following conditions are met:

- the subscriber's advisory committee approves the conversion application;
- the attorney in fact submits the application on the required form; and
- OIR finds that the application meets the minimum statutory requirements.

If OIR approves the application, the assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer by:

- extinguishing the contingent liability of subscribers under all policies in force in Florida at the time of the conversion;
- omitting contingent liability provisions in all policies delivery or issued in Florida after the conversion; and
- otherwise extinguishing the contingent liability of all subscribers.

However, if the reciprocal insurer is transacting insurance in another state that requires the issuance of policies with contingent liability provisions, the insurer may continue to issue policies with those provisions in the other state.

Additionally, if a reciprocal insurer's surplus becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies.

The bill also prohibits a domestic stock insurer from being converted into a reciprocal insurer.

Rule-Making Authority

Background

Currently, the FSC does not have rule-making authority to administer ch. 629, F.S.

Effect of the Bill

The bill grants rule-making authority to the FSC to adopt, amend, and repeal rules pursuant to ch. 120, F.S., which are necessary to implement ch. 629, F.S.

Participation of Financial Institutions in Reinsurance and Insurance Exchanges

Background

Currently, subject to applicable laws relating to financial institutions and to any other applicable provision of the Florida Insurance Code, any financial institution or aggregation of such institutions may own or control, directly or indirectly, any insurer which is authorized or approved by OIR, which insurer transacts only reinsurance in this state and which actively engages in reinsuring risks located in this state.[62]

Additionally, subject to the same provisions described above, any financial institution or aggregation of such institutions may participate, directly or indirectly, as an underwriting member or as an investor in an underwriting member of any insurance exchange authorized in accordance with s. 629.401, F.S., which underwriting member transacts only aggregate or specific excess insurance over underlying self-insurance coverage for self-insurance organizations authorized under the Florida Insurance Code, for multiple-employer welfare arrangements, or for workers' compensation self-insurance trusts, in addition to any reinsurance the underwriting member may transact.[63]

Effect of the Bill

The bill eliminates a financial institution's, or aggregation of such institutions' participation as an underwriting member or an investor in an underwriting member of the insurance exchange authorized under 629.401, F.S., and described above, because the existence of that type of exchange is being eliminated by the bill.

Miscellaneous

Pursuant to the changes made by the bill, the bill relocates the following sections of ch. 629, F.S., and, where applicable, relocates the provisions elsewhere:

- S. 629.021, F.S., relating to "reciprocal insurer" defined;
- S. 629.061, F.S., relating to attorney; and
- S. 629.261, F.S., relating to nonassessable policies.

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

Background

Medical Malpractice Crisis

During the 1970s and 1980s, medical liability insurance in Florida had become so expensive that, although technically available, it was functionally unavailable.[64] The Florida Legislature determined that obstetrician-gynecologists (ob-gyns) disproportionately accounted for medical liability claims, both in number of claims and amount of payout.[65] Therefore, in 1986, the Legislature created a special task force to study the Florida medical malpractice crisis and address the ob-gyn impact on that crisis.[66] The task force evaluated the rising insurance costs and reported that litigation costs and attorney's fees had increased between 1975 and 1986, but there was no particular change in substantive law to account for the change.[67] Moreover, some physicians became reluctant to treat high-risk patients and practice

[62] S. 624.45(1), F.S.
[63] S. 624.45(2), F.S.
[64] Sandy Martin, *NICA - Florida Birth-Related Neurological Injury Compensation Act*, 26 Nova L. R. 609 (2002), https://core.ac.uk/download/pdf/51081713.pdf (last visited Feb. 20, 2024).
[65] *Id*.
[66] *Id*.
[67] *Id*.

certain high-risk specialties altogether.[68] In 1985, ob-gyns in Florida paid an average medical malpractice liability premium of $185,460, compared to a national average for ob-gyns of $23,300.[69]

Florida Birth-Related Neurological Injury Compensation Plan

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was part of the Legislature's efforts to manage both rising medical malpractice costs and diminishing availability of liability insurance by creating a hybrid no-fault and tort medical liability system.[70] The Plan was created to pay for the care of infants born with certain neurological injuries and is available to eligible families without the need for litigation. By eliminating costly legal proceedings, the Plan aims to ensure that birth-injured infants receive the care they need while reducing the financial burden on both medical providers and families.

Florida Birth-Related Neurological Injury Compensation Association

In February 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA) to manage the Plan.[71] NICA is an independent association. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on NICA's board are appointed by the Chief Financial Officer (CFO) for staggered terms of three years or until their successors are appointed, but they may not serve more than six consecutive years on the board.[72] The board of directors is composed of:

- One citizen representative.
- One representative of participating physicians.
- One representative of hospitals.
- One representative of casualty insurers.
- One representative of physicians other than participating physicians.
- One parent or guardian representative of an injured infant under the plan.
- One representative of an advocacy organization for children with disabilities.[73]

The board of directors may:

- Administer the Plan.
- Administer the funds collected on behalf of the Plan.
- Administer the payment of claims on behalf of the Plan.
- Direct the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan.
- Reinsure the risks of the Plan in whole or in part.
- Sue, be sued, appear, and defend in all actions relating to the Plan.
- Exercise all powers necessary to effectuate any of the purposes for which the Plan is created.
- Enter into such contracts as are necessary or proper to administer the Plan.
- Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan.
- Take such legal action as may be necessary to avoid payment of improper claims.
- Indemnify any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.[74]

Annually, NICA must furnish audited financial reports to:

- Any Plan participant upon request;
- The OIR; and

[68] *Id*.
[69] *Id*.
[70] *Id.*
[71] S. 766.315, F.S. and ch. 88-1, s. 74, Laws of Fla.
[72] *Id.*
[73] *Id*.
[74] *Id*.

- The Joint Legislative Auditing Committee.[75]

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.[76]

Eligibility

An administrative law judge (ALJ) within the Florida Division of Administrative Hearings[77] hears all claims under the Plan and determines whether a claim is compensable.[78] To qualify, there must have been a birth injury to the brain or spinal cord of a live infant in which:

- The birth occurred in a hospital;
- The infant weighed 2500g at birth for single gestation or 2000g for multiple gestation at birth;
- There was oxygen deprivation or mechanical injury;
- The injury occurring during labor, delivery or resuscitation efforts in the immediate post delivery period;
- The infant experienced permanent and substantial mental and physical impairment;
- The injury was not caused by genetic or congenital abnormality; and
- The physician is participating in the Plan.[79]

A participating physician under the Plan is a licensed Florida physician who either practices obstetrics or performs obstetrical services on a full or part-time basis and pays a yearly NICA assessment.[80] If the physician did not pay his or her assessment for the year in which the injury occurred, there is no NICA coverage. Hospitals that allow doctors who do not participate in NICA to deliver babies are subject to multi-million dollar catastrophic injury lawsuits despite having paid into the NICA fund.[81]

Benefits

Once an ALJ determines a child is eligible under the Plan, the child is covered for life, and no other compensation from a medical malpractice lawsuit or settlement is available.[82] Instead, there are lifetime benefits and care available through the Plan, which include actual expenses for:

- Medical and hospital services;
- Rehabilitation, therapy, and training;
- Family residential or custodial care;
- Professional residential and custodial care;
- Medications;
- Special equipment and facilities; and
- Related travel expenses.[83]

[75] *Id*.
[76] *Id*.
[77] S. 766.302, F.S. The Division of Administrative Hearings is housed within the Florida Department of Management Services.
[78] S. 766.304, F.S.
[79] S. 766.302(2), F.S.
[80] S. 766.314, F.S.
[81] S. 766.302(7), F.S.
[82] *Id*.
[83] S. 766.31, F.S.

The Plan may also provide:

- A one-time cash award, not to exceed $250,000, to the infant's parents or guardians.
- A $50,000 death benefit for the infant.[84]
- Compensation for reasonable expenses incurred for filing the claim, including attorney's fees.
- An annual benefit up to $10,000 for psychotherapeutic services for immediate family members residing with the birth-injured child;
- A reliable method of transportation to Plan beneficiaries;
- Replacement of any vans purchased by the Plan every 7 years or 150,000 miles, whichever comes first; and
- Housing assistance of up to $100,000 for the lifetime of the child, including home construction and modification costs.[85]

Exclusions

The Plan does not reimburse or pay expenses that might otherwise be covered by insurance or any private or governmental programs, unless such exclusion is prohibited by federal law.[86] Many children with birth-related injuries are either covered by programs such as Children's Medical Services or Medicaid. Under current state and federal law, Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients; therefore, current law appears to prohibit NICA from shifting covered costs onto Medicaid.[87]

Effect of the Bill

The bill requires that by September 1, 2024, NICA submit a report, in consultation with OIR and AHCA, to several governmental bodies, including the Governor, the CFO, the President of the Senate, and the Speaker of the House of Representatives. This report must include:

- Recommendations for defining actuarial soundness for the association, including potential options for phasing it in if deemed appropriate.
- Recommendations for the timing of reporting actuarial soundness and specifying to whom the soundness should be reported.
- Recommendations for ensuring a revenue level that will maintain actuarial soundness, also providing potential options for phasing it in if deemed appropriate.

The bill clarifies "family residential or custodial care" as care provided by family members beyond typical duties, without compensation for tasks deemed part of normal family responsibilities. However, the bill removes the provision stating that the award for family residential or custodial care should not be included in current estimates for the purposes of another section.

The bill requires that if the total estimates exceed 100 percent of available funds within 12 months, NICA can't accept new claims without legislative approval, except for claims from injuries occurring 18 months prior. Additionally, the bill mandates that NICA must notify the Governor, the CFO, the President of the Senate, the Speaker of the House of Representatives, OIR, and AHCA within 30 days after the effective date of this suspension.

[84] S. 766.31(1)(b)2., F.S. In 2003, the $10,000 death benefit for an infant replaced the requirements to pay funeral expenses up to $1,500. (Ch. 2003-416, s. 78, Laws of Fla.)
[85] S. 766.31(1)(c), F.S.
[86] S. 766.31(1)(a), F.S.
[87] S. 409.910, F.S.; 42 C.F.R. s. 433.136; 42 U.S.C. s. 1396a.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative impact on state expenditures to the extent that OIR incurs additional costs related to licensing and regulating reciprocal insurers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The changes to the law regarding PHA self-insurance funds may have a positive impact on local government expenditures if the funds no longer have to purchase the same amount of excess insurance or reinsurance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Personal residential and commercial residential policyholders may experience an indeterminate economic impact as a result of the bill. Surplus lines insurers may experience a negative economic impact by being forced to renew policies on properties with unrepaired damage that they otherwise would have nonrenewed or canceled.

The bill may have an indeterminate negative impact on property insurers that incur additional administrative costs due to increasing reporting requirements from quarterly to monthly.

D. FISCAL COMMENTS:

None.