The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL:	CS/SB 1622
INTRODUCER:	Banking and Insurance Committee and Senator Trumbull
SUBJECT:	Insurance
DATE:	February 7, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1622 revises provisions relating to the Office of Insurance Regulation (OIR). Specifically, the bill:

- Requires each insurer and insurer group to file the required supplemental reports monthly, rather than quarterly, and to provide such information broken down by zip code;
- Provides the Financial Services Commission authority to adopt rules to administer certain provisions;
- Revises financial requirements for a public housing self-insurance fund;
- Provides that, upon a declaration of an emergency, and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a residential property that has been damaged as a result of a hurricane or wind loss until 90 days after the residential property has been repaired;
- Repeals current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable;
- Repeals provisions providing that certain coverage under the Citizens Property Insurance Corporation is not subject to its rate limitations;
- Amends s. 629.01, F.S., to provide an attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer; and
- Provides a substantial rewrite of provisions regulating reciprocal insurers.

The bill has an indeterminate impact to state revenues or expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[1] As part of its regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[2]

Financial Examinations

The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[3] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[4] The OIR is charged with conducting an exam once every three years for high-risk insurers and once every five years for low-risk insurers.[5] However, a domestic insurer that has held a certificate of authority for less than three years must be examined on an annual basis.[6] The OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.[7]

Market Conduct Exams

The OIR is authorized, as often as it deems necessary, to perform a market conduct examination of, among other entities, any authorized insurer, to determine compliance with applicable provisions of the workers' compensation law and the Insurance Code.[8] The costs of the examination are to be paid by the subject entity.[9] Section 624.3161, F.S., authorizes the OIR to subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane, is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane-related property insurance claims filed to the number of property insurance policies in force.[10]

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[1] Section 20.121(3)(a), F.S. 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 the OIR for purposes of rulemaking. Further, the Commission appoints the commissioner of the OIR.
[2] Section 624.418, F.S.
[3] Section 624.316(1)(a), F.S.
[4] Section 624.318(2), F.S.
[5] Section 624.316(2)(a), F.S.
[6] Section 624.316(2)(f), F.S.
[7] Section 624.316(2)(b), F.S.
[8] Section 624.3161(1), F.S.
[9] Section 624.3161(4), F.S.
[10] Section 624.3161(7)(a), F.S.

The OIR must subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane:

- Is among the top 20 percent of insurers based upon a calculation of the ratio of consumer complaints made to the DFS to hurricane-related claims;
- Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims on policies providing wind or windstorm coverage;
- Has made significant payments to its managing general agent since the hurricane; or
- Is identified by the OIR as necessitating a market conduct exam for any other reason.[11]

The relevant criteria under ss. 624.3161 and 624.316, F.S., are to be applied to the market conduct examination after a hurricane.[12] Such market conduct examination, if any, must be started within 18 months after the landfall of the related hurricane.[13] The insurer's managing general agent must be included in the market conduct examination as if it were the insurer.[14]

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," the OIR may order the insurer to file its claims-handling practices and procedures with the OIR for review and inspection.[15] The practices and procedures are to be held by the OIR for 36 months and are considered public records, not trade secrets, during the 36-month period.[16] The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."[17]

Annual Statement and Other Information

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the OIR containing various financial data, including audited financial statements, actuarial opinions, and certain claims data.[18] Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1.[19] Quarterly statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.[20]

In 2021, the Legislature enacted legislation[21] to assist the OIR and the Legislature in identifying current and emerging property insurance litigation trends that are cost drivers adversely affecting insurance rates. As of January 1, 2022, each authorized insurer or insurer group issuing personal

[11] Section 624.3161(7)(b), F.S.
[12] Section 624.3161(7), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 624.3161(6), F.S.
[16] *Id.*
[17] *Id.*
[18] Section 624.424, F.S.
[19] Section 624.424(1)(a), F.S.
[20] *Id.*
[21] Chapter 2021-77, L.O.F.

lines or commercial lines residential property insurance policies in this state must provide specific pieces of data regarding closed claims to the OIR on an annual basis.[22] The report must include, excluding liability only claims, the following information on a per claim basis:

- Claim identification number;
- Type of policy;
- Date, location, and type of loss;
- Name and type of vendors utilized for mitigation, repair, or replacement;
- Dates of when the claim was made; initially closed; most recently reopened, if applicable; when a supplemental claim was made, if applicable; and most recently closed, if different from the initial date the claim was closed;
- Name of the public adjuster, if any;
- Name and Florida Bar number of the claimant's attorney, if any;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[23] and insured's attorney fees, including any contingency risk multiplier[24] requested by the attorney; and
- Any other information deemed necessary by the Financial Services Commission to provide the OIR with the ability to track litigation and claims trends occurring in the property market.[25]

Section 624.424(10), F.S., requires insurers and insurer groups doing business in Florida to file quarterly reports with the OIR. These reports, also known as QUASR reports, must include the following information for each county in Florida, compiled on a quarterly basis:

- The total number of policies in force at the end of each month;
- The total number of policies canceled;
- The total number of policies nonrenewed;
- The number of policies canceled due to hurricane risk;
- The number of policies nonrenewed due to hurricane risk;
- The number of new policies written;
- The total dollar value of structure exposure under policies that include wind coverage;
- The 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; and
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

The OIR must aggregate on a statewide basis the data submitted and make such data publicly available on the OIR website within one month after each quarterly and annual filing.[26] The information must be published on the OIR website within one month after each quarterly and

[22] Section 624.424(11), F.S.
[23] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited January 31, 2024).
[24] A contingency risk multiplier is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So.3d 1122 (Fla. 2017).
[25] Section 624.424(11, F.S.
[26] Section 624.424(10)(b), F.S.

annual filing.[27] This information is not a trade secret as defined in s. 688.002(4), F.S., or s. 812.081, F.S., and is not subject to the public records exemption for trade secrets provided in s. 119.0715, F.S.[28] The 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.[29]

Nonrenewal of Residential Property Insurance Policies

An insurer that plans to nonrenew more than 10,000 residential property insurance policies within a 12-month period must give written notice to the OIR for informational purposes 90 days before the issuance of such notices of nonrenewal.[30] The notice provided to the OIR must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders.[31]

Public Housing Authorities Self-Insurance Funds

Two or more public housing authorities may form a self-insurance fund as to any one or more risks. Such self-insurance fund that is created must:

- Have annual normal premiums in excess of five million dollars;
- Use a qualified actuary to determine rates and annually submit to the OIR a certification by the actuary that the rates are actuarially sound and are not inadequate;
- Use a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submit to the OIR a certification by the actuary that the loss and loss adjustment expense reserves are adequate;
- Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, the program must:
  - Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers;
  - Retain a per-loss occurrence that does not exceed $350,000;
- Submit to the OIR annually an audited fiscal year-end financial statement by an independent certified public accountant;
- Have a governing body which is comprised entirely of commissioners of public housing authorities that are members of the fund or persons appointed by the commissioners;
- Use knowledgeable persons to administer the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas;
- Submit to the OIR copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund; and
- Annually submit to the OIR a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

[27] *Id.*
[28] *Id.*
[29] Office of Insurance Regulation, *Amended Agency Analysis of SB 1622* (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[30] Section 624.4305, F.S.
[31] *Id.*

A business entity in which a public housing authority holds an ownership interest or participates in its governance may join a self-insurance fund solely to insure risks related to public housing.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[32] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.[33] Rather, surplus lines insurers are "unauthorized" insurers,[34] but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[35]

Notice of Cancellation, Nonrenewal, or Renewal of Insurance Policies

The requirements for an authorized insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.

For an authorized insurer writing personal lines residential or commercial lines residential property insurance policies are generally subject to the following requirements:

- The insurer must give written notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination and the notice is required to include the reason for nonrenewal, cancellation, or termination;[36] and
- The insurer must give written notice of renewal premium at least 45 days prior to the renewal premium[37] and the notice of renewal premium must specify certain information, including the dollar amount of any premium increase that is due to an approved rate increase and the total dollar amount that is due to coverage changes.[38]

[32] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.
[33] Section 624.09(1), F.S.
[34] Section 624.09(2), F.S.
[35] Section 626.913(4), F.S.
[36] Section 627.4133(2)(b), F.S.
[37] Section 627.4133(2)(a), F.S.
[38] Section 627.4133(7), F.S.

An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:

- For a period of 90 days after the property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation;[39] and
- Until the earlier of when property has been repaired or one year after the insurer issues the final claim payment, if such property was damaged by any covered peril, but was not damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation.[40]

The requirements for a surplus lines insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 626.9201, F.S. A surplus lines insurer issuing a policy providing coverage for property insurance must give the insured at least 45 days' advance written notice of nonrenewal that includes the reasons why the policy is not to be renewed.[41]

A surplus lines insurer issuing a policy providing coverage for property insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

- If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation;[42] and
- If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given.[43]

Rate Standards

Part I of ch. 627, F.S., the Rating Law,[44] governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.[45] The rating law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.[46] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies that "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[47]

[39] Section 627.4133(2)(e)1.a., F.S.
[40] Section 627.4133(2)(e)1.b., F.S.
[41] Section 626.9201(1), F.S.
[42] Section 626.9201(2)(a), F.S.
[43] Section 626.9201(2)(b), F.S.
[44] Section 627.011, F.S.
[45] Section 627.021(1), F.S.
[46] Section 627.062(1), F.S.
[47] Section 627.041, F.S.

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or within 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.[48] Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- The cost of medical services, if applicable;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.[49]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[50] Citizens is not a private insurance company.[51] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[52]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[53] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[54] The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.[55]

[48] Section 627.062, F.S.
[49] Section 627.062(2)(b), F.S.
[50] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[51] Section 627.351(6)(a)1., F.S.
[52] Section 2, ch. 2002-240, L.O.F.
[53] Section 627.351(6)(a)2., F.S.
[54] Section 627.351(6)(c)4.a., F.S.
[55] Section 627.351(6)(c)4., F.S.

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006.[56] In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established 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.[57] In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:

- 11 percent for 2022;
- 12 percent for 2023;
- 13 percent for 2024;
- 14 percent for 2025; and
- 15 percent for 2026 and all subsequent years. [58]

The implementation of these increases cease when Citizens has achieved actuarially sound rates.[59] In addition to the overall glidepath rate increase, Citizens may increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF) coverage, pursuant to s. 215.555(5)(b), F.S.[60] The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- Are new policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the OIR to be unsound or an insurer placed in receivership under chapter 631; or
- Are subsequent renewals of those policies.[61]

Instead, the rate standard for such policies prohibits a rate lower than the previous year's rate charged by Citizens and allows a rate increase of greater than 50 percent.

Insurance Holding Companies; Registration; Regulation

An authorized insurer that is a member of an insurance holding company must register and file a registration statement with the OIR each year.[62] The Financial Services Commission has authority to adopt rules establishing the information and manner in which such registered insurers and their affiliates are regulated.[63] The rules do not apply to foreign insurers domiciled in states that are currently accredited by the National Association of Insurance Commissioners (NAIC).[64] The rules must include all requirements and standards of ss. 4 and 5 of the Insurance

[56] Section 15, ch. 2006-12, L.O.F.
[57] Section 10, ch. 2009-87, L.O.F.
[58] Section 627.351(6)(n)5., F.S.
[59] Section 627.351(6)(n)7., F.S.
[60] Section 627.351(6)(n)6., F.S.
[61] Section 627.351(6)(n)8., F.S.
[62] Section 628.801(1), F.S.
[63] *Id.*
[64] *Id.*

Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2010.

NAIC Model Acts

The NAIC is a voluntary association of insurance regulators from all 50 states.[65] The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.[66]

Model Holding Company Act and Regulation

The NAIC has adopted the Insurance Holding Company System Regulatory Model Act[67] and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions.[68] The provisions of the model acts provide insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[69]

Reciprocal Insurers

A reciprocal insurance exchange is a form of insurance organization in which individuals and businesses exchange insurance contracts and spread the risks associated with those contracts among themselves.[70] Policyholders of a reciprocal insurance exchange are referred to as subscribers.[71] In Florida, reciprocal insurers are regulated pursuant to ch. 629, F.S. Florida law provides that a "reciprocal insurer" is "an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves"[72] and:

> "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity,

[65] National Association of Insurance Commissioners (NAIC), *Frequently Asked Questions*, https://content.naic.org/sites/default/files/about-faq.pdf (last visited Jan. 31, 2024).
[66] *Id.*
[67] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[68] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions*, https://content.naic.org/sites/default/files/MO450_0.pdf (last visited Jan. 31, 2024).
[69] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, Section 6B, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[70] *What Is a Reciprocal Insurance Exchange?* Investopedia https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 31, 2024).
[71] *Id.*
[72] Section 629.021, F.S.

> the interexchange being effectuated through an "attorney in fact" common to all such persons.[73]

A reciprocal insurer may transact any kind of insurance other than life insurance or title insurance.[74] A domestic reciprocal insurer must maintain surplus funds of not less than $250,000 and must, when first authorized, have an expendable surplus of not less than $750,000.[75] A domestic reciprocal insurer may organize with twenty-five or more persons domiciled in Florida making application to the OIR for a certificate of authority to transact insurance and file a declaration setting forth:

- 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 this state;
- 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 its members;
- That all moneys paid to the reciprocal must, after deducting therefrom 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 six months at an adequate approved rate;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand; and
- A copy of each policy, endorsement, and application form it proposes to use.

When the declaration is filed, the attorney must file a $100,000 bond in favor of the state for the benefit of all persons damaged as a result of a breach by the attorney of the conditions of his or her bond.[76]

Each domestic reciprocal insurer must have a subscribers' advisory committee. The advisory committee exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[77] Not less than two-thirds of such committee must be subscribers other than the attorney,

[73] Section 629.011, F.S.
[74] Section 629.041, F.S.
[75] Section 629.071, F.S.
[76] Section 629.121, F.S.
[77] Section 629.201(1), F.S.

or any person employed by, representing, or having a financial interest in the attorney.[78] The committee must:

- Supervise the finances of the insurer;
- Supervise the insurer's operations 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.[79]

Power of Attorney

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.[80] Currently, 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.[81]

Under current law, 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.

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 the OIR.[82]

Fiduciary Duty

Under s. 673.3071, F.S., fiduciary means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument. Under Florida's

[78] Section 629.201(2), F.S.
[79] Section 629.201(3), F.S.
[80] Section 629.101(1), F.S.
[81] Section 629.101(2), F.S.
[82] Section 629.101(3), F.S.

Trust Code, a fiduciary means "a person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary, who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.[83] Furthermore, the holder of a power to direct is liable for any loss that results from breach of fiduciary duty.[84]

Fiduciary duty is defined as "someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes the duties of good faith, loyalty, due care, confidentiality, prudence and disclosure".[85]

Fiduciary duty is often found in the following relationships: attorney-client; executor-heir; guardian-ward; agent-principal; trustee-beneficiary; corporate officer-shareholder. Depending upon particular facts, lenders, clerics and spouses may share a fiduciary duty.[86] A fiduciary duty may arise expressly or be implied by law.[87]

The Florida Supreme Court (Court), in *Quinn v. Phipps* (1927), held that a fiduciary duty "exists, and that relief is granted, *in all cases* in which influence has been acquired and abused – in which confidence has been reposed and betrayed."[88] In addition, the Court, characterized the fiduciary relationship as follows:

> [T]he relation and duties involved need not be legal; they may be moral, social, domestic, or personal. *If a relation of trust and confidence exists between the parties (that is to say, where confidence is reposed by one party and a trust accepted by the other, or where confidence has been acquired and abused), that is sufficient as a predicate for relief.* The origin of the confidence is immaterial. [italics in original, quoting *Quinn*][89]

The Court further stated: "…as the relationship and duties do not have to be legal, "[A] "fiduciary relationship may be implied by law, and such relationships are 'premised upon the *specific factual situation* surrounding the transaction and the relationship of the parties."[90]

According to the Florida Bar, "[w]hen a fiduciary relationship exists, the fiduciary is under a duty to act for the benefit of the beneficiary only as to matters within the scope of the fiduciary relationship. No duty attaches to matters beyond the scope of the fiduciary relationship."[91]

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[83] Section 736.0808(4), F.S.
[84] *Id*.
[85] Cornell Law School, Legal Information Institute, *Fiduciary Duty, Overview*, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Feb. 1, 2024). See also, Black's Law Dictionary, 2nd Ed., *available at* https://thelawdictionary.org/fiduciary-duty/ (last visited Feb. 1, 2024).
[86] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).
[87] *Id* at *How Fiduciary Duty Arises.*
[88] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[89] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024). *See* fn 15: *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 20002) (emphasis added). *In Quinn v. Phipps*, 113 So. 419, 421, 425-426 (Fla. 1927), the Florida Supreme Court addressed the fiduciary relationship in the context of the development of equity.
[90] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[91] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).

Furthermore, "[w]hile the parameters of the fiduciary relationship may be undefinable, the relationship may arise expressly, through contracts and statutes, or may be implied under the specific circumstances of the parties' relationship, which often requires a factually intensive inquiry."[92]

Power of Attorney and Attorney in Fact

Chapter 709, F.S., relates to the powers of attorney and similar instruments. A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as otherwise provided in s. 708.08, F.S."; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity. A durable power of attorney is exercisable as of the date of execution. However, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), F.S., the durable power of attorney is exercisable upon the delivery of affidavits to the third party.[93]

An attorney in fact is a person who is authorized to represent someone else in business, financial, and private matters, usually through a power of attorney.[94] An attorney in fact is not necessarily an attorney, but they must act in the best interests of the principal and follow any instructions or guidelines set forth in the power of attorney.[95] An attorney in fact is not the same as a lawyer or attorney. A lawyer or attorney is professional who is duly licensed to practice law and offers advice to their client and represents them in a courtroom. While an attorney in fact has been given the authority to act on, often making decisions for, the behalf of another person.[96]

An attorney in fact must be a natural person who is 18 years of age or older, is of sound mind, or a financial institution, as defined in ch. 655, F.S., with trust powers having a place of business in this state and authorized to conduct trust business in this state. A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact, or its officers or directors.[97]

An attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. 736.0901, F.S., except as otherwise provided in s. 709.08, F.S.[98]

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[92] *Id.*
[93] Section 709.08(1) and (4)(c) and (d), F.S.
[94] Adam Hayes, Investopedia, *Attorney-in-Fact: Definition, Types, Powers and Duties* (August 2, 2023), https://www.investopedia.com/terms/a/attorneyinfact.asp (last visited Feb. 1, 2024).
[95] *Id.*
[96] *Id.*
[97] Section 709.08, F.S.
[98] Section 709.08(8), F.S.

III. Effect of Proposed Changes:

Market Conduct Examinations

Section 1 amends s. 624.3161, F.S., to authorize the Office of Insurance Regulation (OIR) to conduct market conduct examinations of the attorney in fact of each reciprocal insurer.

Annual Statement and Other Information

Section 2 amends s. 624.424, F.S., to require each insurer and insurer group to file the required supplemental reports on personal lines and commercial lines property insurance monthly, rather than quarterly. Requires such information to be broken down by zip code, rather than by county.

Nonrenewal of Residential Property Insurance Policies

Section 3 amends s. 624.4305. F.S., to provide the Financial Services Commission (Commission) the authority to adopt rules to administer this section. The section requires any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period to give the OIR at least 90 days written notice before issuing notices of nonrenewal.

Public Housing Authorities Self-Insurance Funds

Section 4 amends s. 624.46226, F.S., to revise financial requirements for a public housing self-insurance fund (fund) to:

- Specify that reinsurance may be used as part of its program to protect the financial stability of the fund;
- Require a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;
- Require the fund's continuing program of excess insurance coverage and reinsurance be certified by a qualified and independent actuary as to the program's adequacy;
- Include reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- Eliminate the requirement to retain a per-loss occurrence that does not exceed $350,000.

Notice of cancellation or nonrenewal by Surplus Lines Insurers

Section 5 amends s. 626.9201, F.S., to provide that, upon a declaration of an emergency pursuant to s. 252.36, F.S., and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in the area.

The bill provides the following exceptions, allowing the surplus lines insurer to cancel the policy:

- Upon 10 days' notice for nonpayment of premium.
- Upon 45 days' notice:
  - For a material misstatement or fraud;
  - If the insurer determines the insured has unreasonably caused a delay in repairs;
  - If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide a response; or
  - If the insurer has paid policy limits.

If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 day notice to the insured that the insurer intends to nonrenew the policy after 90 days after the dwelling or residential property has been repaired.

Other than the specified limitations proscribed within this section, the insurer is not prevented from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would have otherwise canceled or nonrewed.

The bill provides the Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this requirement.

Rate Standards

Section 6 amends s. 627.062, F.S., to repeal current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable.

Citizens Property Insurance Corporation

Section 7 amends s. 627.351, F.S., to repeal provisions adopted last legislative session that allow the Citizens Property Insurance Corporation (Citizens) to apply a different methodology to polices which, immediately prior to being insured by Citizens, were insured by an insurer determined by the OIR to be unsound or that was placed in receivership. Rates for such policies, if they cover a primary residence, will be subject to the Citizens rate "glidepath" which will restrict rate increases to 13 percent for 2024, rather than a prohibition on rate decreases and a limit of 50 percent on rate increases at issuance at renewal. If such policies do not cover a primary residence, the prohibition on rate decreases and the 50 percent limit on rate increases will apply.

Scope of part

Section 8 amends s. 628.011, F.S., to remove the word "stock" from the phrase "domestic stock insurers."

Investigation of Proposed Organizations

Section 9 amends s. 628.061, F.S., to provide the OFR is authorized to conduct an investigation in connection with any proposal to organize or incorporate a domestic insurer. The OFR is required to investigate:

- The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact;
- The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact; and
- The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Insurance Holding Companies; Registration; Regulation

Section 10 amends s. 628.801, F.S., to provide the Commission may adopt rules for the filing of the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners (NAIC), as adopted in December 2020.

Reciprocal Insurers

Definitions

Section 11 amends s. 629.011, F.S., to add definitions for the terms "affiliated person," "attorney in fact," "controlling company," and "reciprocal insurer."

"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, and the parents of the other person's spouse, and their lineal descendants;
- A person who directly or indirectly owns or controls, or holds with 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 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 director, an officer, a trustee, a partner, an owner, a manager, a joint venture, an employee, or other person performing duties similar to those of persons in such positions;
- If the other person is an investment 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 or controlling company that is not a stock corporation.

"Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

"Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another 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.

"Reciprocal insurer" is defined as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

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

"Reciprocal Insurer" Defined

Section 12 repeals s. 629.021, F.S., defining "reciprocal insurer."

Attorney

Section 13 repeals s. 629.061, F.S., providing requirements related to the attorney in fact.

Organization of Reciprocal Insurer

Section 14 amends s. 629.081, F.S., to provide for the permit application by those domiciled in this state who wish to organize as a domestic reciprocal insurer. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the OIR.

Reciprocal insurer applicants must apply to the OIR to receive a permit. The permit application must be in writing and in accordance with forms prescribed by the OIR. The reciprocal insurance permit application must include the following:

- The name of the proposed reciprocal insurer, in accordance with s. 629.051, F.S.;
- The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and which shall be maintained in Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original 25 or more subscribers;
- The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney;
- The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or if other than a corporation, as well as the background information as specified in s. 629.227, F.S., for all officers, directors and 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 powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227, F.S., for each proposed member;
- A copy of the proposed subscribers' agreement; and
- A copy of each policy, endorsement, and application form the insurer proposes to issue or use;

The filing must be accompanied by the application fee required under s. 624.501(11)(a), F.S., and such other pertinent information and documents reasonably requested by the OIR.

The OIR is authorized to evaluate and grant or deny the permit application in accordance with ss. 628.061 and 628.071, F.S. and other relevant provisions of the code.

Reciprocal Certificate of Authority

Section 15 amends s. 629.091, F.S., to provide the application requirements for a certificate of authority as a domestic reciprocal insurer. A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit. Such application must include:

- Executed copies of any proposed or draft documents required as part of the permit application;
- A statement affirming that all moneys paid to the reciprocal insurer must, after deducting 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 six months at the rate that was filed with and approved by the 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; and
- Such other pertinent information or documents as reasonably requested by the OIR.

If the reciprocal insurer intends to issue nonassessable policies under the certificate of authority, and the OIR determines the reciprocal insurer meets the legal requirements to issue such polices, including surplus requirements, the OIR shall grant a certificate of authority to the reciprocal authority. However, 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 and the provisions of s. 629.301, F.S., apply.

The certificate of authority is issued in the name of the reciprocal insurer to its attorney in fact.

Continued Eligibility for Certificate of Authority

Section 16 creates s. 629.094, F.S., to provide that in order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all conditions

required under the chapter and the rules for the initial applications for a permit and certificate of authority.

Power of Attorney

Section 17 amends s. 629.101, F.S., to provide that the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

Acquisitions

Section 18 creates s. 629.225, F.S., to provide the provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

The bill provides requirements regarding the acquisition of 10 percent or more of a reciprocal insurer. To complete such an acquisition, the person seeking to obtain such ownership interest must provide notice of the attorney in fact of the reciprocal insurer within certain time frames, file an application with the OIR containing detailed information about the offer and the person making the offer which will be reviewed pursuant to ch. 120, F.S., and receive OIR approval of the acquisition. The OIR must approve the acquisition if the applicant proves that the acquisition will not jeopardize the financial stability of the attorney in fact or harm the reciprocal insurer's subscribers or public. The bill provides that:

- A person may not acquire, 10 percent or more of the outstanding voting securities of an attorney in fact unless:
  - The person has filed with the OIR and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee and the domestic reciprocal insurer a letter of notification regarding the transaction no later than five days after any offer is proposed, or no later than five days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. Such notification must be on forms prescribed by the OIR and must contain information necessary to understand the transaction and identify all purchasers and owners involved;
  - The subscribers' advisory committee has provided the required notification, on a form prescribed by the OIR, letting the subscribers know of the filing deadlines for objecting to the acquisition;
  - The person has filed with the OIR an application which contains the required information within 30 days after any offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved; and
  - The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved;
- This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the OIR;
- The OIR may waive or person filing the notice may request that the OIR waive the requirement that the subscribers' advisory committee provide notice to subscribers of the proposed acquisition, if there is no change in ultimate controlling shareholders and their ownership percentages and no unaffiliated parties acquire any interest in the attorney in fact;
- The application must contain the following information:

  - The identity and background information specified each person on whose behalf the acquisition is to be made and any person who controls such other person;
  - The source and amount of the funds to be used in making the acquisition;
  - Any plans made 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 any other major change in their business or corporate structure or management;
  - The nature and the extent of the controlling interest which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation;
  - The number of shares or other securities which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired;
  - Information as to any arrangement with any party with respect to any of the securities of the attorney in fact or controlling company; and
  - The required fee;
- An amendment to the application must be filed with the OIR detailing any changes in facts or the background information detailed in the application;
- The acquisition application must be reviewed pursuant to ch. 120, F.S., the Administrative Procedure Act. The OIR may initiate or by written request conduct a proceeding to consider the appropriateness of the proposed filing. Under this review:
  - Time periods are tolled during the pendency of the proceeding;
  - Written request must be filed within 10 days after the date notice of filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later;
  - During the review period by the OIR, any person or affiliated person complying with the filing requirements may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon approval by the OIR;
  - If at any time, the OIR finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the OIR shall immediately order the proposed acquisition disapproved and any further steps to conclude the acquisition ceased;
  - A material change in the operation or management of the attorney in fact or controlling company, unless specifically approved by the OIR, are prohibited;
  - A request for material change may be provided to the OIR by advanced written notice;
  - The OIR may either approve or disapprove a written request for material change, if the request meets or does not meet defined provisions provided in subsection (7);
  - The proceeding must conducted within 60 days after the date of the written request is received by the OIR;
  - The OIR will issue a recommended order within 20 days after the date of the close of the proceedings; and
  - A final order will be issued within 20 days after the date of the recommended order, or if exceptions are filed, within 20 days after the date of the exceptions are filed;
- The OIR may disapprove any acquisition by any person or affiliated person who willfully violates this section or violates the OIR orders related to divestiture or the acquisition of specified additional stock or ownership interest without complying with this section;
- The applicant has the burden of proof;

- The bill provides criteria for the OIR approval of an acquisition, which generally must be given if the OIR finds that the acquisition will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or harm the public;
- Any acquisition contrary to this section is void, as is any vote by a stockholder of record or any other person of any security so acquired;
- OIR approval of an offer or acquisition does not constitute a recommendation by the OIR;
- A presumption of control may be rebutted by filing a valid disclaimer of control with the OIR;
- Authorizes the OIR to order divesture by a person who acquires 10 percent or more of voting securities of an attorney in fact or a controlling company without complying with this section; and
- Authorizes the OIR to suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

A person who violates these provisions commits a third degree felony, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.[99] The statute of limitations for prosecution of an offense committed under this section is five years.

The term "material change in the operation of the attorney in fact" is defined to mean a transaction that disposes of or obligates five percent or more of the domestic reciprocal insurer.

The term "material change in the management of the attorney in fact" is defined to mean any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate five percent or more of the attorney in fact's capital or surplus.

Background Information

Section 19 creates s. 629.227, F.S., to provide the required background information that must be submitted on 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. The background information must include a sworn biographical statement providing detailed information of the person's business history over the last 20 years. The information must detail any criminal convictions, license revocation proceedings, bankruptcies, and other specified proceedings that have occurred in the last 10 years. Fingerprints must also be submitted.

Attorney in Fact

Section 20 creates s. 629.2297, F.S., to provide that any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of

[99] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

any other insurer doing business in this state, and who served in that capacity within the two-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency:

- Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or
- Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Nonassessable Policies

Section 21 amends s. 629.261, F.S., to provide that upon impairment of the surplus of a nonassessable reciprocal insurer, the OIR must revoke its authorization. Such revocation does not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has been paid. After revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

Merger or conversion

Section 22 amends s. 629.291, F.S., to provide requirements for mergers and conversions. The bill provides that a domestic stock insurer may not be converted to a reciprocal insurer. The bill provides that any plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the OIR on forms adopted by the Financial Services Commission and must contain such information as the OIR reasonably requires to evaluate the transaction.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if the subscriber's advisory committee approves, the attorney in fact submits the required application, and the OIR approves.

If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301, F.S., apply.

Rulemaking Authority

Section 23 creates s. 629.525, F.S., to grant rulemaking authority to the Financial Services Commission to adopt, amend, or repeal rules necessary to implement the chapter.

Conforming Changes

Sections 8, 9, 24, and 25 amend ss. 628.011 (Scope of Part), 628.061 (Investigation of Proposed Organization), 163.01 (Florida Interlocal Cooperation Act of 1969), and 626.9531 (Identification of Insurers, Agents, and Insurance Contracts), F.S., respectively, to conform those sections based on changes made by the bill.

Effective Date

Section 26 provides that the bill becomes effective on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Article VII, s. 19 of the Florida Constitution requires that a new state tax or fee must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service." Section 14 and Section 18 impose an application or filing fee subject to s. 624.501(1)(a), F.S. The bill requires a two-thirds vote of the membership of each house of the Legislature.

B. Private Sector Impact:

The bill is intended to have a positive impact on consumers.

Insurers will need to revise current procedures in order to comply with the provisions of the bill. The cost of such revisions is indeterminate.

Applicants are subject to filing and application fees under s. 624.501(1)(a), F.S.

Applicants may experience out of pocket expenses for any fingerprint or state or federal background check required under the bill. The cost for a state and national criminal history record check is $37.25 per name. In addition, the Florida Department of Law Enforcement (FDLE) reports Livescan Services may assess additional processing fees,[100] which may require an applicant to pay additional fees.[101]

C. Government Sector Impact:

The bill has an indeterminate impact to state revenues and expenditures.

The Office of Insurance Regulation may experience an increase in filings and applications, resulting in a positive, yet indeterminate, impact to state revenues. The bill makes numerous changes that will require systems and process changes in the OIR. However, the OIR has indicated any technology updates can be absorbed within existing resources.[102]

The bill may have a positive impact to the Florida Department of Law Enforcement's Operating Trust Fund as the cost for a state and national criminal history record check is $37.25 per name submitted. The Federal Bureau of Investigation (FBI) receives $13.25 and, pursuant to s. 943.053(3)(e), F.S., the FDLE retains $24.[103]

The bill creates a new third degree felony for violation of s. 629.225, F.S., which is punishable by up to five years in prison. The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to determine the impact of this bill. The bill has a positive/negative indeterminate impact, meaning the final direction of the impact is unknown, at this time.

VI. Technical Deficiencies:

Section 13 repeals s. 629.062, F.S., relating to attorney in fact, eliminating the provision which requires the attorney in fact to maintain an office at the place designated by the subscribers in the power of attorney. This language or similar language could be added to Section 17.

Section 17 amends s. 629.101, F.S., relating to "power of attorney." Specifically the tag line was amended to "power of attorney in fact"; however, the amended language from attorney to attorney in fact is not consistent throughout the section.

[100] *Id.*
[101] *Id.*
[102] Email from Kevin Jacobs, Deputy Chief of Staff, Office of Insurance Regulation to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment, and General Government (Feb. 1, 2024).
[103] The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

The section relates to a power of attorney (legal document) and not an attorney in fact. It would appear legislative intent is to allow an attorney in fact, as defined within this act, rather than a duly licensed attorney, to hold the authority placed within a power of attorney. To provide clarification, the section could be amended to read: 629.101 Power of attorney and "power of attorney in fact" could replace every reference to an "attorney" throughout the section.

VII. Related Issues:

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the Florida Department of Law Enforcement (FDLE), a sex offender registry check, local criminal records check, and a domestic violence check.[104] Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE, a national criminal history records check through the Federal Bureau of Investigation (FBI), and a domestic violence check. It may also include local criminal records checks. A Level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.[105]

If it is the intent of the bill to require applicants to undergo finger-print based, state and national criminal history record checks (Level 2), during the application process, the FDLE recommends stating so specifically within each applicable section of the bill. To facilitate state and national criminal history record checks, the following language should be included to ensure compliance with federal law and the United States Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check.[106]

> An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.
>
> Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).[107]

[104] Section 435.03, F.S.
[105] Section 435.04, F.S.
[106] The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[107] *Id.*

The FDLE notes that a statute cannot be approved for access to FBI criminal history record information (CHRI) unless all criterion specified within Public Law 92-544 are satisfied which includes a review of whether the population(s) (i.e., categories of individuals) being screened is clearly defined and the state agency responsible for conducting the fingerprint-based background check and receiving the CHRI from the FBI is identified within the statute(s). As written, the FDLE opines "the FBI will likely deny the request for fingerprint-based access to national criminal history record check information."[108]

The FDLE recommends further defining and clarifying the terms "Affiliated Person" within s. 6239.011, F.S., and "Controlling Company" within s. 629.011, F.S., as the FBI considers the terms overly broad and undefined.[109]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161, 624.424, 624.4305, 624.46226, 626.9201, 627.062, 627.351, 628.011, 628.061, 628.801, 629.011, 629.081, 629.091, 629.101, 629.261, 629.291, 163.01, and 626.9531.

This bill creates the following sections of the Florida Statutes: 629.094, 629.225, 629.227, 629.229, and 629.525.

This bill repeals the following sections of the Florida Statutes: 629.021 and 629.061.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on January 29, 2024:
The committee substitute removed the entire substance of the bill made numerous changes to the wording and organization of the bill and:

- Revised the provision in section 5 of the bill regarding cancellation or nonrenewal by a surplus lines insurer after a hurricane, to include damage that is the result of wind loss;
- Repealed current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable;
- Created a new section of statute, s. 629.229, F.S., providing for regulation of the attorney in fact, officers, and directors;
- Removed sections 13, 14, 15, 17, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, 39, 40, 41, 44, 45, and 47 from the bill; and
- Changed the effective date from July 1, 2025 to July 1, 2024.

[108] *Id.*
[109] *Id.*

B. Amendments:

None.