Regulatory Affairs Committee

Wednesday, March 12, 2014
1:00 PM
404 HOB

Will Weatherford
Speaker

Doug Holder
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time: Wednesday, March 12, 2014 01:00 pm

End Date and Time: Wednesday, March 12, 2014 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 375 Insurance by Santiago
CS/HB 413 Consumer Collection Practices by Insurance & Banking Subcommittee, Santiago
CS/HB 565 Insurance by Insurance & Banking Subcommittee, Santiago
CS/HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders by Insurance & Banking Subcommittee, Workman
CS/HB 633 Division of Insurance Agents & Agency Services by Insurance & Banking Subcommittee, Ingram

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, March 11, 2014.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 11, 2014.

NOTICE FINALIZED on 03/10/2014 16:10 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 12, 2014
404 HOB
1:00 PM – 3:00 PM

I. Call to Order and Roll Call

II. HB 375 by *Rep. Santiago*
Insurance

III. CS/HB 413 by *Insurance & Banking Subcommittee; Rep. Santiago*
Consumer Collection Practices

IV. CS/HB 565 by *Insurance & Banking Subcommittee; Rep. Santiago*
Insurance

V. CS/HB 631 by *Insurance & Banking Subcommittee; Rep. Workman*
Loan Originators, Mortgage Brokers, & Mortgage Lenders

VI. CS/HB 633 by *Insurance & Banking Subcommittee; Rep. Ingram*
Division of Insurance Agents & Agency Services

VII. ADJOURNMENT

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 413-0419

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 375 Insurance
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Emmanuel	Cooper
2) Regulatory Affairs Committee		Emmanuel	Hamon

SUMMARY ANALYSIS

Under current law, a Florida-licensed agent is required to countersign a property, casualty, or surety insurance policy in order to validate it. This signature is in addition to the signature of the insurance company representative and the signature of the insured.

Prior to 2003, the law required a countersignature from an agent that was also a Florida resident. In 2003, any distinction based solely on residency was overturned on constitutional grounds by the Northern District of Florida in *Council of Insurance Agents and Brokers v. Gallagher*. The court held that distinctions based on knowledge, skill, or certification level may be permissible in a licensed industry, but pure residency requirements run afoul of the U.S. Constitution. To comply with the federal court's ruling, the legislature changed the law to require a countersignature from "Florida-licensed" agents.

These countersignatures are proof that a Florida-licensed agent has reviewed the policy for conformance to Florida law. Currently, insurance companies are not to assume direct liability for any policy unless it has been signed by a Florida-licensed agent. An agent may delegate the power to countersign a policy to the issuing insurance company.

Frequently, the insurer will send the signed policy to the agent and then the agent will give the policy to the insured. In practice however, there are instances where the insurer is uncertain if the policy has been signed by the agent.

Under current case law, insurance companies waive any defense regarding a policy's invalidity due to the lack of a countersignature if the company accepts payment for that policy from the policy holder. Because of this, the insured are typically protected from an insurance company claiming a disputed policy is invalid based solely on the lack of a countersignature. Currently, it is unclear whether insurance companies enjoy the same protection if the consumer claims a similar defense.

House Bill 375 allows otherwise invalid insurance policies to be valid in the absence of a statutorily required countersignature. To the extent there is uncertainty in the current law, this bill clarifies that insurance companies will receive the same rights as consumers when a policy lacks a countersignature. It also lessens the statutory ramifications for the lack of a countersignature.

This bill has no fiscal impact on the public sector. To the extent that there may be less of an incentive to seek a countersignature, some Florida-licensed agents may not receive the economic and business practice benefit of being a counter-signatory.

This bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A countersignature is a "signature of a subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it".[1] Florida law requires a countersignatures from a Florida-licensed agent for certain property (which includes automobile), casualty, and surety insurance policies.[2]

The Department of Financial Services (DFS) licenses and regulates Florida insurance agents. The countersignatures allow DFS to have a responsible party in Florida to contact in the event of non-compliance or any other issues that may arrise. These countersignatures also establish that someone familiar with Florida insurance law has attested to the specific policy's validity.

The Office of Insurance Regulation (OIR) licenses and regulates insurance companies. OIR conducts Market Conduct Surveys which include whether or not an insurance company is following the law by having countersignatures on such policies.[3]

Council of Insurance Agents and Brokers v. Gallagher and Subsequent Changes to the Law

In 2003, the language of s. 624.425(1) F.S., included a provision that policies must be "countersigned by, a local producing agent who is a resident of the state".[4] This pre-2004 countersignature requirement of s. 624.425, F.S., placed a distinct difference between Florida licensed non-resident agents and Florida licensed resident agents. Under the pre-2004 legal regime, non-resident companies were forced to have all policies countersigned by Florida resident agents, who were to have been paid at least 25% of the commission.[5]

This distinction based only on residency was overturned on constitutional grounds in *Council of Insurance Agents and Brokers v. Gallagher*.[6] In that decision, the North District of Florida declared that s. 624.425, F.S., "violate[d] the Privileges and Immunities Clause and Equal Protection Clause of the United States Constitution to the extent that [it denied] to Florida-licensed nonresident insurance agents the same rights and privileges [afforded] to Florida-licensed resident agents."[7] The court noted that distinctions based on knowledge, skill, or certification level can be permissible in a licensed industry, but pure residency requirements run afoul of the U.S. Constitution. For example, the Florida Bar may permissibly require all lawyers to be certified or knowledgeable in a certain area of law, but may not require that all Florida Bar attorneys live in Florida.

Shortly after the *Gallagher* decision, the DFS released an informational bulletin, noting that the holding applied "to all Florida-licensed non-resident general lines agents, including those working for Risk Retention Groups and Risk Purchasing Groups."[8]

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[1] See Countersignature, Black's Law Dictionary (9th ed. 2009), available at Westlaw Blacks
[2] s. 624.425, F.S.
[3] Information obtained from a telephone conversation with OIR, 1/29/2014. On file with the Insurance & Banking Subcommittee staff.
[4] s. 625.425, F.S. (2003).
[5] 287 F. Supp. 2d 1302 (N.D. Fla. 2003) at 1304.
[6] 287 F. Supp. 2d 1302 at 1313.
[7] 287 F. Supp. 2d 1302 at 1313.
[8] DFF-03-004, "Policy Countersignature – To All Property, Casualty and Surety Insurers and General Lines Insurance Agents" (Feb 26, 2003) http://www.myfloridacfo.com/agents/industry/Bulletins-Memos/docs/DFS-03-004-11-12-03.pdf.

In 2004, the Legislature kept the countersignature requirement, but changed the residency requirement to a licensure requirement.[9] To have a valid policy, the document must now be countersigned by a Florida-licensed agent rather than a Florida-resident agent.

Though not subject to the *Gallagher* ruling, Florida law continues to have additional requirements for those nonresident agents who seek to sell life[10] and health[11] insurance.

Current Situation

Currently, the law explicitly states that insurers may not assume direct liability unless the contract is countersigned. The relevant section reads as follows:

> "Except as stated in 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, an is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code."[12]

There are very few exceptions to this countersignature requirement.[13]

The current law allows agents to give written power of attorney to the issuing insurance company in order to countersign policies on the agent's behalf.[14]

Although there is a statutory requirement for insurers to have a Florida-licensed agent to countersign the policy, not all policies are signed in practice. Insurers send completed policies to agents who then turn over the policies to the insured, leaving the insurers at a disadvantage in determining whether or not their policies are countersigned.[15] This situation does not arise if the agents exercised their rights under s. 624.425(3), F.S., delegating to the insurance company the authority to countersign a policy on behalf of the agent.

Insurance providers have litigated whether these unsigned policies are valid contractual agreements for the purposes of insurers seeking collection from policyholders.[16]

Effect of the Bill

This bill targets the policies that have not been countersigned, adding the language "[n]otwithstanding the requirements of this section, the absence of a countersignature does not affect the validity of a policy or contract" to s. 624.425(1), F.S.

The bill would give the insurance companies the same rights as consumers in the event a policy lacks a countersignature. Currently, insurance companies can be bound to a contract that lacks a

[9] See SB 2588 (2004).
[10] s. 626.792, F.S.
[11] s. 626.835, F.S.
[12] s. 624.425 (1), F.S.
[13] As laid out in s. 624.426, F.S., exceptions to the countersignature law are limited to contracts of reinsurance, policies of insurance on the rolling stock of railroad companies doing general freight and passenger business, U.S. Customs surety bonds, and company-to-company transfers of policies under the same ownership umbrella where the agent remains the same or the application has been lawfully submitted.
[14] s. 624.425 (3), F.S.
[15] Information obtained from call with OIR, 1/29/2014. On file with the Insurance & Banking Subcommittee staff.
[16] Information obtained from conference call with FCCI Mutual Insurance, 1/28/2014. On file with the Insurance & Banking Subcommittee staff.

countersignature.[17] Generally, insurance companies waive any defense based on the validity of a contract when they accept payment in conformance with the contract.[18] Therefore, consumers are able to enforce un-countersigned policies on insurance companies. It is less clear whether consumers can be similarly bound. In the event that a policy lacks a counter signature, the proposed law would allow insurers to enforce an otherwise valid policy on the consumer.

Under the proposed law, insurance companies will still be required to seek countersignatures, despite the fact that the lack of a countersignature no longer could invalidate a policy. Those companies that do not have countersignatures on their policies would still be subject to review and possible penalties from the Office of Insurance Regulation through their market conduct surveys.[19] The penalties of a market conduct survey infraction range from reprimands to fines to the revocation of an insurance license.

This bill does not relieve the agent of their obligation to countersign insurance policies. The Department of Financial Services has the statutory authority to sanction agents, but typically does not fine agents for failing to countersign policies.[20] DFS believes that agents have enough incentive with the possibility of commissions or additional face time with consumers to follow the law.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.425(1), F.S., relating to agent countersignature required, property, casualty, surety insurance.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[17] Information obtained from conference call with FCCI Mutual Insurance, 1/28/2014. On file with the Insurance & Banking Subcommittee staff.
[18] See *Meltsner v. Aetna Causality and S. Co. of Hartford*, Conn., 233 So. 2d 849 (Fla. 3d DCA 1969) (holding that there was a "waiver of the requirement that the insurance policy be countersigned by a local producing agent" and the policy was valid), *Wolfe v. Aetna Ins. Co.*, 436 So. 2d 997 (Fla. 5th DCA 1983) (holding that "failure to countersign the endorsement does not, as a matter of law, invalidate because the absence of a countersignature may be waived")
[19] Information obtained from call with OIR, 1/29/2014. On file with the Insurance & Banking Subcommittee staff.
[20] Information obtained from call with DFS, 1/27/2014. On file with the Insurance & Banking Subcommittee staff.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. To the extent that there may be less of an incentive for an insurance company to seek a countersignature, some Florida-licensed agents may no longer receive the economic or social benefit of being a counter-signatory. However even though the lack of a countersignature would not affect validity, insurers would still have to seek countersignatures to follow the letter of the law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Yes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance; amending s. 624.425, F.S.; providing that the absence of a countersignature does not affect the validity of a policy or contract; providing an effective date.

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

Section 1. Subsection (1) of section 624.425, Florida Statutes, is amended to read:

624.425 Agent countersignature required, property, casualty, surety insurance.—

(1) Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code. Notwithstanding the requirements of this section, the absence of a countersignature does not affect the validity of a policy or contract. If two or more authorized insurers issue a single policy of insurance against legal liability for loss or damage to person or property caused by the nuclear energy hazard, or a single policy insuring against loss or damage to property by radioactive contamination, whether or not also insuring against

one or more other perils proper to insure against in this state, such policy if otherwise lawful may be countersigned on behalf of all of the insurers by a licensed and appointed agent of any insurer appearing thereon. The producing agent shall receive on each policy or contract the full and usual commission allowed and paid by the insurer to its agents on business written or transacted by them for the insurer.

Section 2. This act shall take effect July 1, 2014.

REGULATORY AFFAIRS COMMITTEE

HB 375 by Rep. Santiago
Insurance

AMENDMENT SUMMARY
March 12, 2014

Amendment 1 by Rep. Nelson and Rep. Waldman (Lines 33-34): Authorizes a long-term care insurer to offer a nonforfeiture benefit in the form of a return of premiums paid if the insured dies or surrenders or cancels the policy.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 375 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representatives Nelson and Waldman offered the following:

Amendment (with title amendment)

Between lines 33 and 34, insert:

Section 2. Subsection (2) of section 627.94072, Florida Statutes, is amended to read:

627.94072 Mandatory offers.—

(2) An insurer that offers a long-term care insurance policy, certificate, or rider in this state must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the office if all or part of a premium is not paid. A nonforfeiture benefit may also be offered in the form of a return of premium on death of the insured, or on a complete surrender or cancellation of the policy or contract.

Amendment No. 1

Nonforfeiture benefits and any additional premium for such benefits must be computed in an actuarially sound manner, using a methodology that has been filed with and approved by the office.

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

Remove line 5 and insert:

amending s. 627.94072, F.S.; providing for a nonforfeiture benefit in the form of a return of premium under specified circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 413 Consumer Collection Practices
SPONSOR(S): Insurance & Banking Subcommittee; Santiago
TIED BILLS: CS/HB 415 **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon

SUMMARY ANALYSIS

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. If a borrower defaults on a consumer debt, the lender will initiate collection efforts, usually through the sale or assignment of the asset to a third-party debt collector. State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that can occur before the debtor is sued, as well as during the litigation process.

At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (the Act), and regulates consumer collection agencies and prohibits many of the same debt collection practices prohibited by the federal Fair Debt Collection Practices Act. The Act gives primary oversight authority to the Office of Financial Regulation (OFR). Currently, the Act gives the OFR limited authority to deny registration to applicants, in contrast to some of the other regulatory programs administered by the OFR. In addition, the Act currently limits the OFR's investigative and examination authority to instances where a consumer complaint has been filed against a consumer collection agency (CCA), and does not give the OFR explicit authority to take action against unregistered consumer collection agencies.

The bill makes the following changes to the Act:

- Requires certain "control persons" of consumer collection agencies to be subject to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of criminal convictions;
- Enhances the OFR's registration, investigative, examination, and enforcement authority over consumer collection agencies; and
- Subjects registrants to certain reporting requirements;

The bill will have a positive fiscal impact on state revenues deposited into the Operating Trust Fund within the Florida Department of Law Enforcement (FDLE). In addition, the bill will have an insignificant fiscal impact on state expenditures by the OFR. The revenues to be deposited with the FDLE consist of $81,168 for the cost of state background checks for initial and subsequent fiscal years, and $15,396 a year for the cost of fingerprint retention fees at the state level. The bill requires that control persons of CCA applicants submit live-scan fingerprints to the FDLE at an average cost of $65 per control person. The collection of the fingerprint processing fee will be handled by the vendor and then transferred to the FDLE, less the vendor's associated cost of providing the fingerprinting service, which varies by vendor. The OFR will be responsible for the collection and transfer of the $6 fingerprint retention fee, per control person per year, paid at initial licensing and renewal by CCA's. After collection, the OFR will transfer the fingerprint retention fee to FDLE.

The bill provides an effective date of October 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is "charged off" corporate records.[1] Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which can in turn use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

- *Federal*: The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau are the primary federal enforcement agencies of the Fair Debt Collection Practices Act (FDCPA).[2]
  - The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past three years.[3]

- *Florida*: At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972.[4] The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines "consumer collection agency" as "any debt collector[5] or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act.
  - The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.[6]

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collections or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.[7] Both acts define "debt collector" narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement

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[1] The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36,903 (June 12, 2000). It should be noted that a "charge-off" does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies.

[2] 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

[3] *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 1 (2013) (statement of James Reilly Dolan, Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission).

[4] Chapter 72-81, Laws of Florida.

[5] Defined broadly at s. 559.55(6), F.S.

[6] E-mail from the OFR (received January 8, 2014), on file with the Insurance & Banking Subcommittee staff.

[7] Section 559.55(6), F.S., and 15 U.S.C. § 1692a(6).

of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney's fees and costs. If the court finds that the suit fails to raise justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney's fees incurred by the defendant.[8]

In terms of the FDCPA's relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.[9] The Act also provides that in the event of an inconsistency with the FDCPA, the provision which is more protective of the consumer or debtor shall prevail.[10]

Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies (CCAs) that are not otherwise exempted by the Act. The Act provides a list of persons exempt from registration, including original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies that are authorized to do business in this state.[11]

According to the OFR, there are currently 1,344 registered CCAs in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. Of that number, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.[12] Once registered, CCAs must renew their registration between October 1 and December 31 of every year.[13]

A CCA must meet minimal requirements to register with the OFR and is "entitled to be registered when registration information is complete on its face and the $200 registration fee has been paid."[14] Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of CCAs. Currently, the OFR cannot deny registration to any CCAs applicant, even if its control persons have been convicted of felony financial crimes or have been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.[15]

Other regulatory programs administered by the OFR include statutory and rule authority to deny licensure or registration based on applicants' civil, criminal, and regulatory history, which provides

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[8] Section 559.77 and 15 U.S.C. § 1692k.
[9] 15 U.S.C. § 1692n.
[10] Section 559.552, F.S.
[11] Section 559.553(4), F.S. However, it is noted that these persons are only exempt from the registration requirement in this section, not the rest of the Act.
[12] E-mail from the OFR (received January 9, 2014), on file with the Insurance & Banking Subcommittee staff.
[13] During the 2012 year, 1,283 consumer collection agencies renewed their registrations with the OFR. OFR bill analysis of HB 413 (received January 17, 2013), on file with the Insurance & Banking Subcommittee.
[14] Section 559.553(3), F.S. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.
[15] *Id.* See *Welch v. Florida West Coast, Inc.*, 816 So.2d 711 (Fla. 2nd DCA 2002) (holding that registration to engage in business as consumer collection agency is complete upon submission of registration form together with required fee). But see *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) (holding that failing to register as a consumer collection agency in Florida may serve as a basis for a claim under the FDCPA, which prohibits "claim[ing], attempt[ing], or threatening to enforce a debt when such person knows that the debt is not legitimate, or assert[ing] the existence of some other legal right when such person knows that the right does not exist.")

important public protections in light of the nature of industries regulated by the OFR and their access to consumers' financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or "control or relevant persons" listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods in that an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

The following table illustrates disqualifying periods for these other licenses under the OFR's jurisdiction. These disqualifying periods are explained in further detail through commission rule.[16]

Industry/License Type	**Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude**	**All other felonies**	**Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude**
Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.)[17]	- Permanent bar[18] - 15 year bar for felonies involving acts of moral turpitude	7 year bar	5 year bar
Relevant persons of money services businesses (ch. 560, F.S.)[19]	15 year bar	7 year bar	5 year bar
Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.)[20]	15 year bar	N/A	5 year bar

Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.[21] Additionally, unregistered out-of-state consumer debt collectors can be subject to administrative fines of up to $10,000 and enforcement actions by the Office of the Attorney General.[22]

[16] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[17] *See* Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).
[18] The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch 560 and ch 517, F.S.).
[19] *See* Chapter 69V-560, Fla. Admin. Code (Money Transmitters).
[20] *See* Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).
[21] Section 559.785, F.S.
[22] Section 559.565, F.S.

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over *any person* if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on *registrants*.[23]

Enforcement

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry. Specifically, the 2010 amendments to the Act:

- Created a requirement that registrants maintain and produce certain books and records for at least three years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;[24]
- Designated the OFR, and not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute; required consumer complaints to be subject to penalty of perjury; required registrants to respond to the OFR's inquiries regarding consumer complaints.
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to $10,000 per violation, suspensions or revocations on registrants as well as cease-and-desist orders against any person. [25]

The OFR is required to notify the appropriate state attorney or the Attorney General for cases pertaining to out-of-state consumer debt collectors, of any determination by the OFR of a violation of the requirements of this part.[26]

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.[27]

Effect of the Bill on the OFR's Registration and Enforcement Authority

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S., of the Act:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new section 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-, 7-, and 15-year disqualifying periods from registration based on applicants' criminal histories.
- "Control person" is defined as individual or entity that possesses the power to direct the management or policies of a company, whether through ownership of at least 10% of a class of voting securities, by contract, or otherwise. Natural persons who meet the definition of a "control person" must be fingerprinted and will be subject to registration review.

Section 2 of the bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S., for applicants, including a completed application form, a nonrefundable application fee of $200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and by the Federal Bureau of Investigation (FBI) for federal criminal background checks to enable the OFR to determine applicants' fitness for registration. The costs of fingerprint processing are

[23] Sections 559.727 and 559.730, F.S.
[24] *See* Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.
[2525] Chapter 2010-127, L.O.F., and s. 559.5556, F.S. *See also* Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.
[26] Section 559.725(5), F.S.
[27] Sections 559.5556 and 559.725(4), F.S.

borne by the persons subject to the background check, while the OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is $65 per control person, and the annual retention fee is $6.[28] CCAs who become registered before the bill's effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e., before the next renewal cycle).

Once approved, the bill will subject registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons enter certain convictions or pleas, and when changes occur in the information contained in the initial application (such as a new business address) and in the registrant's business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act, in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable $200 renewal fee and fingerprint retention fee of $6 at renewal time.

The bill creates a new section 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of ch. 119 and the Act.[29]

The bill provides additional grounds for administrative action, such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to denial, suspension, revocation, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to $1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

The bill provides an effective date of October 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 559.55, F.S., relating to definitions.

Section 2: Amends s. 559.553, F.S., relating to registration of consumer collection agencies required; exemptions.

Section 3: Creates s. 559.554, F.S., relating to powers and duties of the commission and office.

Section 4: Creates s. 559.5541, F.S., relating to examinations and investigations.

Section 5: Amends s. 559.555, F.S., relating to registration of consumer collection agencies; procedure.

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[28] E-mail from the OFR (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

[29] House Bill 415 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

Section 6: Creates s. 559.5551, F.S., relating to requirements of registrants.

Section 7: Amends s. 559.565, F.S., relating to enforcement action against out-of-state consumer debt collector.

Section 8: Amends s. 559.730, F.S., relating to grounds for disciplinary action and administrative remedies.

Section 9: Provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Total estimated state revenues to be collected during Fiscal Year 2014-15 as a result of this bill are **$96,564** and consist of the following:

   - The OFR projects that there will be 408 initial consumer collection agency applications for 2014-2015,[30] with an average of 2 control persons per applicant to be fingerprinted. This results in 816 new CCA control person registrants x $24 (state background check) for Fiscal Year 2014-15 totaling **$19,584**.
   - Due to the bill's October 1, 2014 effective date, only a small population in the 2014 renewal cycle would be subject to the new fingerprinting requirements of the bill. Accordingly, the initial fiscal year impact includes the fingerprinting of 2,566 control persons. It should be noted, however, that the bill would authorize full fingerprinting at renewal time for those registrants renewing by December 31, 2014 that were approved before October 1, 2014.[31] Accordingly, Fiscal Year 2014-15 includes the following: 2,566 control persons fingerprinted at 12/31/2014 renewal x $24 (state background check) totaling **$61,584.**
   - The bill also requires that fingerprints be retained as part of renewing a CCA registration. The cost to retain fingerprints at the state level is $6 per control person. Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of 2 control persons per CCA, there would be 2,566 control persons subject to the $6 annual retention fee that OFR would collect during registration renewal. The retention fee is passed on to the FDLE resulting in estimated Fiscal Year revenues of **$15,396.**[32]

2. Expenditures:

   The OFR will have increased non-operating expenditures of $15,396, which represents the estimated fingerprint retention fees collected by the OFR at time of registration renewal that will be passed on to the FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[30] E-mail from the OFR (received January 22, 2014), on file with the Insurance & Banking Subcommittee staff.
[31] OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.
[32] OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

The bill requires that control persons of non-exempt collection agencies be fingerprinted and screened, and the average incurred live-scan costs will be $65 per control person.[33] The *$65* average live-scan cost consists of the live-scan vendor's cost of providing the service as well as the $40.50 fee that is charged by the FDLE, which is apportioned as:

- $24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- $16.50 for a federal background check, which is forwarded to the FBI.[34]

Once registered, control persons of CCAs must submit an annual fee of $6 for the cost of retaining fingerprints with the FDLE.[35]

First Fiscal Year:
408 applications x 2 control persons = 816 control persons
816 x $65 = ***$53,040***

2,566 control persons fingerprinted at 12/31/14 renewal
2,566 x $65 = ***$166,790***

Total for Year 1 = $219,830

Subsequent Fiscal Years:
408 applications x 2 control persons = 816 control persons
816 x $65 = ***$53,040***

Retained print costs for 2,566 control persons at each renewal
2,566 x $6 = ***$15,396***

Total Year 2 = $68,436

D. FISCAL COMMENTS:

The fee charged by each live-scan vendor varies; however, the OFR indicates that the average fee for live-scan fingerprinting is $65. The $65 average live-scan cost consists of the live-scan vendor's cost of providing the service as well as the $40.50 fee that is charged by the FDLE, which is apportioned as:

- $24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- $16.50 for a federal background check, which is forwarded to the FBI.[36]

The OFR indicates that the bill may result in a slight increase in investigations and examinations under the Act, however, any increase in additional workload could be absorbed within existing resources.[37] In addition, the FDLE has indicated that while this bill alone does not necessitate a need for additional FTE or other resources, the bill in combination with additional background screening bills could potentially create a need for additional staffing or other resources.[38]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[33] According to the OFR, the average cost to process electronic fingerprints through a live-scan vendor is $65, which is inclusive of the $40.50 charge by FDLE and a cost added by the vendor to cover their services. E-mail from the OFR (received February 10, 2014), on file with the Insurance & Banking Subcommittee staff.
[34] FDLE's bill analysis of HB 413 (received February 1, 2014), on file with the Insurance & Banking Subcommittee staff.
[35] OFR's bill analysis of HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.
[36] FDLE's bill analysis of HB 413 (received February 1, 2014), on file with the Insurance & Banking Subcommittee staff.
[37] *Id.*
[38] *Id.*

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Collectors Association and the Florida Alliance for Consumer Protection are supportive of this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill and made the following changes:

- Changed the bill's title to "an act relating to consumer collection practices";
- Corrected a drafting error regarding requirements for collection agencies registered before October 1, 2014.
- Removed a requirement that the OFR provide written notification to an expired registrant.
- Corrected a cross-reference regarding the OFR's authority to enforce registration violations.
- Corrected a drafting error by substituting the word "proceeding" for "processing."
- Restored current law with regard to prohibited practices, which "no person shall" engage in.
- Restored current law with regard to the requirement to provide a notice of assignment of debt to debtors.
- Changed the bill's effective date from July 1, 2014 to October 1, 2014, to allow the OFR more time for rulemaking and a service contract with the FDLE.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to consumer collection practices; amending s. 559.55, F.S.; reordering and revising definitions; amending s. 559.553, F.S.; deleting a provision entitling prospective consumer collection agency registrants to registration when specified conditions are met; creating s. 559.554, F.S.; providing powers and duties of the Office of Financial Regulation and the Financial Services Commission; authorizing the commission to adopt rules; requiring fees, charges, and fines to be deposited in a specified trust fund; creating s. 559.5541, F.S.; authorizing the office to make investigations or examinations to determine violations of specified provisions; amending s. 559.555, F.S.; revising registration procedures and application requirements for consumer collection agencies; requiring applicants and certain registrants to submit fingerprints; providing that registrations are not transferable or assignable; requiring consumer collection agencies to report changes in specified information within a specified period; providing registration renewal and fingerprint retention fees; providing for applicability to registration renewals for registrants initially registered before a specified date; creating s. 559.5551, F.S.; providing notification requirements

for consumer collection agencies; authorizing the office to bring an administrative action under certain circumstances; amending s. 559.565, F.S.; conforming a cross-reference; amending s. 559.730, F.S.; providing grounds for disciplinary action; providing penalties; providing grounds for an immediate suspension of a consumer collection agency registration; providing grounds to deny a request to terminate a registration and to withdraw a registration application; providing an effective date.

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

Section 1. Section 559.55, Florida Statutes, is reordered and amended to read:

559.55 Definitions.—The following terms shall, unless the context otherwise indicates, have the following meanings for the purpose of this part:

(1) "Commission" means the Financial Services Commission.

(2) ~~(5)~~ "Communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) ~~(7)~~ "Consumer collection agency" means any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not

expressly exempted as set forth in s. 559.553(3) ~~559.553(4)~~.

(4) "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes, but is not limited to:

(a) A company's executive officers, including the president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and other individuals having similar status or functions.

(b) For a corporation, a shareholder who, directly or indirectly, owns 10 percent or more or that has the power to vote 10 percent or more, of a class of voting securities unless the applicant is a publicly traded company.

(c) For a partnership, all general partners and limited or special partners who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(d) For a trust, each trustee.

(e) For a limited liability company, all elected managers and those members who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(5) ~~(3)~~ "Creditor" means any person who offers or extends

credit creating a debt or to whom a debt is owed, but does not include any person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(6) ~~(1)~~ "Debt" or "consumer debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(7) ~~(6)~~ "Debt collector" means any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:

(a) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(b) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector for persons to whom it is so related or affiliated and

if the principal business of such persons is not the collection of debts;

(c) Any officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;

(d) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(e) Any not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or

(f) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(8) ~~(2)~~ "Debtor" or "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(9) "Federal Fair Debt Collection Practices Act" or "Federal Act" means the federal legislation regulating fair debt

collection practices, as set forth in Pub. L. No. 95-109, as amended and published in 15 U.S.C. ss. 1692 et seq.

(10) ~~(4)~~ "Office" means the Office of Financial Regulation of the ~~Financial Services~~ commission.

(11) ~~(8)~~ "Out-of-state consumer debt collector" means any person whose business activities in this state involve both collecting or attempting to collect consumer debt from debtors located in this state by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in this state. For purposes of this subsection, a creditor has a business presence in this state if either the creditor or an affiliate or subsidiary of the creditor has an office in this state.

Section 2. Section 559.553, Florida Statutes, is amended to read:

559.553 Registration of consumer collection agencies required; exemptions.—

(1) A ~~After January 1, 1994, no~~ person may not ~~shall~~ engage in business in this state as a consumer collection agency or continue to do business in this state as a consumer collection agency without first registering in accordance with this part, and thereafter maintaining a valid registration.

(2) Each consumer collection agency doing business in this state shall register with the office and renew such registration annually as set forth in s. 559.555.

~~(3) A prospective registrant shall be entitled to be registered when registration information is complete on its face and the applicable registration fee has been paid; however, the office may reject a registration submitted by a prospective registrant if the registrant or any principal of the registrant previously has held any professional license or state registration which was the subject of any suspension or revocation which has not been explained by the prospective registrant to the satisfaction of the office either in the registration information submitted initially or upon the subsequent written request of the office. In the event that an attempted registration is rejected by the office the prospective registrant shall be informed of the basis for rejection.~~

(3)~~(4)~~ This section does ~~shall~~ not apply to:

(a) An ~~Any~~ original creditor.

(b) A ~~Any~~ member of The Florida Bar.

(c) A ~~Any~~ financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.

(d) A ~~Any~~ licensed real estate broker.

(e) An ~~Any~~ insurance company authorized to do business in this state.

(f) A ~~Any~~ consumer finance company and any wholly owned subsidiary and affiliate thereof.

(g) A ~~Any~~ person licensed pursuant to chapter 520.

(h) An ~~Any~~ out-of-state consumer debt collector who does

not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state.

(i) An ~~Any~~ FDIC-insured institution or subsidiary or affiliate thereof.

(4)~~(5)~~ An ~~Any~~ out-of-state consumer debt collector as defined in s. 559.55(11) ~~559.55(8)~~ who is not exempt from registration by application of subsection (3) ~~(4)~~ and who fails to register in accordance with this part shall be subject to an enforcement action by the state as specified in s. 559.565.

Section 3. Section 559.554, Florida Statutes, is created to read:

559.554 Powers and duties of the commission and office.—

(1) The office is responsible for the administration and enforcement of this part.

(2) The commission may adopt rules to administer this part, including rules:

(a) Requiring electronic submission of forms, documents, and fees required by this part.

(b) Establishing time periods during which a consumer collection agency is barred from registration due to prior criminal convictions of, or guilty or nolo contendere pleas by, an applicant's control persons, regardless of adjudication.

1. The rules must provide:

a. A 15-year disqualifying period for felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude.

b. A 7-year disqualifying period for all other felonies.

c. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or other acts of moral turpitude.

2. The rules must provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant's criminal history.

3. The rules must provide for mitigating factors for crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.

4. An applicant is not eligible for registration until expiration of the disqualifying period set by rule.

5. Section 112.011 does not apply to eligibility for registration under this part.

(3) All fees, charges, and fines collected pursuant to this part shall be deposited into the Regulatory Trust Fund of the office.

Section 4. Section 559.5541, Florida Statutes, is created to read:

559.5541 Examinations and investigations.—

(1) Notwithstanding s. 559.725(4), the office may, without advance notice, conduct examinations and investigations, within or outside this state, to determine whether a person has violated this part or related rules. For purposes of this section, the office may examine the books, accounts, records, and other documents or matters of any person subject to this part. The office may compel the production of all relevant

books, records, and other documents and materials relative to an examination or investigation. Examinations may not be made more often than once during a 48-month period unless the office has reason to believe a person has violated or will violate this part or related rules.

(2) In order to reduce the burden on persons subject to this part, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this part. The office may also accept an examination from any appropriate regulator.

Section 5. Section 559.555, Florida Statutes, is amended to read:

559.555 Registration of consumer collection agencies; procedure.—

(1) A ~~Any~~ person who acts ~~required to register~~ as a consumer collection agency must be registered in accordance with this section. ~~shall furnish to the office the registration fee and information as follows:~~

(2) In order to apply for a consumer collection agency registration, an applicant must:

(a) Submit a completed application form as prescribed by rule of the commission.

(b) Submit a nonrefundable application fee of $200. Application fees may not be prorated for partial years of

registration.

(c) Submit fingerprints for each of the applicant's control persons in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. A state criminal history background check must be conducted through the Department of Law Enforcement, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated biometric identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and inform the Department of Law Enforcement of any person whose fingerprints are no longer required to be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office is responsible for reviewing the results of the state and federal criminal history background checks and determining whether the applicant meets registration

requirements.

(3) The office shall issue a consumer collection agency registration to each person who is not otherwise ineligible and who meets the requirements of this section. However, it is a ground for denial of registration if the applicant or one of the applicant's control persons has committed any violation specified in this part, or is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.

(4) A registration issued under this part is not transferable or assignable.

(5) A consumer collection agency shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form, or an amendment thereto, within 30 days after the change is effective.

~~(1) The registrant shall pay to the office a registration fee in the amount of $200. All amounts collected shall be deposited by the office to the credit of the Regulatory Trust Fund of the office.~~

~~(2) Each registrant shall provide to the office the business name or trade name, the current mailing address, the current business location which constitutes its principal place of business, and the full name of each individual who is a principal of the registrant. "Principal of a registrant" means~~

~~the registrant's owners if a partnership or sole proprietorship, corporate officers, corporate directors other than directors of a not-for-profit corporation organized pursuant to chapter 617 and Florida resident agent if a corporate registrant. The registration information shall include a statement clearly identifying and explaining any occasion on which any professional license or state registration held by the registrant, by any principal of the registrant, or by any business entity in which any principal of the registrant was the owner of 10 percent or more of such business, was the subject of any suspension or revocation.~~

(6) ~~(3)~~ Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no proration of the fee for any registration. In order to renew a consumer collection agency registration, a registrant must submit a nonrefundable renewal fee equal to the registration fee and a nonrefundable fee to cover the costs of further fingerprint processing and retention as set forth by commission rule.

(7) A consumer collection agency registrant whose initial registration was approved and issued by the office pursuant to this section before October 1, 2014, and who seeks renewal of the registration must submit fingerprints for each control person for live-scan processing as described in paragraph (2)(c). The fingerprints must be submitted before renewing a registration that is scheduled to expire on December 31, 2014.

Section 6. Section 559.5551, Florida Statutes, is created to read:

559.5551 Requirements of registrants.—A registrant under this part shall report to the office in a manner prescribed by rule of the commission:

(1) A conviction of, or plea of nolo contendere to, regardless of adjudication, a crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the registrant or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.

(2) A conviction of, or plea of nolo contendere to, regardless of adjudication, a felony committed by the registrant or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.

(3) A change to the information contained in an initial application form or an amendment to the application within 30 days after the change is effective.

(4) An addition or subtraction of a control person or a change in the form of business organization. A control person added by a registrant is subject to this part and must submit fingerprints in accordance with s. 559.555 and the rules of the commission. The office may bring an administrative action in accordance with s. 559.730 to enforce this part if the added control person fails to meet registration requirements or comply

with any other provision of this part.

Section 7. Section 559.565, Florida Statutes, is amended to read:

559.565 Enforcement action against out-of-state consumer debt collector.— The remedies of this section are cumulative to other sanctions and enforcement provisions of this part for any violation by an out-of-state consumer debt collector, as defined in s. 559.55(11) ~~559.55(8)~~.

(1) An out-of-state consumer debt collector who collects or attempts to collect consumer debts in this state without first registering in accordance with this part is subject to an administrative fine of up to $10,000 together with reasonable attorney fees and court costs in any successful action by the state to collect such fines.

(2) A ~~Any~~ person, whether or not exempt from registration under this part, who violates s. 559.72 is subject to sanctions the same as any other consumer debt collector, including imposition of an administrative fine. The registration of a duly registered out-of-state consumer debt collector is subject to revocation or suspension in the same manner as the registration of any other registrant under this part.

(3) In order to effectuate this section and enforce the requirements of this part as it relates to out-of-state consumer debt collectors, the Attorney General is expressly authorized to initiate such action on behalf of the state as he or she deems appropriate in any state or federal court of competent

jurisdiction.

Section 8. Section 559.730, Florida Statutes, is amended to read:

559.730 Grounds for disciplinary action; administrative remedies.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person registered or required to be registered under this part:

(a) Failure to disburse funds in accordance with agreements.

(b) Fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction.

(c) Commission of fraud, misrepresentation, concealment, or dishonest dealing by trick, scheme, or device; culpable negligence; breach of trust in a business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with another person engaged in such misconduct and in furtherance thereof.

(d) Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a felony or crime involving fraud, dishonesty, breach of trust, money laundering, or act of moral turpitude.

(e) Having a final judgment entered against the registrant in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(f) Being the subject of a decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by a court of competent jurisdiction or an administrative law judge, or by a state or federal agency, involving a violation of a federal or state law relating to debt collection or a rule or regulation adopted under such law.

(g) Having a license or registration, or the equivalent, to practice a profession or occupation denied, suspended, or revoked, or otherwise acted against, including the denial of a registration or license by a registration or licensing authority of this state or another state, territory, or country.

(h) Acting as a consumer collection agency without a current registration issued under this part.

(i) A material misstatement or omission of fact on an initial or amended registration application.

(j) Payment to the office for a registration or permit with a check or electronic transmission of funds, which is dishonored by the applicant's or registrant's financial institution.

(k) Failure to comply with, or a violation of, any provision of this part, or any rule or order made or issued pursuant to this part.

(l) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this part and the rules of the commission.

(m) Refusal to permit an investigation or examination of

books and records, or refusal to comply with an office subpoena or subpoena duces tecum.

(n) Failure to timely pay a fee, charge, or fine imposed or assessed pursuant to this part and the rules of the commission.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

(a) Issuance of a reprimand.

(b) Suspension of a registration, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.

(c) Revocation of a registration.

(d) Denial of a registration.

(e) Imposition of a fine of up to $10,000 for each count or separate offense.

(f) An administrative fine of up to $1,000 per day for each day that a person engages as a consumer collection agency without a valid registration issued under this part.

~~(1) The office may impose an administrative fine against, or revoke or suspend the registration of, a registrant under this part who has committed a violation of s. 559.72. Final action to fine, suspend, or revoke the registration of a registrant is subject to review in accordance with chapter 120.~~

(3) ~~(2)~~ The office may impose suspension rather than revocation of a registration if circumstances warrant that one or the other should be imposed and the registrant demonstrates

that the registrant has taken affirmative steps that can be expected to effectively eliminate the violations and that the registrant's registration has never been previously suspended.

(4) A consumer collection agency is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by a control person of the consumer collection agency.

(5) Pursuant to s. 120.06(6), the office may summarily suspend the registration of a consumer collection agency if the office has reason to believe that a registrant poses an immediate, serious danger to the public's health, safety, or welfare. The arrest of the registrant, or the consumer collection agency's control person, for any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude is deemed sufficient to constitute an immediate danger to the public's health, safety, or welfare. Any proceeding for the summary suspension of a registration must be conducted by the commissioner of the office, or designee, who shall issue the final summary order.

(6) The office may deny a request to terminate a registration or withdraw a registration application if the office believes that an act that would be a ground for registration denial, suspension, restriction, or revocation under this part has been committed.

(7)~~(3) In addition to, or in lieu of suspension or revocation of a registration, the office may impose an~~

~~administrative fine of up to $10,000 per violation against a registrant for violations of s. 559.72.~~ The ~~Financial Services~~ commission shall adopt rules establishing guidelines for imposing administrative penalties.

(8)~~(4)~~ This part does not preclude any person from pursuing remedies available under the Federal Fair Debt Collection Practices Act for any violation of such act.

Section 9. This act shall take effect October 1, 2014.

REGULATORY AFFAIRS COMMITTEE

CS/HB 413 by Rep. Santiago
Consumer Collection Practices

AMENDMENT SUMMARY
March 12, 2014

Amendment 1 by Rep. Santiago (Line 476): Corrects a cross-reference.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 413 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Santiago offered the following:

Amendment

Remove line 476 and insert:

(5) Pursuant to s. 120.60(6), the office may summarily

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 565 Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Callaway	Hamon

SUMMARY ANALYSIS

The bill contains changes for various types of insurance. Issues addressed include:

- boiler inspections;
- insurance agency licensing;
- the alternative dispute programs administered by the Department of Financial Services (DFS) for property, sinkhole, and automobile insurance claims;
- insurance agent licensing of employees and representatives of rental car businesses;
- affidavit required of surplus lines agents;
- use of hurricane loss models in property insurance rate filings;
- rate setting in workers' compensation;
- the notification period for property insurance nonrenewals, cancellations, or terminations;
- insurance post-claim underwriting;
- insurance coverage statements;
- electronic delivery of insurance policies to policyholders;
- notification to policyholders of a change in the terms of their insurance policy;
- disqualification of an appraisal umpire in residential property insurance;
- the fee schedule used in personal injury protection insurance;
- penalty for premium payment made by debit or credit card and declined for insufficient funds;
- financial requirements for service warranty associations;
- insurance administrators;
- annual reports relating to Citizens Property Insurance Corporation (Citizens) and the Florida Hurricane Catastrophe Fund (FHCF);
- independent verification of mitigation discount forms by private insurers and Citizens and reinspection of property to verify mitigation features by Citizens;
- preinsurance inspection of private passenger motor vehicles;
- zip codes and rating territories for motor vehicle insurance;
- information required with the surrender of life insurance or annuity;
- title insurance;
- acquisition of controlling stock;
- refunds to insureds from the Workers' Compensation Joint Underwriting Association;
- licensing and duties of unaffiliated insurance agents; and
- corporation not for profit self-insurance funds.

The bill has an insignificant fiscal impact on state government expenditures. According to the DFS, the bill will require changes to the current licensure system relating to unaffiliated agents and insurance agency licensure. However, DFS confirms that any technology changes as a result of this legislation will be insignificant and can be implemented and absorbed within current resources.

The bill is effective July 1, 2014, unless otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill contains changes for various types of insurance. Issues addressed include:

- boiler inspections;
- insurance agency licensing;
- the alternative dispute programs administered by the Department of Financial Services (DFS) for property, sinkhole, and automobile insurance claims;
- insurance agent licensing of employees and representatives of rental car businesses;
- affidavit required of surplus lines agents;
- use of hurricane loss models in property insurance rate filings;
- rate setting in workers' compensation;
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- electronic delivery of insurance policies to policyholders;
- notification to policyholders of a change in the terms of their insurance policy;
- disqualification of an appraisal umpire in residential property insurance;
- the fee schedule used in personal injury protection insurance;
- penalty for premium payment made by debit or credit card and declined for insufficient premium;
- financial requirements for service warranty associations;
- insurance administrators;
- annual reports relating to Citizens Property Insurance Corporation (Citizens) and the Florida Hurricane Catastrophe Fund (FHCF);
- independent verification of mitigation discount forms and reinspection of property to verify mitigation features by Citizens;
- preinsurance inspection of private passenger motor vehicles;
- zip codes and rating territories for motor vehicle insurance;
- information required with the surrender of life insurance or annuity;
- title insurance;
- acquisition of controlling stock;
- refunds to insureds from the Workers' Compensation Joint Underwriting Association;
- licensing and duties of unaffiliated insurance agents; and
- corporation not for profit self-insurance funds.

Boiler Inspectors

Chapter 554, F.S., governs boiler safety. Most boilers are insured by boiler and machinery insurance. DFS is the state agency responsible for overseeing boiler safety and does so through the Division of State Fire Marshal within the agency. DFS adopts a State Boiler Code by administrative rule to provide parameters for construction, installation, inspection, maintenance, and repair of boilers in Florida.[1] DFS employs a chief inspector who administers the state boiler inspection program, enforces the State Boiler Code, and keeps a record of all boilers located in public assembly locations. DFS also employs deputy inspectors who report to the chief inspector.

Boilers in public assembly locations[2] must be inspected once per year for high pressure boilers and once every two years for low pressure boilers. The chief inspector issues a certificate of compliance for boilers inspected and found to be in compliance with the State Boiler Code.

[1] s. 554.103(1), F.S.; Chapter 69A-51, F.A.C.
[2] s. 554.1021(2), F.S. and Rule 69A-51.005(24), F.A.C., define public assembly locations.

Boiler inspections are typically done by special inspectors, although inspections can be done by the chief inspector or a deputy inspector. Special inspectors hold a certificate of competency[3] from the chief inspector and are typically employed by the insurance company insuring the boiler. In order for the special inspector to inspect boilers in Florida, the insurance company employing the special inspector must be licensed in Florida to insure boilers.

The bill changes who can be a special inspector from an employee of a company licensed in Florida to insure boilers to an "authorized inspection agency" and makes conforming changes. Authorized inspection agency is defined as an insurance company licensed in any state or Canada employing boiler inspectors or a county, city, town, or other governmental subdivision employing boiler inspector as long as the boiler inspectors employed by both entities hold certificates of competency issued by the chief inspector. The change should allow more persons to be eligible to inspect boilers in Florida while maintaining the inspector competency requirement in current law.

Additionally, the bill requires insurers to annually report to the DFS the names of the authorized inspection agencies performing boiler inspections for the insurer.

Insurance Agency Licensure

The bill makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. DFS is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.[4] According to DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process by DFS, DFS believes also licensing the agency serves no purpose. The bill eliminates the insurance agency licensing requirement for agencies owned solely by licensed insurance agents and not employing other insurance licensees.

The bill allows a third party to complete, submit, and sign an application for an insurance agency license. Current law allows only specified persons owning or managing an agency to sign an agency license application. The bill also requires additional information relating to an agency or branch agency to be included on the agency license application and repeals some information required under current law.

Current law also requires each insurance agency location be licensed. Other states do not have a similar licensing requirement for branch locations of agencies. Starting January 1, 2015, the bill eliminates the licensing requirement for insurance agency branch locations if the branch locations meet certain requirements set out in the bill. Although licensing is no longer required, starting January 1, 2015, insurance agencies and each branch agency cannot conduct business without an agent in charge and the agent in charge must be a licensed insurance agent. However, insurance activity can occur at any agency location as long as a licensed agent is present at the location and an agent in charge has been designated and is employed by the agency. This is a new requirement provided in the bill. The bill sets out the requirements of the agent in charge and the effect on an agency license if an agent in charge is not employed.

Licenses for an insurance agency expire every three years under current law.[5] Starting January 1, 2015, the bill eliminates the three year expiration of an agency license. Thus, agency licenses will no longer have a definite expiration date.

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[3]Section 554.113, F.S., provides the requirements for a certificate of competency, which is valid for one year. Section 554.111, F.S., provides the fees charged by DFS for a certificate of competency, which are deposited into the Insurance Regulatory Trust Fund.

[4] See s. 626.112(7), F.S.

[5] s. 626.382, F.S.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register the agency in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire whereas licenses expire every three years. DFS indicates Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. DFS asserts the number of registered agencies is steadily declining. Over the past four years an average of 38 registered agencies per month have canceled their registrations. Currently, there are over three times as many licensed insurance agencies as registered ones, with over 40,000 licensed agencies and less than 13,000 registered ones.

Effective January 1, 2015, the bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. The bill converts all agency registrations to licenses as of October 1, 2015.

Insurance Mediation Programs

Current law provides for alternative dispute programs, administered by DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[6] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.[7] The person must possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

Also, to qualify as a DFS mediator, a person must successfully complete a training program approved by DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators.[8] However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by the courts.

The bill replaces the DFS mediator education, experience, and training program requirements set out above with new ones. Under the bill, a person with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014 and has conducted at least one DFS mediation from July 1, 2010–July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

According to DFS, 224 of the 379 current DFS mediators are certified as Florida Circuit Court Mediators,[9] so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 155 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. DFS estimates changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,500 mediators.

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[6] s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program.
[7] s. 627.745, F.S.
[8] DFS does not provide the training program in house.
[9] Information obtained from the DFS dated February 5, 2014, on file with the Insurance & Banking Subcommittee.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule governing mediators certified by the Florida courts, or not being qualified. Additionally, DFS is authorized to inquire and investigate into improper conduct of mediators, neutral evaluators, or navigators. DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters. The bill allows DFS to share investigative information with any regulatory agency. Current law only allows the information to be shared with any law enforcement agency.

Neutral Evaluation In Sinkhole Claims

The bill requires an insurer to notify a policyholder of the right to participate in neutral evaluation of a sinkhole claims only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period which is two years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Licensing of Insurance Agents Selling Motor Vehicle Rental Insurance

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by DFS to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[10]

Limited lines insurance agents are individuals, or in some cases entities, licensed as insurance agents but limited to selling one or more of the following forms of insurance (each requiring a separate license):

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit insurance;
- Crop hail and multiple-peril crop insurance;
- In-transit and storage personal property insurance; and
- Portable electronics insurance.[11]

A limited lines insurance agent license generally has fewer requirements for licensing than other insurance agents. These licensees must, however, file an application with DFS and be appointed by an insurance company.

The bill makes one change to the limited license statute for motor vehicle rental insurance. Under current law, a limited license to sell motor vehicle rental insurance can be issued to a business that offers motor vehicles for rent or lease. A license issued to a rental business covers each office, branch office, or place of business associated with the rental business. The bill expands this coverage to each employee or authorized representative of the rental business located at branch offices. Thus, all employees would be covered by the rental business' license to sell rental insurance. According to DFS, the agency interprets the current law relating to rental insurance licensing to mean the license for the rental company business covers each branch office and each employee working at the rental business. Thus, the change made by the bill is clarifying and is consistent with the application of the current law by DFS.

[10] s. 626.112, F.S.
[11] s. 626.321, F.S.

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents. Before a surplus lines insurance agent can place insurance in the surplus lines market, section 626.916, F.S. requires the insurance agent to make a diligent effort to procure the desired coverage from admitted insurers. Section 626.914, F.S. defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is $ 1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days of the effective date of the transaction, must transmit service fees to the Office each month, and must transmit assessment and tax payments to the Office quarterly.

Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter was submitted to the FSLSO. The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts. The bill repeals current law requiring this affidavit. However, surplus lines agents must still file a copy of or information on each surplus lines transaction with the FSLSO in accordance with the FSLSO's plan of operation.

Hurricane Loss Models

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[12] The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the state Chief Financial Officer (CFO); an actuary member from the FHCF Advisory Council; an actuary employed with a property and casualty insurer appointed by the CFO; an actuary employed by the Office of Insurance Regulation (OIR); the Executive Director of Citizens; the senior employee responsible for FHCF operations; the Insurance Consumer Advocate; and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels[13] in a rate filing.

The bill allows insurers to average model results if the insurer uses multiple models to project losses in their rate filing for property insurance rates. However, the average must be a straight average, thus a weighted average is not allowed. Current law allows only one model to be used to project loss estimates and does not authorize use of an average of model results. Thus, the sole result of the model used is the only result that can be used in a rate filing. The bill also lengthens the time insurers have to use a model or models in their rate filing from 60 to 180 days after the Commission finds the model reliable and accurate.

Retrospective Rating Plan in Workers' Compensation

[12] s. 627.0628, F.S.

[13] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

Retrospective rating plans[14] may be used by workers' compensation insurers to compete on price. Under such a plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer controls the amount of claims, it pays lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

The bill authorizes retrospective rating plans that provide for negotiation between the employer and insurer to determine the retrospective rating factors to be used to calculate the premium when the employer has exposure in more than one state, an estimated annual standard premium in Florida of at least $175,000, and an annual estimated countrywide standard premium of $1 million or more for workers' compensation.

Nonrenewal Notice For Property Insurance

Under current law,[15] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.[16] Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The bill repeals the required notice by June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The bill also lengthens the notice time period under current law from 100 days to 120 days. Under the bill, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st–November 30th). Under the bill, policies renewing September 28th–November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the bill does not change the notice period for these policyholders.

Post-Claim Underwriting

Post-claim underwriting is a practice where the underwriting of a policy application is actually done for the first time when a claim is filed. Post-claim underwriting can result in a denial of the claim or cancelation of the policy and is a way insurers implement s. 627.409, F.S., which provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance:

1. is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or
2. if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

[14] See "2013 Workers' Compensation Annual Report" (December 2013) by the Florida Office of Insurance Regulation. Available at http://www.floir.com (last viewed February 4, 2014).
[15] s. 627.4133(2), F.S.
[16] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance Company v. Kramer,*[17] an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America,*[18] an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson,*[19] an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application need not be intentional in order for the insurance company to deny recovery.[20]

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from 10 days for nonpayment of premium to 120 days for certain policyholders.[21] After the policy has been in effect for 90 days, such a policy cannot be canceled unless that has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements with 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.[22]

The bill should curtail cancellation of residential property insurance due to misrepresentations about the policyholder's credit contained on the insurance application that are found during post-claim underwriting. The bill provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied based on credit information available in the public record. The bill does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history). Additionally, under the bill, after a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

Coverage Statement

Under current law, only an officer of an insurer or the insurer's claims manager or superintendent can sign statements given to persons making a claim under a liability insurance policy. The statement sets out the name of the insurer, the name of each insured, the limits of liability coverage, and coverage defenses. A copy of the insurance policy is also included in the statement. The bill expands the insurer personnel authorized to sign coverage statements to include licensed company adjusters.

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[23] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[24] Insurance is specifically included in E-SIGN.[25] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-

[17] 725 So.2d 1141 (Fla. 2d DCA 1998).
[18] 712 So.2d 1261 (Fla. 1st DCA 1998).
[19] 114 So.3d 1031 (Fla. 1st DCA 2013).
[20] *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.
[21] See s. 627.4133(2), F.S.
[22] *Id.*
[23] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)
[24] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[25] *Id.*

SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

In 2013, legislation[26] was enacted allowing all insurance policies to be electronically transmitted to the policyholder. The legislation also contained specific electronic delivery parameters for insurance covering commercial risks.

For personal lines insurance, the bill allows insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Change of Policy Terms In Insurance Policies

Under current law, to make a change in the terms of a property and casualty insurance contract, the insurer must give the policyholder written Notice of Change in Policy Terms with the policy renewal notice and the policy renewal notice must be provided to the policyholder in accordance with current law, which requires insurers to give notice of renewal 45 days prior to the renewal date.[27] A policyholder is deemed to accept the policy term change if the renewal premium is paid. If the insurer does not provide the Notice of Change in Policy Terms to the policyholder, the terms of the insurance policy are not changed.

The bill allows an insurer to send a Notice of Change of Policy Terms separate from the renewal notice as long as the notice is sent within the policy nonrenewal time limits in current law. Generally, the nonrenewal time limits are notice at least 100 days prior to the effective date of the nonrenewal.[28] And, for any nonrenewal that takes effect between June 1st and November 30th, at least 100 days written notice, or notice by June 1st, whichever is earlier, is required. Furthermore, policyholders with property insured by the same insurer for five years or more receive 120 days' notice of nonrenewal instead of 100 days' notice. Thus, the bill requires a Notice of Change of Policy Terms to be given sooner when it is not included with the renewal notice.

The bill also requires the insurer to provide the policyholder's insurance agent with a sample copy of the Notice of Change of Policy Terms before or at the same time as the Notice is provided to the policyholder.

Disqualification of Appraisal Umpire In Residential Property Claims

An appraisal clause is found in all insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

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[26] Ch. 2013-190, L.O.F.

[27] s. 627.43141, F.S.

[28] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.

Because current law does not address disqualification of an umpire due to impartiality, a party wanting to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. In making the ruling, the judge uses his or her judgment about the umpire's impartiality. There are no parameters in current law for a judge's ruling on an umpire's impartiality. The bill provides parameters for the judge's impartiality ruling by adding grounds to current law which the insurer or policyholder in a residential property dispute can use to challenge the impartiality of the umpire in order to disqualify the umpire. The disqualification grounds provided in the bill are the substantially the same as those used to disqualify a neutral evaluator in sinkhole claims under s. 627.7074(7)(a), F.S.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[29] amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...*and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]...."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether the March 1st fee schedule applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[30] stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st. The bill amends s. 627.736(5)(a)2., F.S., to clarify that the fee schedule in place on March 1st applies until the last day of February of the following year.

Penalty for Insufficient Premium Payment

Current law allows a $15 penalty for a premium payment made by check to a premium finance company that is returned due to insufficient funds.[31] The bill extends the $15 penalty to premium payments made by credit card, debit card, or other electronic funds transfer if the payment is declined or cannot be processed due to insufficient funds.

Service Warranty Associations

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

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[29] Ch. 2012-151, L.O.F.
[30] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: February 4, 2014).
[31] s. 627.841, F.S.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted:

1. an insurance policy that pays only when the service warranty association fails to pay its obligations under the service warranties; and
2. a policy that pays claims under the association's service warranties from the first dollar.

In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of $100 million, maintains an "A" or higher rating, and is not affiliated with the service warranty association it insures.[32]

The bill expands the exception to the minimum writing ratio for service warranty associations. Under the bill, associations utilizing an insurance policy that pays only when the service warranty association fails to pay its obligations can avoid the writing ratio as long as the insurer issuing the policy to the association maintains a minimum capital surplus of $200 million and an "A" or higher rating. The surplus requirement for insurers issuing both kinds of insurance policies o service warranty associations helps ensure there is more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

For insurers providing first dollar coverage to service warranty associations, the bill repeals one of the three requirements for these insurers so the service warranty association purchasing insurance from the insurer can be exempt from the writing ratio required by law. The requirement that the insurer providing the first dollar coverage not be affiliated with the service warranty association it insures is repealed. These insurers must still maintain a minimum surplus of $100 million and maintain an "A" or higher rating.

Insurance Administrators

An insurance administrator is defined in s. 626.88(1), F.S., and generally is a person or entity that solicits or effects coverage, collects premiums, or adjusts or settles claims on behalf of a commercial self-insurance fund, a life insurer, or a health insurer. Insurance administrators also provide billing and collection services to health insurers and health maintenance organizations. Part VII of chapter 626, F.S., contains the statutory provisions governing insurance administrators. The bill makes several changes to the law governing these administrators.

Current law requires licensed insurance administrators to file financial statements and audited financial statements with OIR on a calendar year basis. Some administrators, however, do not use a calendar year for financial statements and use a fiscal year instead. For these administrators, the current law requiring reporting on a calendar year basis increases costs and work load to prepare and audit financial statements on a calendar year basis as their typical statements do not coincide with a

[32] The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

calendar year. The bill allows insurance administrators to file financial statements and audited financial statements on a calendar year or a fiscal year.

The bill also changes which persons are subject to biographical review by OIR relating to issuance of a certificate of authority for an insurance administrator.

Under current law, insurance administrator operations for administrators that administer benefits for more than 100 certificate holders for an insurer must be reviewed by the insurer at least semiannually. The bill allows an insurer required to conduct this review to contract with a qualified third party to do the review.

Annual Report to the Legislature Relating to the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation

Section 627.3519, F.S., requires the Financial Services Commission (FSC)[33] to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses,[34] financing options, and potential assessments of the FHCF and Citizens. The report includes the amount and term of debt needed to be issued by the FHCF and Citizens to support the probable maximum losses required to be reported. The assessment percentage that would be needed to support the debt is also required to be reported. The FSC has provided the required report on to the Legislature each February since 2008.

Section 627.35191, F.S., enacted in 2013,[35] requires the FHCF and Citizens to prepare an annual report on the same issues and provide it to the Legislature and the FSC. The only difference in the report required by s. 627.3519, F.S., and report required by s. 627.35191, F.S. is who provides the report. The bill repeals s. 627.3519, F.S., the statute requiring the report to be provided by the FSC and retains s. 627.35191, F.S., the statute requiring the report to be done by the FHCF and Citizens. The repeal removes inconsistencies in current law relating to the report.

Mitigation Discount Verification for Citizens Property Insurance Corporation

Since 2003, insurers have been required to provide mitigation credits, discounts, other rate differentials, or reductions in deductibles (mitigation discounts) to reduce residential property insurance premiums for properties with mitigation features.[36] Section 627.711, F.S., requires insurers to clearly notify an applicant for or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and renewed.

Typically, policyholders are responsible for substantiating to their insurers the insured property has mitigation features. Policyholders submit a completed uniform mitigation verification inspection form to the insurer to substantiate mitigation features. Insurers must accept mitigation forms prepared by home inspectors, building code inspectors, contractors, engineers, and architects and may accept forms prepared by persons determined to be qualified by the insurer to prepare the form.

Insurers can require mitigation forms provided to the insurer by mitigation inspectors or a mitigation inspection company be independently verified for quality assurance purposes before accepting the mitigation form as valid. The insurer must pay for the independent verification.[37] At their expense, insurers can also independently verify, for quality assurance purposes, mitigation forms submitted by policyholders or insurance agents.

The bill provides an exception to the mitigation form independent verification process for Citizens only. The bill does not allow independent verification of mitigation discount forms submitted to Citizens if a

[33] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).
[34] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.
[35] Section 11, Ch. 2013-60, L.O.F.
[36] s. 627.0629(1)(a), F.S. Mitigation features are construction techniques used or items purchased and installed by a property owner to protect a structure against windstorm damage and loss. (e.g., hurricane shutters, hip roof, specified roof covering).
[37] s. 627.711(8), F.S.

quality assurance program approved by Citizens reviewed and verified the form when it was submitted. Similarly, the bill allows insurers, including Citizens, to exempt from verification mitigation discount forms from a mitigation inspection company with a quality assurance program. In addition, Citizens is not allowed to reinspect a property to confirm mitigation features if the mitigation form was reviewed and verified by a quality assurance program approved by them.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill also exempts from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the registration and a copy of the window sticker. Additionally, it deletes language that exempts from preinsurance inspection, new, unused motor vehicles that are purchased only if the bill of sale or buyer's order contains a full description of all options and accessories or, when a copy of the title is provided to the insurer, permits the dealer invoice to be submitted as appropriate supporting documentation.

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR.

Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited. OIR informs that this provision was most likely enacted as an anti-redlining measure, and at that time it was probably considered unlikely that defining a territory consisting of less than two zip codes had a legitimate purpose. However, OIR notes that given the increasing role of "big data" in rating insurance, it may become more common for models including demographic data and insurance data to be used in the determination of rating territory boundaries in the future.[38]

The bill amends s. 627.0651, F.S., to permit new programs or changes to existing programs that result in at least a single zip code as a rating territory for motor vehicle insurance rates. As is currently the case, insurers must provide support that their rating territories are actuarially appropriate. OIR notes that the general prohibition on rates that are unfairly discriminatory in Secs. 627.0651 and 627.062, F.S., would likely be used to disapprove a filing that made an overt attempt to redline. However, OIR adds that, disparate impact situations (where the boundaries are established based on insurance data or other data proven relevant to projecting loss costs and the result is significantly higher premium for some protected class) are more difficult to detect and uncertain in legal status; thus the protection against redlining is lessened.

Information Required With the Surrender of Life Insurance or Annuity

The bill creates s. 627.4553. F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information on the product to be surrendered before execution of the surrender. The information is to be provided on a form that complies with the DFS rule, and must provide information on the product to be

[38] Correspondence from OIR dated February 7, 2014, on file with staff of the Insurance & Banking Subcommittee.

surrendered, including the amount of any: surrender charge; tax consequences resulting from the surrender; or forfeited death benefit. The consumer must also be informed about the loss of any minimum interest guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the surrender.

Title Insurance

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance. Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Title insurers and title insurance agencies are required to submit to the Office of Insurance Regulation (OIR), on or before March 31st of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

The bill extends the date by which title insurers and title insurance agencies must annually submit data on the title insurance industry to the OIR for the most recently concluded year from March 31st to May 31st.

Acquisition of Controlling Stock

OIR Accreditation by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. The membership consists of the state government officials, who along with their departments and staff, regulate the conduct of insurance companies and agents in their respective state or territory. The mission of the NAIC is to assist state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost-effective manner, consistent with the wishes of its members:

- Protect the public interest;
- Promote competitive markets;
- Facilitate the fair and equitable treatment of insurance consumers;
- Promote the reliability, solvency and financial solidity of insurance institutions; and
- Support and improve state regulation of insurance.[39]

As a member of the NAIC, the OIR is required to participate in the organization's Financial Regulation Standards and Accreditation Program.[40] NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. The accreditation program is designed to allow for interstate cooperation and reduces regulatory redundancies. For example, the OIR's examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states. All 50 states, the District of Columbia, and Puerto Rico are accredited by the NAIC. Once accredited, a state is subject to a full accreditation review every five years, as well as interim reviews. The OIR's most recent accreditation review took place in the fall of 2013.

The NAIC also periodically reviews its solvency standards as set forth in its model acts,[41] and revises accreditation requirements to adapt to evolving industry practices. The OIR has identified elements of

[39] About the NAIC, http://www.naic.org/index_about.htm (last viewed February 27, 2013).
[40] NAIC Financial Regulation Standards and Accreditation Committee: http://www.naic.org/committees_f.htm
[41] NAIC Model Laws, Regulations and Guidelines: http://www.naic.org/store_model_laws.htm

several NAIC model acts that are not in the current Insurance Code,[42] and must be implemented in order for the OIR to maintain its accreditation.

Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the NAIC's Model Insurance Holding Company Act.[43]

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[44] studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the SMI's efforts focused on the risks and activities of non-insurance entities within insurance holding companies, concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as enterprise risk. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[45]

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010, which states must adopt as an accreditation component.[46] These revisions include:

- expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- enhancements to the regulator's rights to access books and records and to compel production of information;
- establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- enhancements in corporate governance, such as board of directors and senior management responsibilities;
- the inclusion of financial statements as part of an affiliate's registration requirements; and
- enterprise risk reporting requirements.[47]

Current Situation

Currently, s. 628.461, F.S., provides that a person or affiliated person[48] must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5% or more of a domestic stock insurer or of a controlling company. The statute also sets forth the information required to be disclosed in the statement, which includes criminal and regulatory history information. Alternatively, a party acquiring less than 10% of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10%).

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[42] The Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.

[43] Bill analysis by the OIR (received March 9, 2013), on file with the Insurance & Banking Subcommittee.

[44] NAIC Solvency Modernization Initiative (last viewed February 3, 2014), at http://www.naic.org/index_smi.htm

[45] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

[46] According to the NAIC, 20 states have adopted the December 2010 revisions to the Holding Company act and many others are currently in their respective legislative processes. E-mail from the NAIC (received February 3, 2014), on file with Insurance & Banking Subcommittee staff. The NAIC's 2010 revisions to the Model Holding Company Act have an accreditation deadline of January 1, 2016. See NAIC Financial Regulation and Accreditation Committee: http://www.naic.org/committees_f.htm

[47] NAIC Group Supervision, http://www.naic.org/cipr_topics/topic_group_supervision.htm (last viewed February 27, 2013).

[48] Currently, "affiliated person" is defined in s. 628.461(12)(a), F.S., to include spouses, parents and lineal descendants, and persons affiliated through 5% ownership, common control, or management.

During the pendency of the OIR's review of an acquisition filing, the insurer is not permitted to make a "material change" to its operation or management, unless the OIR has approved or been notified, respectively. A "material change" consists of a disposal or obligation of 5% or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5% of the insurer's capital and surplus.

Effect of the Bill on Acquisition of Controlling Stock

The bill amends s. 628.461, F.S. (acquisition of controlling stock), with the following changes. The bill appears identical or substantially similar to the Model Act disclaimer, with one exception at lines 1785-1793 (bolded below).

- Increases the ownership threshold (which triggers the notification and statement requirements) from 5% to 10% or more of the outstanding voting securities of a domestic stock insurer or of a controlling company.
- Deletes the provision stating "in lieu of filing an acquisition statement, a party acquiring less than 10% of the outstanding voting securities of an insurer, may file a disclaimer of affiliation and control."
- Specifies that effective January 1, 2015, the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in section 6 of the bill.
- Adds language that states effective January 1, 2015, the person required to file the statement pursuant to s. 628.461(1), F.S. will provide the annual report specified in s. 628.801(2), F.S., if control exists.
- Adds a provision that the presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the office or **by providing a copy of a Schedule 13G on file with the SEC**. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer.
- Adds a provision that any controlling person of a domestic insurer that seeks to *divest* its controlling interest in the domestic insurer shall file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.
- Deletes the definition of "affiliated person."[49]
- Deletes the definition of "controlling company," which means any corporation, trust, or association that owns 25% or more of the voting securities of one or more domestic stock insurance companies.[50]

It is noted that section 3(A)(4) of the Model Holding Company Act contains an exclusion that is:

> For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include *any securities broker* holding, in the usual and customary broker's function, less than 20% of the voting securities of an insurance company or of any person which controls any company.

While the 20% ownership threshold is the same as this bill, the bill will provide an automatic disclaimer to a broader class of persons ("an affiliated person of a party") than that contemplated by the Model Act

[49] In the OIR bill from 2013 (HB 813), the definition of "affiliated person" was moved to s. 624.085, F.S., and modified slightly (changed controlling stock threshold from 5% to 10%).

[50] In the OIR bill from 2013 (HB 813), the definition of "controlling company" was moved to s. 624.085, and now shows a 10% threshold instead of 25%.

(any securities broker holding less than 20%). Also, as discussed below, the SEC Schedule 13G filing requires much less rigorous disclosures than that required by the s. 628.461 statement.

SEC filings
The federal Securities and Exchange Act of 1934 (15 U.S.C. § 78a *et seq*, as amended), and Regulation 13D-G (17 CFR Part 240.13d), require certain investment advisers and brokers to file acquisition and beneficial ownership reports with the SEC when they directly or indirectly acquire more than 5% of any issuer's outstanding "Section 13" or "equity securities," which is measured at the end of each calendar year.

A "Section 13" "equity security" means any voting, equity security that is:
1. of a class that is registered pursuant to Section 12 of the Exchange Act (which includes all exchange-traded and NASDAQ-listed securities);
2. issued by an insurance company,[51] which security would have been required to be registered under Section 12 of the Exchange Act but for the exemption contained in Section 12(g)(2)(G) of the Exchange Act; or
3. issued by a closed-end investment company registered under the Investment Company Act of 1940, as amended ("Investment Company Act").[52]

An ownership level above 10% triggers some additional amendatory filing obligations.

Schedule 13G has generally been described as a more streamlined and passive reporting form than Schedule 13D, and may be used by the following:
- qualified institutional investors, which include insurance companies;
- exempt investors, and
- passive investors).
    - A passive investor loses this status at any time it acquires 20% or more of a Section 13 security; at that point, it must file a Schedule 13D unless it can qualify to submit a Schedule 13G as a qualified institutional investor.

It is noted that Schedule 13G only requires the following disclosures (compare with the disclosures required in the s. 628.461 statement):
- Names and types of reporting persons
- Address
- Title of class of securities and CUSIP number
- Citizenship or place of organization
- Aggregated amount beneficially owned by each reporting person
- Identification and classification of members of a reporting group
- Certification and signature

Refunds to Insureds from the Workers' Compensation Joint Underwriting Association
The Florida Workers' Compensation Joint Underwriting Association (FWCJUA)[53] is the market of last resort for workers' compensation and employers liability coverage. Only employers that cannot find coverage in the voluntary market are eligible for coverage in the FWCJUA. At the end of October 2013, the FWCJUA had 1,636 policies with corresponding premiums of $29.4 million.[54]

[51] 15 U.S.C. 77B(a)(13) defines "insurance company" as "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such."
[52] 17 C.F.R. §240.13d-1(i).
[53] The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994.
[54] *See* "2013 Workers' Compensation Annual Report," Florida Office of Insurance Regulation (December 31, 2013). Available at: http://www.floir.com/search/search.aspx#2013 workers compensation annual report (last viewed February 5, 2014).

The FWCJUA has a three-tier rating plan. As a brief overview, Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers; and Tier 3 is for employers not eligible for Tiers 1 or 2.[55] As of January 1, 2014, the premium for Tier 1 is 5 percent above voluntary rates, Tier 2 is 20 percent above voluntary rates, and Tier 3[56] is 75 percent above voluntary rates, Additionally, all three tiers have a flat surcharge of $475. Tier 3 policies are also subject to assessment if premiums are not sufficient to cover losses and expenses.

The bill authorizes the FWCJUA to retain for future use any dividends that cannot be paid to former insureds of the FWCJUA because they cannot reasonably be located. Currently, the FWCJUA reports the property[57] and owner's name, last known address, and other information to the Department of Financial Services, Bureau of Unclaimed Property. The owner can claim her or his property at no cost, any time, regardless of the amount.[58] The bill eliminates the ability of a person to recover unclaimed property that is left in possession of the FWCJUA at any time in the future. The FWCJUA will not report unclaimed property to the DFS and will ultimately use the unclaimed funds in its possession.

Unaffiliated Insurance Agent

The bill creates a new type of insurance agent, an unaffiliated insurance agent. The bill defines this type of agent as a licensed insurance agent that is not appointed by or affiliated with any insurer, but is self-appointed. This agent acts as an independent consultant analyzing insurance policies, providing insurance advice, or comparing insurance products. The bill prohibits an unaffiliated insurance agent from holding an appointment with an insurer, but allows the agent to receive commissions on sales made for an insurer the agent was previously appointed by, as long as the agent properly discloses the receipt of commissions to the client.

The bill requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Corporation Not For Profit Self-Insurance Funds

In general, self-insurance is the assumption of some or all on one's financial risk oneself, rather than paying an insurance company to assume it.[59] Florida law recognizes many different types of self-insurance funds.[60]

Two or more corporations not for profit wanting to pool together their property or casualty risks can form a self-insurance fund under s. 624.4625, F.S. This statute outlines many requirements and parameters for the fund and the corporation not for profit members. One requirement set out is that each fund corporation not for profit member receives at least 75% of its revenue from local, state, or federal government sources.

The bill expands the types of corporations not for profit qualifying for membership in a corporation not for profit self-insurance fund. The bill allows a corporation not for profit that is a publically supported organization for IRS purposes due to receipt of a substantial part of support from a governmental unit or from the general public to be a member of a corporation not for profit self-insurance fund. Whether an organization is a publically supported organization is determined by Schedule A to IRS Form 990 or 990EZ[61]. Most federally tax-exempt organizations must file Form 990 with the IRS. Schedule A to

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[55] For further specifics, see the FWCJUA's website: http://www.fwcjua.com/.

[56] In addition, an Assigned Risk Adjustment Program (ARAP) surcharge applies for Tier 3.

[57] Over the past five years, the FWCJUA has reported unclaimed property totaling $279,499.06 to the DFS. The amount for each year follows: $16,388.32 (2009); $87,813.27 (2010); $63,552.52 (2011); $73,631.27 (2012); $38,113.68 (2013). Correspondence from the FWCJUA dated February 7, 2014, on file with staff of the Insurance & Banking Subcommittee.

[58] *See* chap. 717, F.S. (the Florida Disposition of Unclaimed Property Act) and information on unclaimed property on the website of the Florida Department of Financial Services: http://www.myfloridacfo.com.

[59] http://www.iii.org/ (last viewed February 11, 2014).

[60] See s. 624.462, F.S., relating to commercial self-insurance funds; s. 624.4621, F.S., relating to group self-insurance funds; s. 624.4622, F.S., relating to local government self-insurance funds; s. 624.46226, F.S., relating to public housing authorities self-insurance funds; s. 624.4623, F.S., relating to independent nonprofit colleges or universities self-insurance fund; and s. 624.4626, relating to electric cooperative self-insurance fund.

[61] Non-profits whose incomes were less than $500,000 and their assets less than $1.25 million can file a Form 990EZ.

Form 990 or 990EZ requires organizations to indicate the reason the organization is a public charity for the tax year. The available reasons are listed on the Schedule and one of the reasons listed is that the organization normally receives a substantial part of its support from a governmental unit or from the general public. This reason is consistent with the provision added in the bill for organizations to qualify for membership in a corporation not for profit self-insurance fund.

The determination whether a public charity is also a publically supported organization for IRS purposes is determined by the results of a computation of public support percentage set out on Schedule A.[62] The computation takes into account certain receipts of the public charity for the past five years. Specifically, Schedule A requires organizations to disclose their aggregate receipts from the past five years from gifts; grants; contributions; membership fees; tax revenue; services or facilities furnished to the organization from a governmental unit; gross income from interest, dividends, payments received on securities loans, rents, royalties and income from other sources; net income from unrelated business activities; and other income. The amount of these receipts for certain tax years is used in the computation of a public support percentage, the result of which determines whether the organization qualifies as a publically supported organization for IRS purposes.[63]

The bill maintains current law allowing membership for corporations not for profit that receive at least 75% of their revenue from local, state, or federal government sources. By retaining current law in this regard, all current members of corporation not for profit self-insurance funds are essentially grandfathered in and thus, will be able to continue to qualify for fund membership, as long as their governmental funding level does not fall below 75%.

There is at least one corporation not for profit self-insurance fund in Florida, the Florida Insurance Trust (FIT), with approximately 175 members.[64] According to the FIT, Form 990 from the Internal Revenue Service (IRS) is what the fund uses to determine if potential members receive 75% of funding from governmental sources. In addition, most current members of the FIT indicate on Schedule A for Form 990 that they are an organization that normally receives a substantial part of its support from a governmental unit or from the general public and qualify as a publically supported organization for IRS purposes.

B. SECTION DIRECTORY:

Section 1: Amends s. 554.1021, F.S., relating to definitions used in the boiler inspection law.

Section 2: Amends s. 554.107, F.S., relating to special inspectors relating to boiler inspections.

Section 3: Amends s. 554.109, F.S., relating to exemptions provided for the boiler inspection law.

Section 4: Amends s. 624.4625, F.S., relating to corporation not for profit self-insurance funds.

Section 5: Amends s. 624.501, F.S., relating to filing, licensing, appointment, and miscellaneous fees.

Section 6: Amends s. 626.015, F.S., relating to definitions.

Section 7: Effective January 1, 2015, amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.

[62] There are two ways an organization can qualify as a publically supported one: the 33 1/3 support test and the 10% facts and circumstances test. Calculations for both tests are set forth on Schedule A, Form 990 or Form 990EZ).

[63] Schedule A (Form 990 or 990-EZ and Instructions for Schedule A available at http://www.irs.gov/uac/About-Schedule-A-(Form-990-or-990EZ) (last viewed on February 12, 2014).

[64] Telephone conference with a representative of FIT on February 6, 2014. The FIT has been in existence since 2007.

Section 8: Effective January 1, 2015, amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

Section 9: Amends s. 626.172, F.S., relating to application for insurance agency license.

Section 10: Amends s. 626.311, F.S., relating to scope of license.

Section 11: Amends s. 626.321, F.S., relating to limited licenses.

Section 12: Effective January 1, 2015, amends s. 626.382, F.S., relating to continuation, expiration of license; insurance agencies.

Section 13: Amends s. 626.601, F.S., relating to improper conduct; inquiry; fingerprinting.

Section 14: Effective January 1, 2015, repeals s. 626.747, F.S., relating to branch agencies.

Section 15: Effective January 1, 2015, amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 16: Amends s. 626.8805, F.S., relating to certificate of authority to act as administrator.

Section 17: Amends s. 626.8817, F.S., relating to responsibilities of insurance company with respect to administration of coverage insured.

Section 18: Amends s. 626.882, F.S., relating to agreement between administrator and insurer; required provisions; maintenance of records.

Section 19: Amends s. 626.883, F.S., relating to administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.

Section 20: Amends s. 626.884, F.S., relating to maintenance of records by administrator; access; confidentiality.

Section 21: Amends s. 626.89, F.S., relating to annual financial statement and filing fee; notice of change of ownership.

Section 22: Amends s. 626.931, F.S., relating to insurer reporting requirements.

Section 23: Amends s. 626.932, F.S., relating to surplus lines tax.

Section 24: Amends s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.

Section 25: Amends s. 626.936, F.S., relating to failure to file reports or pay tax or service fee; administrative penalty.

Section 26: Amends s. 627.062, F.S., relating to rate standards.

Section 27: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 28: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 29: Amends s. 627.072, relating to making and use of rates.

Section 30: Amends s. 627.281, F.S., relating to appeal from rating organization; workers' compensation and employer's liability insurance filings.

Section 31: Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemption.

Section 32: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to correct a cross reference.

Section 33: Repeals s. 627.3519, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 34: Amends s. 627.409, F.S., relating to representations in applications; warranties.

Section 35: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 36: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 37: Amends s. 627.421, F.S., relating to delivery of policy.

Section 38: Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 39: Creates s. 627.4553, F.S., relating to recommendations to surrender.

Section 40: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 41: Creates s. 627.70151, F.S., relating to appraisal; conflicts of interest.

Section 42: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 43: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 44: Amends s. 627.711, F.S., relating to notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection forms.

Section 45: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 46: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 47: Amends s. 627.745, F.S., relating to mediation of claims.

Section 48: Amends s. 627.782, F.S., relating to adoption of rates.

Section 49: Amends s. 627.841, F.S., relating to delinquency, collection, cancellation, and return payment charges; attorney fees.

Section 50: Amends s. 628.461, F.S., relating to acquisition of controlling stock.

Section 51: Amends s. 634.406, F.S., relating to financial requirements.

Section 52: Provides an effective date of July 1, 2014, unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the DFS, the bill will require changes to the current licensure system relating to unaffiliated agents and insurance agency licensure. However, DFS confirms that any technology changes as a result of this legislation will be insignificant and can be implemented and absorbed within current resources[65].

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes made to the boiler inspection law should allow more persons to be eligible to inspect boilers in Florida while maintaining the inspector competency requirement in current law. The changes also mean insurers writing boiler and machinery insurance no longer have to maintain a certificate of authority to transact insurance in Florida in order for boiler inspectors employed by the insurer to be authorized to inspect boilers in Florida. However, the insurer must hold an insurance license in another state or Canadian province.

The changes made by the bill to the use of retrospective rating in workers' compensation may reduce workers' compensation premiums for some employers.

Insurers emailing policies will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to deliver their policies by email and how many policyholders will choose to obtain their policies by email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

Property and casualty insurers who choose to provide a Notice of Change of Policy Terms separate from the renewal notice will incur additional costs associated with printing and mailing this Notice. Additionally, the insurers will incur costs associated with providing a copy of the Notice to the policyholder's insurance agent.

[65] Email correspondence with the Department of Financial Services (February 20, 2014) on file with the Government Operations Appropriations Subcommittee.

The bill allows a $15 penalty on policyholders who pay insurance premiums by debit card, credit card, or other electronic funds transfer if the card is declined.

Because the bill allows additional corporations not for profit to self-insure in lieu of obtaining insurance from a private insurance carrier, more of these corporations may save money on insurance premiums. The amount of premium dollars saved for each nonprofit is indeterminable. Additionally, if premiums collected by the self-insurance fund are not sufficient to pay claims and a deficit results, the fund's members must be assessed to cover the deficit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to adopt rules relating to the certification of sinkhole neutral evaluators.

The bill gives DFS authority to adopt rules to administer the authority given DFS under the bill to deny an application, or suspend or revoke approval of a mediator or certification of a sinkhole neutral evaluator for specific grounds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Insurance & Banking Subcommittee considered the bill, adopted a strike all amendment and an amendment to the strike all amendment and reported the bill favorably with a committee substitute. The amendments:

- Clarified appointment fees apply to unaffiliated agents self-appointed for all types of insurance.
- Delayed the effective date of changes in the bill requiring insurance agencies to have an agent in charge from July 1, 2014 to January 1, 2015.
- Delayed the effective date of changes in the bill exempting insurance agencies owned by a single licensed agent from having an insurance agency license from July 1, 2014 to January 1, 2015.
- Delayed the conversion of registrations for insurance agencies to licenses from October 1, 2014 until October 1, 2015. Delays repeal of current laws relating to the registration of insurance agencies from July 1, 2014 until January 1, 2015.
- Terminated issuance of new limited customer representative licenses by the DFS as of October 1, 2014.

- Changed information required to be on an application for an insurance agency license, who must sign an agency license application, and who has to submit fingerprints for the license.
- Delayed the effective date of the elimination of the expiration of an agency license from July 1, 2014 until January 1, 2015.
- Restored rulemaking authority for DFS relating to nonresident agency licenses.
- Revised the provision relating to the disclosure required for the surrender of life insurance and annuities to require the insurance agent to provide the disclosure info on a form that complies with the DFS rule.
- Added provisions specifying the grounds DFS has to deny an application of a neutral evaluator or suspend or revoke its prior certification of the evaluator.
- Required DFS to adopt rules relating to the certification of neutral evaluators.
- Added a provision changing a funding requirement for members to join a corporation not for profit self-insurance fund. Current law requires each member of the fund to receive at least 75% of its funding from governmental sources and the amendment keeps this requirement but alternatively allows a member of the fund to be a publicly supported organization with specific requirements in the Internal Revenue Code.
- Added a provision allowing insurers to exempt mitigation verification forms from independent verification when there is a quality assurance program.
- Specified insurers who want to use an average of results from hurricane models in a property insurance rate filing must use a straight average.
- Allowed employees and authorized representatives of an automobile rental or leasing entity to offer or sell rental car insurance under the entity's insurance agent license.
- Changed the post-claim underwriting provision in the bill to prohibit insurers from canceling or terminating property insurance based on credit information in public records if the policy has been in effect for more than 90 days.
- Allowed the WCJUA to retain dividends, but not premium refunds, owed to former insureds when they cannot be located.
- Regarding acquisition of controlling stock of an insurer, allowed a person to rebut the presumption of control by filing either the OIR's disclaimer of control or the Schedule 13G to the OIR. It also removes the automatic disclaimer language that was in the bill as filed, so that the OIR could still review and disallow the disclaimer.
- Removed the provision in the bill relating to annual reports required of Citizens and the FHCF on probable maximum loss and assessments and repeals the law. Current law (s. 627.35191, F.S) already requires the reports to be submitted by Citizens and the FHCF, so the provision in the bill is duplicative of current law.

The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to insurance; amending s. 554.1021, F.S.; defining the term "authorized inspection agency"; amending s. 554.107, F.S.; requiring the chief inspector of the state boiler inspection program to issue a certificate of competency as a special inspector to certain individuals; specifying the duration of such certificate; amending s. 554.109, F.S.; authorizing specified insurers to contract with an authorized inspection agency for boiler inspections; requiring such insurers to annually report the identity of contracted authorized inspection agencies to the Department of Financial Services; amending s. 624.4625, F.S.; revising requirements for corporation not for profit self-insurance funds; amending s. 624.501, F.S.; revising original appointment and renewal fees related to certain insurance representatives; amending s. 626.015, F.S.; prohibiting new limited customer representative licenses from being issued after a specified date; defining the term "unaffiliated insurance agent"; amending s. 626.0428, F.S.; revising prohibitions relating to binding insurance and soliciting insurance; requiring a branch place of business to have an agent in charge; authorizing an agent to be in charge of more than one branch office

under certain circumstances; providing requirements relating to the designation of an agent in charge; providing that the agent in charge is accountable for misconduct and violations committed by the licensee, agent, and any person under his or her supervision; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; amending s. 626.112, F.S.; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance agency automatically converts to an insurance agency license on a specified date; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; conforming provisions to changes made by the act; amending s. 626.311, F.S.; limiting the types of business that may be transacted by certain agents; amending s. 626.321, F.S.; providing that a limited license to offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses the employees and authorized representatives of such business; amending s. 626.382, F.S.; providing that an

insurance agency license continues in force until canceled, suspended, revoked, or terminated or expired; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; revising a confidentiality provision; repealing s. 626.747, F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances; amending s. 626.8411, F.S.; conforming a cross-reference; amending s. 626.8805, F.S.; revising insurance administrator application requirements; amending s. 626.8817, F.S.; authorizing an insurer's designee to provide certain coverage information to an insurance administrator; authorizing an insurer to subcontract the review of an insurance administrator; amending s. 626.882, F.S.; prohibiting a person from acting as an insurance administrator without a specific written agreement; amending s. 626.883, F.S.; requiring an insurance administrator to furnish fiduciary account records to an insurer; requiring administrator withdrawals from a fiduciary account to be made according to a specific written agreement; providing that an insurer's designee may authorize payment of claims; amending s. 626.884,

F.S.; revising an insurer's right of access to certain administrator records; amending s. 626.89, F.S.; revising the deadline for filing certain financial statements; amending s. 626.931, F.S.; deleting provisions requiring a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; revising the due date of surplus lines tax; amending ss. 626.935 and 626.936, F.S.; conforming provisions to changes made by the act; amending s. 627.062, F.S.; requiring the Office of Insurance Regulation to use certain models or methods, or a straight average of model results or output ranges, to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; amending s. 627.0628, F.S.; increasing the length of time during which an insurer must adhere to certain findings made by the Commission on Hurricane Loss Projection Methodology with respect to certain methods, principles, standards, models, or output ranges used in a rate filing; providing that the requirement to adhere to such findings does not prohibit an insurer from using a straight average of model results or output ranges under specified circumstances; amending s. 627.0651, F.S.; revising provisions for making and use of rates for motor

vehicle insurance; amending s. 627.072, F.S.; authorizing retrospective rating plans relating to workers' compensation and employer's liability insurance to allow negotiations between certain employers and insurers with respect to premiums; amending ss. 627.281 and 627.3518, F.S.; conforming cross-references; amending s. 627.311, F.S.; providing that certain dividends shall be retained by the joint underwriting plan for future use; repealing s. 627.3519, F.S., relating to an annual report on the aggregate net probable maximum losses of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.409, F.S.; providing that a claim for residential property insurance may not be denied based on certain credit information; amending s. 627.4133, F.S.; increasing the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; providing that a policy or contract may not be cancelled based on

certain credit information; amending s. 627.4137, F.S.; adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; amending s. 627.421, F.S.; authorizing a policyholder of personal lines insurance to affirmatively elect delivery of policy documents by electronic means; amending s. 627.43141, F.S.; authorizing a notice of change in policy terms to be sent in a separate mailing to an insured under certain circumstances; requiring an insurer to provide such notice to insured's insurance agent; creating s. 627.4553, F.S.; providing requirements for the recommendation to surrender an annuity or life insurance policy; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss appraisal umpire for purposes of disqualifying such umpire; amending s. 627.706, F.S.; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; revising notification requirements for participation in the neutral evaluation program; providing grounds

for the department to deny an application, or suspend or revoke certification, of a neutral evaluator; requiring the department to adopt rules relating to certification of neutral evaluators; amending s. 627.711, F.S.; revising verification requirements for uniform mitigation verification forms; amending s. 627.736, F.S.; revising the time period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.744, F.S.; revising preinsurance inspection requirements for private passenger motor vehicles; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or suspend or revoke approval, of a mediator; authorizing the department to adopt rules; amending s. 627.782, F.S.; revising the date by which title insurance agencies and certain insurers must annually submit specified information to the Office of Insurance Regulation; amending s. 627.841, F.S.; providing that an insurance premium finance company may impose a charge for payments returned, declined, or unable to be processed due to insufficient funds; amending s. 628.461, F.S.; revising filing requirements relating to the acquisition of controlling stock; revising the amount of outstanding voting securities of a domestic stock

insurer or a controlling company that a person is prohibited from acquiring unless certain requirements have been met; prohibiting persons acquiring a certain percentage of voting securities from acquiring certain securities; providing that a presumption of control may be rebutted by filing a disclaimer of control; providing filing requirements for the divestiture of controlling interest in a domestic insurer; deleting a definition; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing effective dates.

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

Section 1. Subsection (8) is added to section 554.1021, Florida Statutes, to read:

554.1021 Definitions.—As used in ss. 554.1011-554.115:

(8) "Authorized inspection agency" means:

(a) A county, city, town, or other governmental subdivision that has adopted and administers, at a minimum, Section I of the A.S.M.E. Boiler and Pressure Vessel Code as a legal requirement and whose inspectors hold valid certificates of competency in accordance with s. 554.113; or

(b) An insurance company that is licensed or registered by an appropriate authority of any state of the United States or province of Canada and whose inspectors hold valid certificates of competency in accordance with s. 554.113.

Section 2. Section 554.107, Florida Statutes, is amended to read:

554.107 Special inspectors.—

(1) Upon application by an authorized inspection agency ~~any company licensed to insure boilers in this state~~, the chief inspector shall issue a certificate of competency as a special inspector to an ~~any~~ inspector employed by the agency if he or she ~~company, provided that such inspector~~ satisfies the competency requirements for inspectors as provided in s. 554.113.

(2) The certificate of competency of a special inspector remains ~~shall remain~~ in effect only so long as the special inspector is employed by an authorized inspection agency ~~a company licensed to insure boilers in this state~~. Upon termination of employment with such agency ~~company~~, a special inspector shall, in writing, notify the chief inspector of such termination. Such notice shall be given within 15 days following the date of termination.

Section 3. Subsection (1) of section 554.109, Florida Statutes, is amended to read:

554.109 Exemptions.—

(1) An ~~Any~~ insurance company that insures ~~insuring~~ a

boiler located in a public assembly location in this state shall inspect or contract with an authorized inspection agency to inspect such boiler ~~so insured,~~ and shall annually report to the department the identity of any authorized inspection agency that performs a required boiler inspection on behalf of the company. A ~~any~~ county, city, town, or other governmental subdivision that ~~which~~ has adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers and the National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers, regulating such boilers in public assembly locations, shall inspect such boilers so regulated.~~; provided that~~ Such inspection shall be conducted by a special inspector licensed pursuant to ss. 554.1011-554.115. Upon filing of a report of satisfactory inspection with the department, such boiler is exempt from inspection by the department.

Section 4. Paragraph (b) of subsection (1) of section 624.4625, Florida Statutes, is amended to read:

624.4625 Corporation not for profit self-insurance funds.—

(1) Notwithstanding any other provision of law, any two or more corporations not for profit located in and organized under the laws of this state may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any one or combination of property or casualty risk, provided the corporation not for profit self-insurance fund that is created:

(b) Requires for qualification that each participating member receive at least 75 percent of its revenues from local, state, or federal governmental sources or a combination of such sources, or qualify as a publicly supported organization that normally receives a substantial part of its support from a governmental unit or from the general public as evidenced on the organization's most recently filed Internal Revenue Service Form 990 or 990EZ, Schedule A.

Section 5. Paragraphs (a) and (c) of subsection (6) and subsections (7) and (8) of section 624.501, Florida Statutes, are amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(6) Insurance representatives, property, marine, casualty, and surety insurance.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(c) Nonresident agent's original appointment and biennial

renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(7) Life insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment..... $60.00

Section 6. Subsection (11) of section 626.015, Florida Statutes, is amended, subsection (18) of that section is

renumbered as subsection (19), and a new subsection (18) is added to that section, to read:

626.015 Definitions.—As used in this part:

(11) "Limited customer representative" means a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. A limited customer representative is subject to the Florida Insurance Code in the same manner as a customer representative, unless otherwise specified. Effective October 1, 2014, a new limited customer representative license may not be issued.

(18) "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.

Section 7. Effective January 1, 2015, subsections (2) and (3) of section 626.0428, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

626.0428 Agency personnel powers, duties, and limitations.—

(2) An employee or an authorized representative located at a designated branch of an agent or agency may not bind insurance coverage unless licensed and appointed as an agent or customer representative.

(3) An employee or an authorized representative located at a designated branch of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure pursuant to s. 626.8417(4).

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when an agent is not physically present and unlicensed employees at the location do not engage in

insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the physical address of the insurance agency location with the department at the department's designated website. The designation of the agent in charge may be changed at the option of the agency. A change of the designated agent in charge is effective upon notice to the department. Notice to the department must be provided within 30 days after such change.

(d) For purposes of this subsection, an "agent in charge" is the licensed and appointed agent who is responsible for the supervision of all individuals within an insurance agency location, regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of money.

(e) An agent in charge of an insurance agency is accountable for the wrongful acts, misconduct, or violations of this code committed by the licensee or agent or by any person under his or her supervision while acting on behalf of the agency. However, an agent in charge is not criminally liable for any act unless the agent in charge personally committed the act or knew or should have known of the act and of the facts constituting a violation of this chapter.

(f) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. If the agent in charge designated by the agency and whose name is filed with the department ends his or her affiliation with the agency for any reason and the agency fails to designate another agent in charge within 30 days as provided in paragraph (c) and such failure continues for 90 days, the agency license shall automatically expire on the 91st day after the date that the designated agent in charge ended his or her affiliation with the agency.

Section 8. Effective January 1, 2015, subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) An ~~Effective October 1, 2006, no~~ individual, firm, partnership, corporation, association, or ~~any~~ other entity shall not act in its own name or under a trade name, directly or indirectly, as an insurance agency~~,~~ unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an ~~any~~ activity that ~~which~~ may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the

services of or appointing other licensees is exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency, has designated a licensed agent in charge of the branch location as required by s. 626.0428, and has submitted the address and telephone number of the branch location to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006~~.

(c)~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this

section, the department shall impose on the agency an administrative penalty ~~in an amount~~ of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $5,000.~~

(d) ~~(b)~~ Effective October 1, 2015, the department must automatically convert the registration of an approved ~~a~~ registered insurance agency to ~~shall, as a condition precedent to continuing business, obtain~~ an insurance agency license ~~if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases~~.

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency~~

~~shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.~~

~~l. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 9. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by an individual required to be listed in the application under paragraph (a) ~~the owner or owners of the agency. If the agency is incorporated, the application shall be signed by the president and secretary of the corporation~~. An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf, but the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each ~~majority~~ owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the insurance agency, whether through ownership of voting securities, by contract, by ownership of any agency bank account, or otherwise.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name, principal business street address, and valid e-mail address of the insurance agency and the name, address, and e-mail address of the agency's registered agent or person or company authorized to accept service on behalf of the agency ~~its principal business address~~.

(d) The physical address ~~location~~ of each branch agency, including its name, e-mail address, and telephone number, and

the date that the branch location began transacting insurance ~~office and the name under which each agency office conducts or will conduct business~~.

(e) The name of each agent to be in full-time charge of an agency office and specification of which office, including branch locations.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a) ~~partner~~; and

~~3. Each owner of an unincorporated agency;~~

3.~~4.~~ Each individual ~~owner~~ who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange~~;~~

~~5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and~~

~~6. Any other person who directs or participates in the management or control of the agency, whether through the ownership of voting securities, by contract, or otherwise~~.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for an ~~any~~ individual who is currently licensed and appointed under this chapter. This

paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(3) ~~(h) Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of~~

~~the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(4) The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or registration~~ prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency location.

Section 10. Subsection (6) of section 626.311, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an

unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions are received.

Section 11. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) Motor vehicle rental insurance.—

1. License covering only insurance of the risks set forth

in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for no more than 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the

insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended one time only for a period not to exceed an additional 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30

days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 12. Effective January 1, 2015, section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—The license of an ~~any~~ insurance agency ~~shall be issued for a period of 3 years and~~ shall continue in force until canceled, suspended, or revoked~~,~~ or until it is otherwise terminated or becomes expired by operation of law. ~~A license may be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Section 13. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed, approved, or certified licensee, insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, navigator, continuing education course provider,

instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity ~~licensee~~ shall, whenever so required by the department or office, cause the individual's or entity's ~~his or her~~ books and records to be open for inspection for the purpose of such investigation ~~inquiries~~.

(3) ~~The~~ Complaints against any individual or entity ~~licensee~~ may be informally alleged and are not required to include ~~need not be in any such~~ language ~~as is~~ necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations conducted under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any

other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from ~~the provisions of~~ s. 119.07~~,~~ unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

Section 14. Effective January 1, 2015, section 626.747, Florida Statutes, is repealed.

Section 15. Effective January 1, 2015, subsection (1) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions ~~of part II~~ applicable to general lines agents or agencies also apply to title insurance

agents or agencies:

(a) Section 626.734, relating to liability of certain agents.

(b) Section 626.0428(4)(a) and (b) ~~626.747~~, relating to branch agencies.

(c) Section 626.749, relating to place of business in residence.

(d) Section 626.753, relating to sharing of commissions.

(e) Section 626.754, relating to rights of agent following termination of appointment.

Section 16. Paragraph (c) of subsection (2) and subsection (3) of section 626.8805, Florida Statutes, are amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(c) The names, addresses, official positions, and professional qualifications of the individuals employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, and the principal officers in the case of a corporation or~~,~~ the partners

or members in the case of a partnership or association~~, and any other person who exercises control or influence over the affairs~~ of the administrator.

(3) The applicant shall make available for inspection by the office copies of all contracts relating to services provided by the administrator to ~~with~~ insurers or other persons using ~~utilizing~~ the services of the administrator.

Section 17. Subsections (1) and (3) of section 626.8817, Florida Statutes, are amended to read:

626.8817 Responsibilities of insurance company with respect to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer or its designee to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in a ~~the~~ written agreement binding upon ~~between~~ the administrator and the insurer.

(3) In cases in which an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an onsite audit of the operations of the administrator. The insurer may contract with a qualified third

party to conduct such review.

Section 18. Subsections (1) and (4) of section 626.882, Florida Statutes, is amended to read:

626.882 Agreement between administrator and insurer; required provisions; maintenance of records.—

(1) A ~~No~~ person may not act as an administrator without a written agreement, as required under s. 626.8817, that specifies the rights, duties, and obligations of the ~~between such person as~~ administrator and ~~an~~ insurer.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to that agreement shall be furnished to the insurer or its designee by the administrator and shall be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 19. Subsections (3), (4), and (5) of section 626.883, Florida Statutes, are amended to read:

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.—

(3) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall, upon request of an insurer or its designee, furnish such insurer or designee with

copies of records pertaining to deposits and withdrawals on behalf of or for such insurer.

(4) The administrator may not pay any claim by withdrawals from a fiduciary account. Withdrawals from such account shall be made as provided in the written agreement required under ss. 626.8817 and 626.882 ~~between the administrator and the insurer~~ for any of the following:

(a) Remittance to an insurer entitled to such remittance.

(b) Deposit in an account maintained in the name of such insurer.

(c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by such insurer.

(d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.

(e) Payment to the administrator of the commission, fees, or charges of the administrator.

(f) Remittance of return premium to the person or persons entitled to such return premium.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of, and as authorized by, such insurer or its designee.

Section 20. Subsection (3) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(3) The insurer shall retain the right of continuing

access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator on~~ the proprietary rights of the parties in such books and records.

Section 21. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before April ~~March~~ 1 or within such extension of time therefor as the office for good cause may have granted and shall be for the preceding calendar year or for the preceding fiscal year if the administrator's accounting is on a fiscal-year basis. The statement shall be in such form and contain such matters as the commission prescribes and shall be verified by at least two officers of such administrator. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office on or before July ~~June~~ 1 for the preceding calendar or fiscal year ~~ending December 31~~. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's audited financial statement within 5 months after the end of its fiscal year.~~ An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:

(a) Amounts shown on the consolidated audited financial statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

Section 22. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and~~ Insurer reporting requirements.—

~~(1) Each surplus lines agent shall on or before the 45th day following each calendar quarter file with the Florida~~

~~Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

(1)~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during such calendar quarter.

(2)~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year.

(3)~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4)~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or shall be submitted on forms prescribed by the Florida Surplus Lines Service Office and shall show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 23. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office~~,~~ and remit the tax to the Florida Surplus Lines Service Office on or before the 45th day following each calendar quarter ~~at the same time as provided for the filing of the quarterly affidavit, under s. 626.931~~. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b)~~,~~ within 10 days after ~~of~~ receipt.

Section 24. Subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code~~,~~ on any of the following grounds:

(a) Removal of the licensee's office from the licensee's state of residence.

(b) Removal of the accounts and records of his or her surplus lines business from this state or the licensee's state of residence during the period when such accounts and records are required to be maintained under s. 626.930.

(c) Closure of the licensee's office for more than 30 consecutive days.

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

(d) ~~(e)~~ Failure to pay the tax or service fee on surplus lines premiums~~,~~ as provided in the Surplus Lines Law.

(e) ~~(f)~~ Suspension, revocation, or refusal to renew or continue the license or appointment as a general lines agent, service representative, or managing general agent.

(f) ~~(g)~~ Lack of qualifications as for an original surplus lines agent's license.

(g) ~~(h)~~ Violation of this Surplus Lines Law.

(h) ~~(i) For~~ Any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 or s. 626.621.

Section 25. Subsection (1) of section 626.936, Florida Statutes, is amended to read:

626.936 Failure to file reports or pay tax or service fee; administrative penalty.—

(1) A ~~Any~~ licensed surplus lines agent who neglects to

file a report ~~or an affidavit~~ in the form and within the time required or provided for in the Surplus Lines Law may be fined up to $50 per day for each day the neglect continues, beginning the day after the report ~~or affidavit~~ was due until the date the report ~~or affidavit~~ is received. All sums collected under this section shall be deposited into the Insurance Regulatory Trust Fund.

Section 26. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine <u>whether</u> ~~if~~ a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the

amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income that ~~which~~ produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer's ~~insurer~~ having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method, or a straight average of

model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 27. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 180 ~~60~~ days after the commission has made such findings. This paragraph does not prohibit an insurer from using a

straight average of model results or output ranges or using straight averages for the purposes of a rate filing under s. 627.062.

Section 28. Subsection (8) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(8) Rates are not unfairly discriminatory if averaged broadly among members of a group; nor are rates unfairly discriminatory even though they are lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to ensure ~~assure~~ that nonmembers of the group are not unfairly discriminated against. New programs or changes to existing programs that result in at least ~~use of~~ a single United States Postal Service zip code being used as a rating territory shall be deemed submitted pursuant to paragraph (1)(a) ~~unfairly discriminatory~~. Any rating territory shall incorporate sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible and not unfairly discriminatory.

Section 29. Subsections (2), (3), and (4) of section 627.072, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows for negotiation of a premium between the employer and the insurer for employers having exposure in more than one state and an estimated annual standard premium in this state of $175,000 and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Section 30. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.—

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(3) ~~627.072(2)~~, from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 31. Paragraph (h) of subsection (5) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(5)

(h) Any premium or assessments collected by the plan in excess of the amount necessary to fund projected ultimate incurred losses and expenses of the plan and not paid to insureds of the plan in conjunction with loss prevention or dividend programs shall be retained by the plan for future use. Any state funds received by the plan in excess of the amount necessary to fund deficits in subplan D or any tier shall be returned to the state. Any dividend that cannot be paid to a former insured of the plan because the former insured cannot be reasonably located shall be retained by the plan for future use.

Section 32. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. ~~627.4133(2)(b)4.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 33. Section 627.3519, Florida Statutes, is repealed.

Section 34. Section 627.409, Florida Statutes, is amended to read:

627.409 Representations in applications; warranties.—

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and ~~is~~ not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material ~~either~~ to the acceptance of the risk or to the hazard assumed by the insurer.

(b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

(2) A breach or violation by the insured of a ~~any~~ warranty, condition, or provision of a ~~any~~ wet marine or transportation insurance policy, contract of insurance, endorsement, or application ~~therefor~~ does not void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.

(3) For residential property insurance, if a policy or contract is in effect for more than 90 days, a claim filed by

the insured may not be denied based on credit information available in public records.

Section 35. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an~~

~~affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for ~~in connection with~~ the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2.~~3.~~ If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is

canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract is in effect for 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records. ~~The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover~~

~~collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

6.~~5.~~ Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies.

The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7.~~6.~~ A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 36. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of a ~~any~~ claim that ~~which~~ might be made shall provide, within 30 days after ~~of~~ the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager, ~~or~~ superintendent, or licensed company adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~ insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 37. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines

residential property, commercial nonresidential property, farm owners' insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes ~~shall constitute~~ delivery to the insured or to the person entitled to delivery~~,~~ unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.

Section 38. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or be sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide a sample copy of the notice to the insured's insurance agent before or at the same time that notice is given to the insured. Such notice shall be entitled "Notice

of Change in Policy Terms."

Section 39. Section 627.4553, Florida Statutes, is created to read:

627.4553 Recommendations to surrender.—If an insurance agent recommends the surrender of an annuity or life insurance policy containing a cash value and does not recommend that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy, before execution of the surrender, the insurance agent, or the insurance company if no agent is involved, shall provide, on a form that satisfies the requirements of the rule adopted by the department, information relating to the annuity or policy to be surrendered. Such information shall include, but is not limited to, the amount of any surrender charge, the loss of any minimum interest rate guarantees, the amount of any tax consequences resulting from the transaction, the amount of any forfeited death benefit, and the value of any other investment performance guarantees being forfeited as a result of the transaction. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

Section 40. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department

or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules shall provide for:

(b) Qualifications, denial of application, suspension, revocation of approval, and other penalties for ~~of~~ mediators as provided in s. 627.745 and in the Florida Rules of Certified and Court Appointed Mediators~~, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 41. Section 627.70151, Florida Statutes, is created to read:

627.70151 Appraisal; conflicts of interest.—An insurer that offers residential coverage, as defined in s. 627.4025, or a policyholder that uses an appraisal clause in the property insurance contract to establish a process of estimating or evaluating the amount of the loss through the use of an impartial umpire may challenge the umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists between the umpire and any party or a representative of any party;

(2) The umpire has previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, which includes the claim, same property, or an adjacent property and that other person's interests are materially adverse to the interests of any party; or

(4) The umpire has worked as an employer or employee of any party within the preceding 5 years.

Section 42. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who is not otherwise ineligible for certification as provided in s. 627.7074.

Section 43. Subsections (3), (7), and (18) of section 627.7074, Florida Statutes, are amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(3) Following the receipt of the report provided under s.

627.7073 or the denial of a claim for a sinkhole loss, the insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section, if there is coverage available under the policy and the claim was submitted within the timeframe provided in s. 627.706(5). Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015 but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail.

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party, in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a

substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

(b) The department shall deny an application, or suspend or revoke its certification, of a neutral evaluator to serve in such capacity if the department finds that one or more of the following grounds exist:

1. Lack of one or more of the qualifications for certification specified in this section.

2. Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the certification.

3. Demonstrated lack of fitness or trustworthiness to act as a neutral evaluator.

4. Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of business in the financial services industry.

5. Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party to commit such a violation.

(c) ~~(b)~~ The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the

parties cannot agree to a neutral evaluator within 14 business days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(d) ~~(c)~~ Within 14 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall make reasonable efforts to hold the conference within 90 days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a neutral evaluation conference held outside this timeframe.

(18) The department shall adopt rules of procedure for the neutral evaluation process and adopt rules for certifying, denying certification of, suspending certification of, and revoking certification as a neutral evaluator.

Section 44. Subsection (8) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(8) At its expense, the insurer may require that a uniform mitigation verification form provided by a policyholder, a

policyholder's agent, or an authorized mitigation inspector or inspection company be independently verified by an inspector, an inspection company, or an independent third-party quality assurance provider which possesses a quality assurance program before accepting the uniform mitigation verification form as valid. At its option, the insurer may exempt from additional independent verification any uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company that possesses a quality assurance program that meets standards established by the insurer. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, an authorized mitigation inspector, or an inspection company to Citizens Property Insurance Corporation is not subject to such additional verification and the property is not subject to reinspection by the corporation, absent material changes to the structure for the term stated on the form, if the form signed by a qualified inspector was submitted to, reviewed, and verified by a quality assurance program approved by the corporation before submission of the form to the corporation.

Section 45. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or

institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of

durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies from March 1 until the last day of February ~~throughout the remainder~~ of the following ~~that~~ year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An

insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under

subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 46. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(1) A private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, may not be issued in this state unless the insurer has inspected the motor vehicle in accordance with this section. Physical damage coverage on a motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide required documents. However, payment of a claim may be conditioned upon the insurer's receipt of the required documents, and physical damage loss occurring after the effective date of coverage is not payable until the documents are provided to the insurer.

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle~~,~~ if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from a licensed motor vehicle dealer or leasing company~~,~~ if the

insurer is provided with:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~,~~ ~~including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

~~For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide the required documents. However, payment of a claim is conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage is payable until the documents are provided to the insurer.~~

Section 47. Paragraph (b) of subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)

(b) To qualify for approval as a mediator, an individual ~~a~~

~~person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Supreme Court certified circuit court mediator. A circuit court mediator whose certification is in a lapsed, suspended, sanctioned, or decertified status is not eligible to participate in the program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department. The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~e. Insurance nomenclature~~.

(4) The department shall deny an application, or suspend

or revoke its approval, of a mediator to serve in such capacity if the department finds that one or more of the following grounds exist:

(a) Lack of one or more of the qualifications for approval specified in this section.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator.

(d) Fraudulent or dishonest practices in the conduct of mediation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department, violation of the Florida Rules of Certified and Court Appointed Mediators, or aiding, instructing, or encouraging another party to commit such a violation.

The department may adopt rules to administer this subsection.

Section 48. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office

determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by May ~~March~~ 31 of the year after the reporting year. The commission shall adopt rules regarding the collection and analysis of the data from the title insurance industry.

Section 49. Subsection (4) of section 627.841, Florida Statutes, is amended to read:

627.841 Delinquency, collection, cancellation, and payment ~~check~~ return charge ~~charges~~; attorney ~~attorney's~~ fees.—

(4) In the event that a payment is made to a premium finance company by debit, credit, electronic funds transfer, check, or draft and such payment ~~the instrument~~ is returned, declined, or cannot be processed due to ~~because of~~ insufficient funds ~~to pay it~~, the premium finance company may, if the premium finance agreement so provides, impose a return payment charge of $15.

Section 50. Subsections (1), (3), (10), and (12) of section 628.461, Florida Statutes, are amended to read:

628.461 Acquisition of controlling stock.—

(1) A person may not, individually or in conjunction with any affiliated person of such person, acquire directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 ~~5~~ percent or more of the outstanding voting

securities of a domestic stock insurer or of a controlling company~~,~~ unless:

(a) The person or affiliated person has filed with the office and sent to the insurer and controlling company a letter of notification regarding the transaction or proposed transaction within ~~no later than~~ 5 days after any form of tender offer or exchange offer is proposed~~,~~ or within ~~no later than~~ 5 days after the acquisition of the securities if no tender offer or exchange offer is involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved;

(b) The person or affiliated person has filed with the office a statement as specified in subsection (3). The statement must be completed and filed within 30 days after:

1. Any definitive acquisition agreement is entered;

2. Any form of tender offer or exchange offer is proposed; or

3. The acquisition of the securities~~,~~ if no definitive acquisition agreement, tender offer, or exchange offer is involved; and

(c) The office has approved the tender or exchange offer, or acquisition if no tender offer or exchange offer is involved, and approval is in effect.

~~In lieu of a filing as required under this subsection, a party~~

~~acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation and control. The disclaimer shall fully disclose all material relationships and basis for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation and control. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the office disallows the disclaimer. The office shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.~~ A filing as required under this subsection must be made as to any acquisition that equals or exceeds 10 percent of the outstanding voting securities.

(3) The statement to be filed with the office under subsection (1) and furnished to the insurer and controlling company shall contain the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the policyholders and shareholders of the insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made; and, if the

acquisition is to be made by, or on behalf of, a corporation, association, or trust, as to the corporation, association, or trust and as to any person who controls either directly or indirectly the corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust;

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(c) Any plans or proposals which such persons may have made to liquidate such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals which such persons may have made to liquidate any controlling company of such insurer, to sell any of its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(d) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired; ~~and~~

(e) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the insurer or controlling company, including, but

not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof;

(f) Effective January 1, 2015, an agreement by the person required to file the statement that the person will provide the annual report specified in s. 628.801(2) if control exists; and

(g) Effective January 1, 2015, an acknowledgement by the person required to file the statement that the person and all subsidiaries within the person's control in the insurance holding company system will provide, as necessary, information to the office upon request to evaluate enterprise risk to the insurer.

(10) Upon notification to the office by the domestic stock insurer or a controlling company that any person or any affiliated person of such person has acquired 10 ~~5~~ percent or more of the outstanding voting securities of the domestic stock insurer or controlling company without complying with ~~the provisions of~~ this section, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the domestic stock insurer or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the

person, individually or in connection with any affiliated person of such person, has acquired 10 ~~5~~ percent or more of the outstanding voting securities of a domestic stock insurer or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this subsection that the person or affiliated person has acquired voting securities of a domestic stock insurer or controlling company in violation of this section, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

(12)(a) A presumption of control may be rebutted by filing a disclaimer of control. Any person may file a disclaimer of control with the office. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. The disclaimer of control shall be filed on a form prescribed by the office, or a person or acquiring party may file a disclaimer of control by filing with the office a copy of a Schedule 13G on file with the Securities and Exchange Commission pursuant to Rules 13d-1(b) or 13d-1(c) under the Securities Exchange Act of 1934, as amended. After a disclaimer is filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless the office disallows the disclaimer. ~~For the purpose of this section, the term~~

~~"affiliated person" of another person means:~~

~~1. The spouse of such other person;~~

~~2. The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;~~

~~3. Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;~~

~~4. Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;~~

~~5. Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person;~~

~~6. Any officer, director, partner, copartner, or employee of such other person;~~

~~7. If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;~~

~~8. If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or~~

~~9. Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of a domestic stock insurer or controlling company.~~

(b) Any controlling person of a domestic insurer who seeks to divest the person's controlling interest in the domestic insurer in any manner shall file with the office, with a copy to the insurer, confidential notice, not subject to public inspection as provided under s. 624.4212, of the person's proposed divestiture at least 30 days before the cessation of control. The office shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer must file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the office, in its discretion, determines that confidential treatment interferes with enforcement of this section. If the statement required under subsection (1) is otherwise filed, this paragraph does not apply. ~~For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more domestic stock insurance companies.~~

Section 51. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Uses ~~Utilizes~~ a contractual liability insurance policy approved by the office that: ~~which~~

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, regardless of whether ~~or not~~ it has been reported.

~~(7) A contractual liability policy must insure 100 percent~~

~~of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation~~

~~system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of~~

~~coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 52. Except as otherwise provided in this act, this act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders
SPONSOR(S): Insurance & Banking Subcommittee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer JB	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for enforcing and administering ch. 494, F.S. (the Act), which governs the regulation of non-depository residential loan originators, mortgage brokers, and mortgage lenders. Licensure of these individuals and entities is conducted through the Nationwide Mortgage Licensing System & Registry, as required by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) created the Consumer Financial Protection Bureau (CFPB) and authorized the CFPB to enforce and write regulations for many existing federal consumer protection laws. Dodd-Frank also made significant changes to federal mortgage loan origination and lending laws, which has resulted in several potential inconsistencies and redundancies with the Act.

The bill:

- Makes several changes to the Act's provisions regarding mortgage fees and disclosures, where they may be inconsistent or duplicative with Dodd-Frank and the CFPB mortgage regulations;
- Authorizes the OFR to conduct joint or concurrent examinations with any state or federal regulatory agency and to share examination material with those regulators;
- Authorizes the OFR to take administrative action against applicants found to be engaging in pre-licensing examination misconduct, and reenacts the OFR's authority to enforce the federal Real Estate Settlement Procedures Act and the Truth in Lending Act;
- Repeals provisions in the Act regarding arbitration, fees, the loan application process; the Florida Fair Lending Act and the Loans Under Florida Uniform Land Sales Practices Law (parts IV and V of ch. 494, F.S.);
- Provides for an extended license renewal period for all individuals and entities licensed under the Act; and
- Makes technical or clarifying changes to the Act.

The bill has a positive, yet indeterminate fiscal impact on state revenues. The bill allows for new fees for late renewal or reinstatement of licensure for loan originators, mortgage brokers, mortgage broker branch office locations, mortgage lenders, and mortgage lender branch offices. According to the OFR, the number of licensees that would use the late renewals and reinstatement capability is unknown at this time. The bill potentially has a positive impact on the private sector, in that regulatory requirements for the residential, non-depository mortgage professionals in Florida are simplified.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Loan Originators and Mortgage Brokers Act (ch. 494, F.S.)

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for enforcing and administering ch. 494, F.S. (the Act), which governs the regulation of non-depository residential loan originators, mortgage brokers, and mortgage lenders. The following is a brief description of the various licenses under the Act:

- *Loan originator*: This license is required for an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, processes a mortgage loan application, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes the activities of a loan originator as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, codified at 12 U.S.C. 5101 et seq., "S.A.F.E.")
- *Mortgage broker*: This license is required for an entity conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.[1]
- *Mortgage lender*: This license is required for an entity making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a non-institutional investor. Making a mortgage loan means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.[2]
- *Mortgage lender servicer*: This licensing endorsement is required for any mortgage lender licensee who services a mortgage loan. "Servicing a mortgage loan" means to receive, cause to be received, or transferred for another, installment payments of principal, interest, or other payments pursuant to a mortgage loan. A "servicing endorsement" means authorizing a mortgage lender to service a loan for more than 4 months. A mortgage lender servicer may also conduct those activities described under Mortgage Lender without the need for two separate licenses.[3]
- *Branch licenses:* This license is required for company licensees who conduct business at locations other than the main license holder's principal place of business: (a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this chapter; (b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated or negotiated. (c) At which mortgage loans are originated or negotiated by a licensee.[4]

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.)

In 2008, Congress enacted the Housing and Economic Recovery Act. Title V of this act is the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E.).[5] The intent of S.A.F.E. was to provide greater accountability and regulation of *individual* loan originators and to enhance consumer protections by establishing minimum licensure and registration requirements and a national registry for consumer to inquire into the credentials and disciplinary history of such loan originators. S.A.F.E. requires non-depository mortgage loan originators to be state-licensed in accordance with the following minimum standards of S.A.F.E.:

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[1] Section 494.001(21), F.S.
[2] Section 494.001(19), (22), F.S.
[3] Sections 494.001(33), (34); 494.00611(1)(e), F.S.
[4] Sections 494.001(3), F.S.; 494.000036; 494.0066, F.S.
[5] Section 494.001(16), F.S.

- Criminal history background checks and specified disqualifying periods for certain convictions and pleas,
- Credit background checks for "financial responsibility" determination,
- No loan originator license revocation in any state,
- Pre-licensure education and testing,
- Continuing education,
- States must also establish a net worth, surety bond, or recovery fund, and
- All states must licensure mortgage loan originators through the Nationwide Mortgage Licensing System & Registry ("NMLS").

S.A.F.E. required all states to implement these minimum licensure and regulatory standards and for the U.S. Department of Housing and Urban Development (HUD) to determine whether each state met the federally mandated minimums. In response, the Florida Legislature enacted CS/CS/SB 2226 in 2009, which substantially amended the Act to bring Florida into compliance with S.A.F.E.[6]

Nationwide Mortgage Licensing System (NMLS)[7]

NMLS is the sole system of licensure for mortgage companies for 54 state agencies and the sole system of licensure for Mortgage Loan Originators (MLOs) for 58 state and territorial agencies. The NMLS is also the system of record for many other non-depository, financial services licensing or registration frameworks for participating state agencies, and provided operational uniformity for companies and individuals seeking to apply for, amend, renew and surrender license authorities managed through NMLS by 58 state or territorial governmental agencies. NMLS itself does not grant or deny license authority.

NMLS was created by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators[1] and began operations in January 2008. It is owned and operated by the State Regulatory Registry LLC,[2] a wholly owned subsidiary of CSBS.[8]

Dodd-Frank & the U.S. Consumer Financial Protection Bureau

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank") was signed into law. It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent "to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."[9]

Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System. Dodd-Frank:

- Assigned the CFPB broad authority to examine and enforce consumer protection regulations over all mortgage-related businesses, large non-bank financial companies, and banks and credit unions with assets greater than $10 billion. In essence, Dodd-Frank makes the CFPB the primary regulator over non-depository lenders.
- Granted broad authority to the CFPB to write regulations to protect consumers from unfair and deceptive financial products, acts, or practices.
- Consolidated and transferred most federal consumer financial protection authority under the CFPB's jurisdiction, including[10]:
    - Real Estate Settlement and Procedures Act (RESPA)
    - Truth in Lending Act (TILA)

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[6] Chapter 2009-241, L.O.F.

[7] The Act refers to NMLS as "the registry," which is defined at s. 494.001(31), F.S.

[8] "About NMLS," at http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx (last accessed February 4, 2014).

[9] "Creating the Consumer Bureau," at http://www.consumerfinance.gov/the-bureau/creatingthebureau/ (last accessed February 6, 2014).

[10] Dodd-Frank required the Secretary of the U.S. Treasury to establish a designated transfer date by which the CFPB would receive certain rulemaking, supervision, and enforcement powers from seven existing federal agencies. The Treasury Secretary established July 11, 2011, or one year after the enactment of Dodd-Frank, as the designated transfer date. See 75 FR 57272 (Sept. 20, 2010) and 76 FR 43569 (July 21, 2011).

- Home Ownership and Equity Protection Act (HOEPA)
- Home Mortgage Disclosure Act (HMDA)
- HUD's regulations promulgated under S.A.F.E.

Title XIV of Dodd-Frank, also known as the Mortgage Reform and Anti-Predatory Lending Act, made significant changes to mortgage loan origination and lending standards, to be discussed below. The CFPB has issued several mortgage regulations implementing the changes to the various federal laws above.[11]

Regulation X of RESPA states that "state laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency." However, a state law or regulation that provides greater protection to consumers is not an inconsistency.[12] This "only if consistent" preemption standard also applies to TILA, although to a more limited extent.

Effect of the Bill

License renewals - Sections 5, 6, 7, 13, and 14

Currently, mortgage licensees in Florida must submit a renewal request through NMLS from November 1 to December 31 every year, and meet other renewal requirements (completion of continuing education requirements, payment of applicable renewal fees, and authorization to run a new criminal background check and credit report check). According to the NMLS, 48 out of 60 state licensing authorities allow for late renewals/reactivations, with varying late fees and deadlines.[13] However, following the S.A.F.E. implementation legislation in 2009, Florida does not allow for late renewals, so that licenses that have not been renewed by December 31 will automatically expire and persons desiring to continue in the mortgage industry must submit a new initial application.[14] Branch office licenses must also be renewed annually at the time the main license is renewed.[15]

The bill's language for late renewals, which has been modeled after several other state lending laws, provides an additional 60 days to renew all mortgage license types. As a result, all licensees who do not renew between December 31 and February 28[16] will be placed in a "failed to renew" status, and will be required to pay a reinstatement fee outside of the registry to reactivate the license. The new reinstatement fees range from $150 to $475, depending on the type of license being reinstated. However, licensees who do not complete the renewal process after February 28 would then be placed in a "terminated-expired" status and will have to submit new initial applications if they desire to continue doing mortgage business in Florida.

Indirect owners of a mortgage company

Currently, the Act requires "control persons" of a mortgage company (broker or lender) to be fingerprinted and screened for their criminal background history and credit reports to determine their fitness to be on a company license.[17] Such persons possess the power to direct the management or policies of a company, whether through the 10% or more ownership of securities or capital contribution, by contract, or otherwise.[18] However, the NMLS Company Form asks applicants to disclose "are there any *indirect*

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[11] CFPB "Mortgage Rules at a Glance," at http://www.consumerfinance.gov/mortgage-rules-at-a-glance/ (last accessed February 7, 2014).
[12] 24 C.F.R. 3500.13 (relation to state laws).
[13] NMLS Renewal Deadlines Chart (accessed February 6, 2014), on file with the Insurance & Banking Subcommittee staff.
[14] *See* Rules 69V-40.0313, 69V-40.0322, and 69V-40.0612, F.A.C.
[15] Sections 494.0036 and 494.0066, F.S.
[16] The NMLS provides that the reinstatement period will be open from January 1st through February 28th. .NMLS Renewal Period End and Reinstatement, at http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx (last accessed February 6, 2014).
[17] Sections 494.00321 and 494.0067, F.S.
[18] Section 494.001(6), F.S.

owners of the entity required to be reported?"[19] According to the OFR, the NMLS uniform application form uses a 25% ownership threshold, and the Act's lack of a definition of "indirect owner" creates a disconnect from the definition of "control person," especially for large mortgage lender or broker companies with complex corporate structures.[20]

Accordingly, Section 1 of the bill creates a definition of "indirect owner" which closely parallels the definition of "control person," but uses a 25% ownership threshold.

Joint and concurrent examinations

Currently, the Act authorizes the OFR to conduct intermittent examinations of any licensee or other person, and allows the OFR to recover travel and per diem out-of-state examination costs from the licensee.[21]

Section 2 of the bill authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and furnish copies of all examinations to an appropriate regulator, if said regulator agrees to maintain the confidentiality requirements applicable to such examinations pursuant to chs. 119 and 494, F.S.[22] The OFR is also authorized to accept an examination from an appropriate regulator.

Administrative penalty for pre-licensure examination misconduct

Currently, all loan originator applicants seeking licensure must abide by the NMLS Rules of Conduct for Test Takers, which prohibits misconduct, assistance and the use of study materials during pre-licensure examinations.[23] The NMLS Rules of Conduct provide that test center representatives may report any alleged violations to the state(s) in which the applicant is seeking licensure.

Section 3 of the bill makes it a ground for administrative action (denial of licensure, action against an existing license, or administrative fines) by the OFR when a mortgage loan originator applicant violates the NMLS Rules of Conduct in connection with a pre-licensing examination.

Arbitration

Section 4 of the bill repeals s. 494.0028, F.S., relating to arbitration. Currently, this provision authorizes arbitration between noninstitutional investors or borrowers and a mortgage lender or broker regarding mortgage broker agreements, servicing agreements, loan applications, or purchase agreements. Currently, the Act allows the noninstitutional investor or borrower to elect arbitration before the American Arbitration Association or other approved arbitration forum, and provides that any election under this section is irrevocable.

However, Dodd-Frank amended the federal Truth in Lending Act to prohibit creditors from including mandatory arbitration terms or any other non-judicial procedure in residential mortgages and open-end consumer credit secured by principal dwellings. The CFPB's implementing rule took effect January 10,

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[19] NMLS Company Form, at http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS% (last accessed February 6, 2014).

[20] E-mail with the OFR (January 31, 2014), on file with the Insurance & Banking Subcommittee staff.

[21] Section 494.0012(3), F.S.

[22] The Public Records Act (ch. 119, F.S.) contains an agency-specific exemption for the OFR, in which any information that the OFR *receives* from other state or federal regulatory, administrative, or criminal justice agencies that confidential or exempt in accordance with the laws of the other agency. Additionally, this exemption provides confidentiality for any information that the OFR *receives or develops* as part of a joint or multiagency examination or investigation with these other agencies and that the OFR may obtain and use this information in accordance with a joint or multiagency agreement, except to any information that would otherwise be public if the OFR independently conducted an investigation or examination under Florida law. Section 119.0712(3), F.S. Section 494.00125, F.S., contains a similar regulatory information-sharing exemption and allows the OFR to share confidential and exempt information to any law enforcement or regulatory agency.

[23] NMLS Rules of Conduct for Test Takers, at http://mortgage.nationwidelicensingsystem.org/profreq/Documents/Test%20Taker%20Rules%20of%20Conduct.pdf (last accessed February 6, 2014).

2014. This federal prohibition does not apply to certain time-share plans or for a home equity line of credit secured by the consumer's principal dwelling.[24]

Mortgage call reports

Due to a S.A.F.E. requirement, the Act requires mortgage broker and mortgage lender licensees to file "reports of condition" to the NMLS, in such form and containing such information as NMLS may require.[25] NMLS refers to these as "mortgage call reports," and these reports involve:

- *Residential mortgage loan activity information* (application, closed loan, individual loan originator, line of credit, and repurchase information by state), which must be submitted quarterly (within 45 days of the end of every calendar quarter), and
- *Financial condition* (financial information at the company level), which NMLS requires to be filed annually with the company's fiscal year end.[26]

In order to clarify the OFR's authority to enforce the timely filing of the mortgage call report, sections 9 and 15 of the bill authorize the Financial Services Commission to prescribe by rule the timeframe by which mortgage broker and mortgage lender licensees must file the reports of condition, which the bill also defines as synonymous with the NMLS Mortgage Call Report.

Provisions of the Act affected by Dodd-Frank changes

It is noted that the Act currently authorizes the OFR to enforce the provisions of the Real Estate Settlement Procedures Act and the Truth in Lending Act and any regulations adopted thereunder, and to pursue administrative fines and license sanctions against a licensee (or person required to be licensed).[27] However, in light of the significant changes to these federal laws, reenactment of this provision is necessary for the OFR to enforce these federal changes that have been adopted after the last time the Florida Legislature reenacted s. 494.00255(1)(m), F.S.[28] As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed *at the time* the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.[29] The Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body "that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.[30]

The bill also amends or removes provisions in the Act that are potentially inconsistent or redundant with the new changes to RESPA and TILA.

Section 1 of the bill amends the definition of "loan origination fee." Currently, it is defined as the total compensation from any source received by a mortgage broker acting as a loan originator, and requires any payment for processing the mortgage loan application must be included in the fee and paid to the mortgage broker.[31] However, Dodd-Frank and CFPB implementing regulations now prohibit loan originators from receiving compensation that varies based on the terms of a loan (other than the amount of principal), and provides for certain exceptions. This is intended to prohibit yield spread premiums or other similar compensation based on terms (including rate) that would cause a loan originator to "steer" borrowers to

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[24] Section 1414 of Dodd-Frank; 78 FR 11279 (Feb. 15, 2013), finalizing a proposal issued on August 17, 2012 (77 FR 55271 (Sept. 7, 2012) (2012 Loan Originator Proposal)), amending 12 C.F.R. Parts 1026 (Regulation Z). The amendment to Reg Z that prohibits arbitration is effective June 1, 2013.

[25] Section 1505(e) of S.A.F.E.; Sections 494.004(3) and 494.0067(13), F.S.

[26] NMLS Mortgage Call Report, at http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx (last accessed February 6, 2014).

[27] Section 494.00255(1)(m), F.S.

[28] It appears that the last time the Act readopted RESPA and TILA was in the 2011 legislative session (s. 14 of ch. 2011-071, L.O.F.).

[29] See *Overstreet v. Blum,* 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

[30] *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). *See also Freimuth v. State*, 272 So.2d 473 (Fla.1972); *State v. Camil*, 279 So.2d 832 (Fla.1973).

[31] Section 494.001(16), F.S.

particular mortgage products.[32] Additionally, Dodd-Frank created new requirements for "qualified mortgages" – a mortgage which would have certain characteristics and requirements and, if those required features are met, the loan would be given either a "safe harbor" or "rebuttable presumption" status. One of the requirements is a 3 percent cap on points and fees for loan amounts that are $100,000 or greater. Lesser loan amounts also have fee cap restrictions. Due to Florida's requirement for the processing fee to be part of the origination fee, mortgage broker businesses must include this fee towards the 3 percent cap. If this fee was not required to be part of the origination fee, it would not have to be included unless the processing company being used was affiliated with the creditor and/or mortgage broker. The inclusion of processing fees, more than likely from contract processing companies, may result in mortgage broker businesses no longer utilizing the services of a contract processor and attempting to process files on their own. The unintended consequence of this decision may result in a loss of checks and balances on a file and potential harm to the consumer.[33] The bill amends the definition of "loan origination fee" to remove payment for processing a mortgage application.

Section 8 of the bill amends s. 494.0038, F.S., relating to loan origination fees and disclosures. Currently, the Act prohibits loan origination fees unless there has been a written, signed mortgage brokerage agreement between the broker and the borrower that contain certain disclosures. The Act requires that at least 3 business days before the execution of a closing or settlement statement, the broker must provide a written disclosure. In addition, Section 9 of the bill amends s. 494.004, F.S., relating to requirements of licensees, to:

- Remove certain notification requirements relating to mortgage loan transaction, including the requirement that each licensee must notify a borrower of any material change in the terms of a mortgage loan previously offered to the borrower within 3 business days of being made aware of the change by the mortgage lender.
- Remove language giving the borrower the ability to waive the right to receive such a notice under certain circumstances.

These disclosures are already required by RESPA and the CFPB implementing regulations, which provide for simplified disclosures effective August 1, 2015, and also provide when re-disclosure is required (such as an annual percentage rate increase of 1/8%).[34] Accordingly, the bill:

- Removes language related to loan origination fees between a borrower to a mortgage broker, the requirement for a written mortgage broker agreement describing the services to be provided by the broker, and the execution requirements for such an agreement.
- Removes the requirement that a disclosure must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing.

Section 10 of the bill makes a technical change to s. 494.0042, F.S., relating to loan origination fees, by deleting a cross-reference for a law repealed in section 11 of the bill.

Section 11 of the bill repeals s. 494.00421, F.S., relating to fees earned upon obtaining a bona fide commitment. New federal laws and regulations do not allow most fees before closing to be charged or collected from the borrower, including a commitment fee. Industry advocates recommend the removal of the requirement for a mortgage broker to issue a mortgage broker agreement to a borrower. Under TILA's loan originator compensation requirements, a mortgage broker is not permitted to receive a fee for services rendered prior to the culmination of a transaction. Due to this requirement, a contract for fees between a mortgage broker and a borrower is weakened, since federal requirements do not permit fees to be obtained if a transaction fails to close.[35]

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[32] Section 1403 of Dodd-Frank; effective January 1, 2014.
[33] FAMP bill analysis of HB 623 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.
[34] *Id.*; see also Integrated Mortgage Disclosures Under RESPA (Regulation X) and TILA (Regulation Z), 78 FR 79730 (December 31, 2013).
[35] FAMP bill analysis of HB 673 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

Section 15 of the bill amends s. 494.0067, F.S., relating to requirements of mortgage lenders, to:

- Remove language that is currently found in federal law under 24 CFR 3500.7 and 12 CFR 1026.19.
- Specifically, it removes the requirement that a mortgage lender provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can expect to pay in obtaining a mortgage loan and the delivery requirements of the documents associated with this estimate.
- Remove the requirement that a disclosure related to an adjustable rate mortgage loan and any changes associated with the terms of such loan occur prior to closing be provided to the applicant by the mortgage lender as well as the process for which such notification is furnished by the lender.
- Remove the requirement that a mortgage lender, in every mortgage transaction, notify the borrower of any material changes in the terms of a mortgage loan previously offered to the borrower as well as the process for which such notification is furnished.
- Remove the requirement that a licensee bears the burden of proof that a notification was provided to and accepted by the borrower. It removes the right of a borrower to waive receipt of the notice of a material change.

Section 16 of the bill repeals s. 494.0068, F.S., relating to loan application process, which set forth required disclosures for mortgage lenders. However, federal law already provides for mandatory disclosures under Regulation X of RESPA.[36]

Section 17 of the bill amends s. 494.007, F.S., relating to the commitment process. The bill removes language related to the amount of the commitment fee from the disclosure in writing a mortgage lender must issue if a commitment is issued, in order to align with federal law.

Section 18 of the bill amends s. 494.0073, F.S., relating to mortgage lender when acting as a mortgage broker. The bill deletes a cross-reference (s. 494.004(2), F.S., regarding the 3-day notice of material change), which Section 9 of this bill deletes.

Servicing capabilities

Currently, a mortgage lender may close loans in its own name, but may not service the loan without a "servicing endorsement" (authorization), which currently requires a minimum net worth of $250,000 (versus a minimum net worth of $63,000 for mortgage lenders who do not seek a servicing endorsement).[37] According to FAMP, mortgage lenders have sometimes faced difficulties fulfilling the requirements necessary to transfer servicing rights within the current 4-month timeframe, and has requested that the timeframe be extended to 6 months.[38] Section 15 of the bill amends s. 494.0067, F.S., to permit mortgage lenders to service loans for up to 6 months without a servicing endorsement.

High-cost loans / Florida Fair Lending Act

Part IV of the Act is the Florida Fair Lending Act, which provides certain consumer protections for high-cost home loans, which are typically subprime, equity-based mortgages, and is administratively enforced by the OFR.

- 494.0078 (Florida Fair Lending Act),
- 494.0079 (Definitions),
- 494.00791 (Prohibited Acts),
- 494.00792 (Required Disclosures for High-Cost Home Loans),
- 494.00793 (Liability of Purchasers and Assignees),
- 494.00794 (Right to Cure High-Cost Home Loans),
- 494.00795 (Powers and Duties of the Commission and Office; Investigations, Examinations, Injunctions; Orders),
- 494.00796 (Enforcement), and
- 494.00797 (General Rule).

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[36] 12 CFR § 1026.4.

[37] Section 494.00611(2)(f), F.S.

[38] FAMP bill analysis of HB 631 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

In January 2013, the CFPB issued its final rule amending Regulation Z (TILA) by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act of 1994 (HOEPA), revising and expanding the tests for coverage under HOEPA, and imposing additional restrictions on mortgages that are covered by HOEPA, including a pre-loan counseling requirement. The new rules became effective on January 10, 2014.[39] HOEPA changes include the following requirements for high-cost mortgages:

- Balloon payments are generally banned;
- Prepayment penalties, financing points, mortgage broker points fees, and negative amortization are banned;
- Late fees are restricted to four percent of the payment that is past due, fees for providing payoff statements are restricted, and fees for loan modification or payment deferral are banned.
- Creditors originating HELOCs are required to assess consumers' ability to repay; equity-based lending is eliminated;
- Creditors and mortgage brokers are prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage; and
- Before making a high-cost mortgage, creditors are required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the mortgage.

Due to these changes, FAMP has requested the repeal of part IV, ch. 494, F.S., because federal law will provide broader protections than Florida law with regard to high-cost mortgages.[40] Section 19 of the bill repeals part IV, ch. 494, F.S.

However, the Florida Alliance for Consumer Protection has noted that part IV, ch. 494, F.S., differs from federal law by allowing borrowers to cure the default for high-cost loans in certain circumstances and by providing that any material violation of the Fair Lending Act shall result in the forfeiture of the entire interest charged in the high-cost loan, but there are no such corresponding consumer protections in the federal law.[41]

Loans Under Florida Uniform Land Sales Practices Law

Section 20 of the bill repeals s. 494.008, F.S., relating to the Loans Under Florida Uniform Land Sales Practices Law. This provision was enacted in 1977[42] and provides notice and recording requirements for mortgage loans with face amount of $35,000 or less and is secured by vacant land before the loan can be sold to a mortgagee (other than a financial institution). According to FAMP, this is an obsolete and rarely used provision.[43] According to the Uniform Law Commission, the Model Land Sales Practices Act was promulgated in 1966 and provides regulations for the promotional sale of land. Florida is one of only nine states that has adopted this model act.[44]

Other

Section 12 of the bill amends s. 494.00611, F.S., relating to mortgage lender license. The bill corrects a cross-reference relating to the principal loan originator for a mortgage lender license.

B. SECTION DIRECTORY:

Section 1 of the bill amends s. 494.001, F.S., relating to definitions.

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[39] 78 FR 6855 (January 31, 2013). See also ss. 1431-1432 of Dodd-Frank.
[40] FAMP bill analysis of HB 631 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.
[41] See ss. 494.00794 and 494.00796; F.S.; Florida Alliance for Consumer Protection White Paper on HB 631 (received February 11, 2014), on file with the Insurance & Banking Subcommittee staff.
[42] Section 3, ch. 77-397, L.O.F.
[43] FAMP bill analysis of HB 413, on file with the Insurance & Banking Subcommittee staff.
[44] Uniform Law Commission, "Legislative Fact Sheet – Land Sales Practices," at http://uniformlaws.org/LegislativeFactSheet.aspx?title=Land Sales Practices (last accessed on February 7, 2014).

Section 2 of the bill amends s. 494.0012, F.S., relating to investigations; complaints; examinations.

Section 3 of the bill amends s. 494.00255, F.S., relating to administrative penalties and fines; license violations.

Section 4 of the bill repeals s. 494.0028, F.S., relating to arbitration.

Section 5 of the bill amends s. 494.00313, F.S., relating to loan originator license renewal.

Section 6 of the bill amends 494.00322, F.S., relating to mortgage broker license renewal.

Section 7 of the bill amends s. 494.0036, F.S., relating to mortgage broker branch office renewal.

Section 8 of the bill amends s. 494.0038, F.S., relating to loan origination fees and disclosures.

Section 9 of the bill amends s. 494.004, F.S., relating to requirements of licensees.

Section 10 of the bill amends s. 494.0042, F.S., relating to loan origination fees.

Section 11 of the bill repeals s. 494.00421, F.S., relating to fees earned upon obtaining a bona fide commitment.

Section 12 of the bill amends s. 494.00611, F.S., relating to mortgage lender license.

Section 13 of the bill amends s. 494.00612, F.S., relating to mortgage lender license renewal.

Section 14 of the bill amends s. 494.0066, F.S., relating to branch offices.

Section 15 of the bill amends s. 494.0067, F.S., relating to requirements of mortgage lenders.

Section 16 of the bill repeals s. 494.0068, F.S., relating to loan application process.

Section 17 of the bill amends s. 494.007, F.S., relating to commitment process.

Section 18 of the bill amends s. 494.0073, F.S., relating to mortgage lender when acting as a mortgage broker.

Section 19 of the bill repeals part IV of chapter 494, F.S., relating to the High Cost Loans and Fair Lending Act.

Section 20 of the bill repeals s. 494.008, F.S., relating to the Loans Under Florida Uniform Land Sales Practices Law.

Section 21 of the bill provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The OFR indicates that revenues could potentially increase based on the number of license reinstatements sought after December 31 of each year. The bill allows for new fees for late renewal or reinstatement of licensure for loan originators, mortgage brokers, mortgage broker branch office locations, mortgage lenders, and mortgage lender branch offices. Reinstatement fees range from $150 to $475 outside of the current renewal fee, depending on the type of license being reinstated.

According to the OFR, a projection on the number of potential license reinstatements sought is currently unknown; the fiscal impact on revenues is positive, yet indeterminate at this time.[45]

2. Expenditures:

The OFR indicates that additional expenditures are possible based on the number of license reinstatements sought after December 31 of each year. The increased expenditures would consist of additional workload for existing staff to take the time to electronically notify licensees that their renewal deadline has been missed. In addition, effects of the bill will require minimal configuration changes to the OFR's Regulatory Enforcement and Licensing (REAL) System. According to the OFR, a projection on the number of potential license reinstatements sought is currently unknown; therefore an exact fiscal impact is indeterminate at this time.[46] However, the OFR indicates that any additional workload, as well as any technology configuration changes as a result of this legislation, can be absorbed within their current resources and their current operations and maintenance contract for the REAL system. [47]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases fees to mortgage licensees through the reactivation fee, which allows an expired licensee to renew their license with payment of a fee instead of having to file a new application. According to the OFR, an exact fiscal impact is indeterminate at this time as the OFR cannot project how many licensees will use this reactivation option.[48]

The bill's allowance for late license renewals and regulatory streamlining may be beneficial to the residential, non-depository mortgage industry in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

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[45] OFR's analysis of HB 631 (received February 4, 2014), on file with the Insurance & Banking Subcommittee.
[46] *Id.*
[47] *Id.*
[48] *Id.*

B. RULE-MAKING AUTHORITY:

The bill's allowance for late renewals will require the OFR to amend the following administrative rules regarding license renewal: 69V-40.0313, 69V-40.0322, 69V-40.0612, F.A.C.

The bill grants the Financial Services Commission authority to adopt rules relating to a licensure renewal forms for mortgage lender branch office and a mortgage broker branch office and to adopt rules relating to the deadline by which a mortgage broker must file a report of condition. It removes rulemaking authority relating to an acceptable form for disclosure of brokerage fees. It removes rulemaking authority relating to furnishing of the disclosure relating to the costs an applicant can reasonably expect to pay in obtaining a mortgage loan.

The substantial amendment to s. 494.0038, F.S., regarding loan origination and disclosure requirements, would require the OFR, with approval of the Financial Services Commission, to repeal or amend Rule 69V-40.008, F.A.C. (fees and commissions).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Association of Mortgage Professionals supports this bill.

The Florida Consumer Action Network and Florida Alliance for Consumer Protection support the bill's additions to the Act that enhance and streamline the OFR's enforcement authority and align the Act with the new federal changes. However, they have expressed concerns about the bill's elimination of arbitration, the amendment to the definition of loan origination fee and disclosures required under current law, and the repeal of the Florida Fair Lending Act (part IV, ch. 494, F.S.).[49]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill and made the following changes:

- Provided a March 1 deadline for late license renewals for all license types under the Act, in order to align with dates established by the National Mortgage Licensing System & Registry;
- Clarified the OFR's administrative authority over applicants found to be engaging in pre-licensure examination misconduct; and
- Reenacted and updated the OFR's authority to enforce the federal Real Estate Settlement Procedures Act, the Truth in Lending Act, and related federal regulations due to the recent significant changes to those federal laws and regulations.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

[49] Florida Alliance for Consumer Protection, White Paper: HB 631/SB 666 Loan Originators, Mortgage Brokers, & Mortgage Lenders (received February 11, 2014), on file with the Insurance & Banking Subcommittee staff.

A bill to be entitled

An act relating to loan originators, mortgage brokers, and mortgage lenders; amending s. 494.001, F.S.; providing and revising definitions; amending s. 494.0012, F.S.; authorizing the Office of Financial Regulation to conduct joint or concurrent examinations of licensees; amending s. 494.00255, F.S.; providing that violating specified rules is grounds for disciplinary action; repealing s. 494.0028, F.S., relating to arbitration of disputes involving certain agreements; amending ss. 494.00313 and 494.00322, F.S.; providing for change in license status if a licensed loan originator or mortgage broker fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0036, F.S.; providing guidelines for renewal of a mortgage broker branch office license; providing for change in license status if a licensed branch office fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0038, F.S.; deleting certain requirements regarding loan origination and disclosure; amending s. 494.004, F.S.; deleting a requirement that a licensee provide certain notice to a borrower in mortgage loan transactions; authorizing the Financial Services Commission to adopt rules prescribing the time by which a mortgage broker must

file a report of condition; amending s. 494.0042, F.S.; conforming a cross-reference; repealing s. 494.00421, F.S., relating to required disclosures to borrowers in mortgage broker agreements by mortgage brokers receiving loan origination fees; amending s. 494.00611, F.S.; revising a cross-reference; amending s. 494.00612, F.S.; providing for change in license status if a licensed mortgage lender fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0066, F.S.; providing guidelines for renewal of a mortgage lender branch office license; providing for change in license status if a licensed branch office fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0067, F.S.; deleting requirements that a mortgage lender provide an applicant for a mortgage loan a good faith estimate of costs and written disclosures related to adjustable rate mortgages; deleting requirement that mortgage lender provide notice of material changes in terms of a mortgage loan to a borrower in mortgage loan transactions; revising period during which mortgage lenders may service loans without meeting certain requirements; authorizing the commission to adopt rules prescribing the time by which a mortgage lender must file a report of condition; repealing s.

494.0068, F.S., relating to required disclosures to borrowers by mortgage lenders before the borrower accepts certain fees; amending s. 494.007, F.S.; deleting the requirement that a mortgage lender disclose a certain fee and whether the fee is refundable; amending s. 494.0073, F.S.; conforming a cross-reference; repealing part IV of chapter 494, F.S., relating to the Florida Fair Lending Act; repealing s. 494.008, F.S., relating to conditions for mortgage loans of specified amounts secured by vacant land; providing an effective date.

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

Section 1. Subsections (12) through (36) of section 494.001, Florida Statutes, are renumbered as subsections (13) through (37), respectively, a new subsection (12) is added, and present subsection (15) of that section is amended, to read:

494.001 Definitions.—As used in ss. 494.001-494.0077, the term:

(12) "Indirect owner" means, with respect to direct owners and other indirect owners in a multilayered organization:

(a) For an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or more of voting security of the corporation.

(b) For an owner that is a partnership, each general partner and each limited or special partner that has the right to receive upon dissolution, or has contributed, 25 percent or more of the partnership's capital.

(c) For an owner that is a trust, the trust and each trustee.

(d) For an owner that is a limited liability company:

1. Each member that has the right to receive upon dissolution, or that has contributed, 25 percent or more of the limited liability company's capital; and

2. If managed by elected managers or appointed managers, each elected or appointed manager.

(e) For an indirect owner, each parent owner of 25 percent or more of its subsidiary.

(16)~~(15)~~ "Loan origination fee" means the total compensation from any source received by a mortgage broker acting as a loan originator. ~~Any payment for processing mortgage loan applications must be included in the fee and must be paid to the mortgage broker.~~

Section 2. Subsection (4) is added to section 494.0012, Florida Statutes, to read:

494.0012 Investigations; complaints; examinations.—

(4) To reduce the burden on persons subject to this chapter, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator

if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this chapter. The office may also accept an examination from an appropriate regulator.

Section 3. Paragraph (y) of subsection (1) of section 494.00255, Florida Statutes, is amended, and paragraph (m) of that subsection is reenacted, to read:

494.00255 Administrative penalties and fines; license violations.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person licensed or required to be licensed under part II or part III of this chapter:

(m) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.

(y) Pursuant to an investigation by the Mortgage Testing and Education Board acting on behalf of the registry, being found in violation of Nationwide Mortgage Licensing System and Registry Rules of Conduct.

Section 4. Section 494.0028, Florida Statutes, is repealed.

Section 5. Subsection (3) is added to section 494.00313, Florida Statutes, to read:

494.00313 Loan originator license renewal.—

(3) If a licensed loan originator fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the loan originator's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of $150 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees by March 1, such license is expired and such loan originator must apply for a new loan originator license under s. 494.00312.

Section 6. Subsection (3) is added to section 494.00322, Florida Statutes, to read:

494.00322 Mortgage broker license renewal.—

(3) If a licensed mortgage broker fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the mortgage broker's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of $250 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees by March 1, such license is expired and such mortgage broker must apply for a new

mortgage broker license under s. 494.00321.

Section 7. Subsection (3) of section 494.0036, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

494.0036 Mortgage broker branch office license.—

(3) A branch office license must be renewed annually at the time of renewing the mortgage broker license under s. 494.00322. A nonrefundable branch renewal fee of $225 per branch office must be submitted at the time of renewal. To renew a branch office license, a mortgage broker must:

(a) Submit a completed license renewal form as prescribed by commission rule.

(b) Submit a nonrefundable renewal fee.

(c) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information may include documents that may provide the office with the appropriate information to determine eligibility for license renewal.

(4) The office may not renew a branch office license unless the branch office continues to meet the minimum requirements for initial licensure under this section and adopted rule.

(5) If a licensed branch office fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the branch office's license status shall be changed to "failed

to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of $225 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees by March 1, such license is expired and such branch office must apply for a new mortgage broker branch office license under this section.

Section 8. Section 494.0038, Florida Statutes, is amended to read:

494.0038 ~~Loan origination and~~ Mortgage broker fees ~~and disclosures~~.—

~~(1) A loan origination fee may not be paid except pursuant to a written mortgage broker agreement between the mortgage broker and the borrower which is signed and dated by the principal loan originator or branch manager, and the borrower. The unique registry identifier of each loan originator responsible for providing loan originator services must be printed on the mortgage broker agreement.~~

~~(a) The written mortgage broker agreement must describe the services to be provided by the mortgage broker and specify the amount and terms of the loan origination fee that the mortgage broker is to receive.~~

~~1. Except for application and third-party fees, all fees received by a mortgage broker from a borrower must be identified as a loan origination fee.~~

~~2. All fees on the mortgage broker agreement must be disclosed in dollar amounts.~~

~~3. All loan origination fees must be paid to a mortgage broker.~~

~~(b) The agreement must be executed within 3 business days after a mortgage loan application is accepted if the borrower is present when the mortgage loan application is accepted. If the borrower is not present, the licensee shall forward the agreement to the borrower within 3 business days after the licensee's acceptance of the application and the licensee bears the burden of proving that the borrower received and approved the agreement.~~

~~(2) If the mortgage broker is to receive any payment of any kind from the mortgage lender, the maximum total dollar amount of the payment must be disclosed to the borrower in the written mortgage broker agreement as described in paragraph (1)(a). The commission may prescribe by rule an acceptable form for disclosure of brokerage fees received from the lender. The agreement must state the nature of the relationship with the lender, describe how compensation is paid by the lender, and describe how the mortgage interest rate affects the compensation paid to the mortgage broker.~~

~~(a) The exact amount of any payment of any kind by the lender to the mortgage broker must be disclosed in writing to the borrower within 3 business days after the mortgage broker is made aware of the exact amount of the payment from the lender~~

~~but not less than 3 business days before the execution of the closing or settlement statement. The licensee bears the burden of proving such notification was provided to the borrower. Notification is waived if the exact amount of the payment is accurately disclosed in the written mortgage broker agreement.~~

~~(b) The commission may prescribe by rule the form of disclosure of brokerage fees.~~

~~(3) At the time a written mortgage broker agreement is signed by the borrower or forwarded to the borrower for signature, or at the time the mortgage broker business accepts an application fee, credit report fee, property appraisal fee, or any other third-party fee, but at least 3 business days before execution of the closing or settlement statement, the mortgage broker shall disclose in writing to any applicant for a mortgage loan the following information:~~

~~(a) That the mortgage broker may not make mortgage loans or commitments. The mortgage broker may make a commitment and may furnish a lock-in of the rate and program on behalf of the lender if the mortgage broker has obtained a written commitment or lock-in for the loan from the lender on behalf of the borrower for the loan. The commitment must be in the same form and substance as issued by the lender.~~

~~(b) That the mortgage broker cannot guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.~~

~~(c) A good faith estimate that discloses settlement~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~charges and loan terms.~~

~~1. Any amount collected in excess of the actual cost shall be returned within 60 days after rejection, withdrawal, or closing.~~

~~2. At the time a good faith estimate is provided to the borrower, the loan originator must identify in writing an itemized list that provides the recipient of all payments charged the borrower, which, except for all fees to be received by the mortgage broker, may be disclosed in generic terms, such as, but not limited to, paid to lender, appraiser, officials, title company, or any other third-party service provider. This requirement does not supplant or is not a substitute for the written mortgage broker agreement described in subsection (1). The disclosure required under this subparagraph must be signed and dated by the borrower.~~

~~(4) The disclosures required by this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing. The mortgage broker shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, as amended; its commentary, as amended; and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended; together with the Consumer Handbook on Adjustable Rate Mortgages, as amended; published by the Federal~~

~~Reserve Board and the Federal Home Loan Bank Board. The licensee bears the burden of proving such disclosures were provided to the borrower.~~

~~(5) If the mortgage broker agreement includes a nonrefundable application fee, the following requirements are applicable:~~

~~(a) The amount of the application fee, which must be clearly denominated as such, must be clearly disclosed.~~

~~(b) The specific services that will be performed in consideration for the application fee must be disclosed.~~

~~(c) The application fee must be reasonably related to the services to be performed and may not be based upon a percentage of the principal amount of the loan or the amount financed.~~

~~(6) A mortgage broker may not accept any fee in connection with a mortgage loan other than an application fee, credit report fee, property appraisal fee, or other third-party fee before obtaining a written commitment from a qualified lender.~~

(1)~~(7)~~ Any third-party fee entrusted to a mortgage broker must immediately, upon receipt, be placed into a segregated account with a financial institution located in the state the accounts of which are insured by the Federal Government. Such funds shall be held in trust for the payor and shall be kept in the account until disbursement. Such funds may be placed in one account if adequate accounting measures are taken to identify the source of the funds.

(2)~~(8)~~ A mortgage broker may not pay a commission to any

person not licensed pursuant to this chapter.

(3) ~~(9)~~ This section does not prohibit a mortgage broker from offering products and services, in addition to those offered in conjunction with the loan origination process, for a fee or commission.

Section 9. Subsections (2) and (3) of section 494.004, Florida Statutes, are amended to read:

494.004 Requirements of licensees.—

~~(2) In every mortgage loan transaction, each licensee under this part must notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the mortgage lender but at least 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement is an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial~~

~~emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.~~

(2)~~(3)~~ Each mortgage broker shall submit to the registry reports of condition, which must be in such form and shall contain such information as the registry may require. The commission may adopt rules prescribing the time by which a mortgage broker must file a report of condition. For purposes of this section, the report of condition is synonymous with the registry's Mortgage Call Report.

Section 10. Subsection (3) of section 494.0042, Florida Statutes, is amended to read:

494.0042 Loan origination fees.—

(3) At the time of accepting a mortgage loan application, a mortgage broker may receive from the borrower a nonrefundable application fee. If the mortgage loan is funded, the nonrefundable application fee shall be credited against the amount owed as a result of the loan being funded. A person may not receive any form of compensation for acting as a loan originator other than a nonrefundable application fee, a fee based on the mortgage amount being funded~~, or a fee which complies with s. 494.00421~~.

Section 11. Section 494.00421, Florida Statutes, is repealed.

Section 12. Paragraph (b) of subsection (2) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

(2) In order to apply for a mortgage lender license, an applicant must:

(b) Designate a qualified principal loan originator who meets the requirements of s. 494.00665 ~~494.0035~~ on the application form.

Section 13. Subsection (3) is added to section 494.00612, Florida Statutes, to read:

494.00612 Mortgage lender license renewal.—

(3) If a licensed mortgage lender fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the mortgage lender's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of $475 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees by March 1, such license is expired and such mortgage lender must apply for a new mortgage lender license under s. 494.00611.

Section 14. Subsection (3) of section 494.0066, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

494.0066 Branch offices.—

(3) A branch office license must be renewed at the time of

renewing the mortgage lender license. A nonrefundable fee of $225 per branch office must be submitted at the time of renewal. To renew a branch office license, a mortgage lender must:

(a) Submit a completed license renewal form as prescribed by commission rule.

(b) Submit a nonrefundable renewal fee.

(c) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information may include documents that may provide the office with the appropriate information to determine eligibility for license renewal.

(4) The office may not renew a branch office license unless the branch office continues to meet the minimum requirements for initial licensure under this section and adopted rule.

(5) If a licensed branch office fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the branch office's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of $225 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees by March 1, such license is expired and such branch office must apply for a new mortgage

lender branch office license under this section.

Section 15. Subsections (8) through (13) of section 494.0067, Florida Statutes, are amended to read:

494.0067 Requirements of mortgage lenders.—

~~(8) Each mortgage lender shall provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan. The good faith estimate of costs must be mailed or delivered to the applicant within 3 business days after the licensee receives a written loan application from the applicant. The estimate of costs may be provided to the applicant by a person other than the licensee making the loan. The good faith estimate must identify the recipient of all payments charged to the borrower and, except for all fees to be received by the mortgage broker and the mortgage lender, may be disclosed in generic terms, such as, but not limited to, paid to appraiser, officials, title company, or any other third-party service provider. The licensee bears the burden of proving such disclosures were provided to the borrower. The commission may adopt rules that set forth the disclosure requirements of this section.~~

~~(9) The disclosures in this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered have a material change prior to closing. The lender shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18~~

~~and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, as amended; its commentary, as amended; and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended; together with the Consumer Handbook on Adjustable Rate Mortgages, as amended; published by the Federal Reserve Board and the Federal Home Loan Bank Board. The licensee bears the burden of proving such disclosures were provided to the borrower.~~

~~(10) In every mortgage loan transaction, each mortgage lender shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but at least 3 business days before signing the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to~~

~~receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.~~

(8)~~(11)~~ A mortgage lender may close loans in its own name but may not service the loan for more than 6 ~~4~~ months unless the lender has a servicing endorsement. Only a mortgage lender who continuously maintains a net worth of at least $250,000 may obtain a servicing endorsement.

(9)~~(12)~~ A mortgage lender must report to the office the failure to meet the applicable net worth requirements of s. 494.00611 within 2 days after the mortgage lender's knowledge of such failure or after the mortgage lender should have known of such failure.

(10)~~(13)~~ Each mortgage lender shall submit to the registry reports of condition which are in a form and which contain such information as the registry may require. The commission may adopt rules prescribing the time by which a mortgage lender must file a report of condition. For purposes of this section, the report of condition is synonymous with the registry's Mortgage Call Report.

Section 16. Section 494.0068, Florida Statutes, is repealed.

Section 17. Paragraphs (c), (d), and (e) of subsection (1) of section 494.007, Florida Statutes, are amended to read:

494.007 Commitment process.—

(1) If a commitment is issued, the mortgage lender shall

disclose in writing:

(c) If the interest rate or other terms are subject to change before expiration of the commitment:

1. The basis, index, or method, if any, which will be used to determine the rate at closing. Such basis, index, or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or

2. The following statement, in at least 10-point bold type: "The interest rate will be the rate established by the lender in its discretion as its prevailing rate . . . days before closing."; and

~~(d) The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee is refundable; and~~

(d)~~(e)~~ The time, if any, within which the commitment must be accepted by the borrower.

Section 18. Section 494.0073, Florida Statutes, is amended to read:

494.0073 Mortgage lender when acting as a mortgage broker.—The provisions of this part do not prohibit a mortgage lender from acting as a mortgage broker. However, in mortgage transactions in which a mortgage lender acts as a mortgage broker, the provisions of ss. 494.0038, ~~494.004(2),~~ 494.0042, and 494.0043(1), (2), and (3) apply.

Section 19. Part IV of chapter 494, Florida Statutes, consisting of ss. 494.0078, 494.0079, 494.00791, 494.00792, 494.00793, 494.00794, 494.00795, 494.00796, and 494.00797, is repealed.

Section 20. Section 494.008, Florida Statutes, is repealed.

Section 21. This act shall take effect July 1, 2014.

REGULATORY AFFAIRS COMMITTEE

CS/HB 631 by Rep. Workman
Loan Originators, Mortgage Brokers, and Mortgage Lenders

AMENDMENT SUMMARY
March 12, 2014

Amendment 1 by Rep. Workman (lines 140, 155, 188, 383, and 415): Makes the following change:

- Clarifies that a licensee must meet renewal requirements and pay all required fees before March 1 to reactivate a license.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 631 (2014)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION		
ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Workman offered the following:

Amendment

Remove line 140 and insert:

this section and pay all required fees before March 1, such license

Remove line 155 and insert:

this section and pay all required fees before March 1, such license

Remove line 188 and insert:

this section and pay all required fees before March 1, such license

Amendment No. 1

Remove line 383 and insert:

this section and pay all required fees before March 1, such license

Remove line 415 and insert:

this section and pay all required fees before March 1, such license

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 633 Division of Insurance Agents & Agency Services
SPONSOR(S): Insurance & Banking Subcommittee; Ingram
TIED BILLS: **IDEN./SIM. BILLS:** SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Reilly	Hamon

SUMMARY ANALYSIS

House Bill 633 amends the insurance agency licensure law. Among other changes, the bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions.
- Allows third parties to sign agency applications.
- Specifies circumstances under which branch agencies do not have to be licensed.
- Repeals provision allowing insurance agencies to obtain a registration in lieu of a license; converts all agency registrations to licenses; eliminates the three-year expiration period for agency licenses.
- Repeals current law governing branch agencies, creates s. 626.0428(4), F.S., to define agent in charge and specifies responsibilities.
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with the Department of Financial Services (DFS) within 90 days after the agent in charge on record has left the agency.
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license.
- Requires DFS to immediately suspend the license or appointment of licensees charged with crimes that would preclude them from applying for licensure from DFS.
- Bars applicants for licensure with sealed or expunged criminal history records from denying or failing to acknowledge arrests covered by these records.
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses.
- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer.
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by DFS; requires DFS to deny an application to be a mediator or neutral evaluator (sinkhole claims) or revoke or suspend a mediator or neutral evaluator in certain circumstances.
- Authorizes DFS to investigate improper conduct of mediators, neutral evaluators, and navigators. In all cases, permits DFS to share investigative information with any regulatory agency.
- Amends requirements for licensure as a nonresident surplus lines agent.
- Bars issuance of any new limited customer representative license after September 30, 2014.
- Authorizes additional methods for service of process in certain administrative actions.
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

The bill has an insignificant, yet indeterminate fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund within DFS. According to DFS, the number of application fee exemptions for members of the United States Armed Forces, their spouses, and veterans of the United States Armed Forces who have retired within 24 months prior to application for licensure is unknown at this time. In addition, the bill will require changes to the current licensure system relating to unaffiliated agents and insurance agency licensure. However, DFS confirms that any loss of revenue will be negligible and any technology changes as a result of this legislation will be insignificant and can be implemented and absorbed within current resources.

The bill is effective July 1, 2014, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Agency Licensure

The bill makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. The Department of Financial Services (DFS) is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.[1] According to DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process, DFS believes also licensing the agency serves no purpose. The bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees.

Only specified persons owning or managing an insurance agency may sign an agency license application. The bill amends current law to require the following persons to sign the license application: each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, whether through ownership of voting securities, by contract, by ownership of an agency bank account, or otherwise. Further, the bill allows a third party to complete, submit, and sign an agency license application on the agency's behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

The bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf; the physical address of the branch location, including its name, e-mail address, and telephone number; the date that the branch office began transacting insurance; and the fingerprints of each individual required to be listed in the agency application.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire, whereas licenses expire every three years. DFS indicates that Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. DFS asserts that the number of registered agencies is steadily declining. Over the past four years an average of 38 registered agencies per month have canceled their registrations. Currently, there are over three times as many licensed insurance agencies as registered ones, with over 40,000 licensed agencies and less than 13,000 registered ones.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency. A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with DFS a licensed agent in charge of the branch location; and (2) has submitted to DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

[1] See s. 626.112(7), F.S.

The bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. The bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Agent in Charge

Each person operating an insurance agency and each location of a multiple location agency must designate a licensed and appointed agent in charge for each location.[2] Under current law, the term agent in charge is not defined and the scope of such agent's responsibilities is not clearly delineated. Effective January 1, 2015, the bill deletes s. 626.747, F.S., relating to branch agencies, and creates s. 626.0428(4), F.S., which defines agent in charge and specifies the scope of their responsibilities.

An agent in charge is defined as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency.[3] Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the location(s) when an agent is not physically present and (2) unlicensed employees at the location(s) do not engage in insurance activities that require licensure as an insurance agent or customer representative.

Under the bill, each insurance agency and branch office is required to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with DFS at the DFS website. A change of the designated agent in charge must be reported to DFS within 30 days, and becomes effective upon notification to DFS. An insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. When the agent in charge ends her/his affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended their affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended their affiliation with the agency.

The bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

Title Insurance and Branch Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[4]

With respect to title insurance agents and agencies, the bill limits application of s. 626.0428(4), F.S., which is created by the bill and discussed earlier, to provisions that essentially mirror those currently

[2] See ss. 627.172 and 636.747, F.S.

[3] Regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

[4] Section 627.786, F.S.

found in s. 626.747, F.S., which is repealed by the bill. The reasons for the differential treatment of title insurance agents and agencies with respect to this section are unclear.

Appointment of Agents by Insurers
When certain entities[5] enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is $25,000 or less.

The bill deletes the above-mentioned exception for insurers with no more than $25,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

Unaffiliated Insurance Agent
The bill creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. The bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. The bill prohibits an unaffiliated insurance agent from being affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. However, these agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent, as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received. The bill requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

Temporary Suspension of License or Appointment for Specified Felonies
Under current law, persons who commit a first degree felony; a capital felony; a felony involving money laundering, fraud or embezzlement; or a felony directly related to a financial services business are permanently barred from applying for a license from DFS (e.g., an insurance agent license).[6] The bill requires DFS to immediately temporarily suspend a license or appointment when a licensee is charged with any of the above-enumerated felonies. Such suspension will continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, any such crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of their license or appointment. Further, the bill prohibits persons seeking licensure from DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by such records.

Licensure Filing Fees and Members of the Military
The bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee prescribed by law. The bill lists documents applicants can submit with the application to establish eligibility for the exemption.

Information Required With the Surrender of a Life Insurance Policy or Annuity
The bill creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another

[5] Sole proprietorships, partnerships, corporations, and associations.
[6] For other crimes, the law provides waiting periods for licensure.

such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information, which must be provided on a form that satisfies the requirements of the rule adopted by DFS, includes the amount of any: surrender charge; tax consequences resulting from the transaction; or forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.

Licensure Examination to Solicit or Sell Variable Products

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable "annuity" contracts. The bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts in general.

Insurance Mediation Programs

Current law provides for alternative dispute programs, administered by DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[7] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole claims. The bill amends the definition of "neutral evaluator" to include only those individuals eligible for certification by DFS.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.[8] The person must possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

Also, to qualify as a DFS mediator, a person must successfully complete a training program approved by DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators.[9] However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by courts.

The bill replaces the DFS mediator education, experience, and training program requirements, set out above, with new ones. Under the bill, a person with an active certification as a Florida Supreme Court certified circuit court mediator is qualified to be a mediator for DFS. Also, a person not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved DFS mediator on July 1, 2014 and has conducted at least one DFS mediation from July 1, 2010-July 1, 2014. This provision essentially grandfathers in current and active DFS mediators so they can continue to be DFS mediators, even if they are not certified as a Florida Circuit Court Mediator.

According to DFS, 224 of the 379 current DFS mediators are certified as Florida Circuit Court Mediators,[10] so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 155 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. DFS estimates that changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,500 mediators.

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[7] See s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program.

[8] Section 627.745, F.S.

[9] DFS does not provide the training program in house.

[10] Information obtained from DFS dated February 5, 2014, on file with the Insurance & Banking Subcommittee.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule governing mediators certified by the Florida courts, or not being qualified. Additionally, DFS is authorized to inquire into and investigate improper conduct of mediators, neutral evaluators, or navigators.[11] DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters. The bill allows DFS to share investigative information with any regulatory agency. Current law only allows the information to be shared with a law enforcement agency.

Regarding the property insurance mediation program, the bill requires that DFS rules additionally provide for the denial of applications, suspension, revocation and other penalties for mediators. DFS is also authorized to adopt rules for certifying, denying certification of, and revoking certification of neutral evaluators.

Nonresident Surplus Lines Agents

Surplus lines insurers are only permitted to write coverage that is not available in the private market. They are not required to be licensed by the Office of Insurance Regulation (OIR), but must have a Letter of Eligibility.[12]

Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. The bill amends licensing requirements for nonresident surplus lines agents, exempting these applicants from the experience or coursework and examination requirements that must be satisfied by applicants for a resident surplus lines agent license. DFS informs that the change is consistent with how other states address the licensing of nonresident surplus lines agents and is designed to create reciprocity with other states. DFS relates an example in which another state required a Florida agent to take its surplus lines examination because Florida requires nonresident agents to take the Florida examination.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

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[11] Navigators are established under the federal Patient Protection and Affordable Care Act (PPACA). Under PPACA, individuals and small businesses can purchase private health insurance through state-based marketplaces called Affordable Insurance Exchanges (Exchanges). Exchanges must certify Qualified Health Plans (QHPs) offered by the insurers through the Exchange. The U.S. Department of Health and Human Services establishes and operates Exchanges within states that do not elect to establish an Exchange, including Florida. The PPACA directs Exchanges to award grants to navigators, who conduct public education activities concerning QHPs, distribute fair and impartial information concerning enrollment in QHPs, and provide referrals to any applicable office of consumer or health insurance ombudsman for any enrollee with a grievance, complaint or question about their health care coverage. Navigators do not make eligibility determinations, do not select QHPs for consumers, or enroll applicants into QHPs, but help applicants through the eligibility and enrollment process. In Florida, individuals acting or offering to act as navigators are required to be registered with DFS. The express purpose of registration is to identify qualified individuals to assist the insurance-buying public in selecting a QHP through an Exchange by providing fair, accurate, and impartial information regarding QHPs and the availability of premium tax credits and cost-sharing reductions for such plans, and to protect the public from unauthorized activities or conduct.

[12] For additional information, see "Surplus Lines Insurance," a presentation made by OIR to the Insurance & Banking Subcommittee on September 25, 2013. Available at: http://www.floir.com/search/search.aspx#surplus lines insurance (Last accessed: February 13, 2014).

Miscellaneous

- Renames the Division of Insurance Agents and Agency Services as the Division of Insurance Agent and Agency Services.
- Provides that no new limited customer representative licenses may be issued after September 30, 2014.[13]
- Amends criteria for issuance of a temporary license as a customer representative. Specifies in part that such temporary license may be issued only after DFS has determined that the applicant has not committed a crime that would disqualify her or him from applying for a license under s. 626.207, F.S.
- Prohibits an employee or authorized representative located at a designated branch of an agent or agency from binding insurance coverage or from initiating contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative.
- Provides for additional methods of service of process for certain administrative actions (cease and desist orders, removal of affiliated parties, and administrative fines). Process is to be served by certified mail, return receipt requested, delivered to the addressee. If service cannot be obtained by certified mail, then by e-mail, delivery receipt required, to the most recent e-mail address provided to DFS by the applicant or licensee; by personal delivery, including hand delivery by a DFS investigator; by publication in accordance with s. 120.60 F.S.; or in accordance with ch. 48, F.S.
- Prohibits DFS and OIR investigators from removing *original* records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.
- Requires insurers that write bail bonds to submit a sample power of attorney to OIR for approval. Currently, these forms are submitted to and approved by DFS.
- Prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S. (bail bond agents), until the license is reinstated or a new license is issued.
- Deletes the requirement that applicants who seek to take a licensure examination in Spanish must pay all costs related to preparing, administering, grading, and evaluating the Spanish language examination.
- Requires each agency location to prominently display the agency license to make it clearly visible to persons entering the location.
- Amends the scope of the license issued to a business entity that offers motor vehicles for rent or lease.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.121, F.S., relating to the Department of Financial Services.
Section 2. Amends s. 624.310, F.S., relating to certain administrative proceedings.
Section 3. Amends s. 624.318, F.S., relating to DFS examinations and investigations.
Section 4. Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.
Section 5. Amends s. 626.015, F.S., relating to insurance representatives.
Section 6. Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.
Section 7. Amends s. 626.112, F.S., relating to license and appointment requirements.
Section 8. Amends s. 626.171, F.S., relating to certain applications for licensure.
Section 9. Amends s. 626.172, F.S., relating to application for insurance agency license.
Section 10. Amends s. 626.207, F.S., relating to disqualification of applicants and licensees.
Section 11. Amends s. 626.241, F.S., relating to scope of examination.
Section 12. Amends s. 626.261, F.S., relating to conduct of licensure examinations.
Section 13. Amends s. 626.311, F.S., relating to scope of license.
Section 14. Amends s. 626.321, F.S., relating to limited licenses.

[13] As of January 2014, 68 people held the limited customer representative license and only 40 of these licenses were active. Over the past three years, DFS has issued two limited customer representative licenses.

Section 15. Amends s. 626.382, F.S., relating to continuation and expiration of agency licenses.
Section 16. Amends s. 626.601, F.S., relating to DFS investigations of licensees and others.
Section 17. Amends s. 626.611, F.S., relating to refusal, suspension or revocation of certain licenses.
Section 18. Amends s. 626.641, F.S., relating to duration of suspension or revocation of license.
Section 19. Amends s. 626.733, F.S., relating to agency firms and corporations.
Section 20. Amends s. 626.7355, F.S., relating to temporary license as customer representative.
Section 21. Repeals s. 626.747, F.S., relating to branch agencies.
Section 22. Amends s. 626.7845, F.S., relating to unlicensed transaction of life insurance.
Section 23. Amends s. 626.8411, F.S., relating to title insurance agents or agencies.
Section 24. Amends s. 626.861, F.S., relating to adjustment of claims.
Section 25. Amends s. 626.862, F.S., relating to adjustments of claims by agents.
Section 26. Amends s. 626.9272, F.S., relating to licensing of nonresident surplus lines agents.
Section 27. Creates s. 627.4553, F.S., relating to recommendations to surrender an annuity or life insurance policy.
Section 28. Amends s. 627.7015, F.S., relating to alternative dispute resolution for property insurance claims.
Section 29. Amends s. 627.706, F.S., relating to sinkhole insurance.
Section 30. Amends s. 627.7074, F.S., relating to alternative dispute resolution for sinkhole claims.
Section 31. Amends s. 627.745, F.S., relating to mediation of claims.
Section 32. Amends s. 627.952, F.S., relating to risk retention and purchasing group agents.
Section 33. Amends s. 648.43, F.S., relating to powers of attorney used by bail bond agents.
Section 34. Amends s. 648.49, F.S, relating to duration of suspension of bail bond agent license.
Section 35. Amends s. 943.0585, F.S., relating to expunged criminal history records.
Section 36. Amends s. 943.059, F.S., relating to sealed criminal history records.
Section 37. Provides an effective date of July 1, 2014, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will have an insignificant, yet indeterminate fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund within DFS. According to DFS, the number of application fee exemptions for members of the United States Armed Forces, their spouses, and veterans of the United States Armed Forces who have retired within 24 months prior to application for licensure is unknown at this time.[14]

2. Expenditures:

   According to DFS, the bill will require changes to the current licensure system relating to unaffiliated agents and insurance agency licensure. However, DFS confirms that any technology changes as a result of this legislation will be insignificant and can be implemented and absorbed within current resources.

[14] Email correspondence with the Department of Financial Services (February 26, 2014) on file with the Government Operations Appropriations Subcommittee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Members of the United States Armed Forces, their spouses, and veterans who are retired for up to 24 months and apply for specified licenses with DFS will be exempt from paying licensing fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants DFS the authority to: adopt a rule establishing requirements for reporting information to consumers when surrender of an annuity or life insurance policy is recommended by an agent or insurance agency; adopt rules for certifying, denying certification of, suspending certification of, and revoking certification of neutral evaluators; and adopt rules to administer s. 627.745(4), F.S., which authorizes DFS to deny an application, or suspend or revoke approval, of mediators in the property insurance mediation program on specified grounds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably with a committee substitute. The amendment made technical changes, retained the provisions of the underlying bill, and provided for the following changes:

- Clarified methods for service of process in certain administrative proceedings.
- Provided that authorized personnel at branch locations of insurance agencies cannot engage in specified activities unless licensed and appointed as agents or customer representatives.
- Expanded the list of persons required to sign an application for an insurance agency license.
- Amended the scope of the license issued to business entities that offer motor vehicles for rent or lease.
- Provided DFS access to sealed and expunged criminal history records of applicants for licensure.
- Deleted language that would have resulted in reprogramming costs to the Florida Department of Law Enforcement.

The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to the Division of Insurance Agents and Agency Services; amending s. 20.121, F.S.; revising the name of the division; amending s. 624.310, F.S.; revising service delivery methods; amending s. 624.318, F.S.; prohibiting the removal of specified original documents under certain conditions; amending s. 624.501, F.S.; revising original appointment and renewal fees related to certain insurance representatives; amending s. 626.015, F.S.; prohibiting new limited customer representative licenses from being issued after a specified date; defining the term "unaffiliated insurance agent"; amending s. 626.0428, F.S.; revising prohibitions relating to binding insurance and soliciting insurance; requiring a branch place of business to have an agent in charge; authorizing an agent to be in charge of more than one branch office under certain circumstances; providing requirements relating to the designation of an agent in charge; providing that the agent in charge is accountable for misconduct and violations committed by the licensee and any person under his or her supervision; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; providing for expiration of an agency license under

specified circumstances; amending s. 626.112, F.S.; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance agency automatically converts to an insurance agency license on a specified date; amending s. 626.171, F.S.; providing an exemption from certain licensure application fees; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; amending s. 626.207, F.S.; conforming a cross-reference; amending s. 626.241, F.S.; revising the scope of the examination for a limited agent; amending s. 626.261, F.S.; deleting a provision requiring certain costs to be paid by applicants who request licensure examinations in Spanish; amending s. 626.311, F.S.; limiting the types of business that may be transacted by certain agents; amending s. 626.321, F.S.; providing that a limited license to offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses employees and authorized representatives of such business; amending s. 626.382, F.S.; providing that an insurance agency license continues in force

until canceled, suspended, revoked, terminated, or expired; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; amending s. 626.611, F.S.; requiring the department to suspend certain licenses and appointments; amending s. 626.641, F.S.; conforming a cross-reference; amending s. 626.733, F.S.; revising applicability of certain appointment provisions; amending s. 626.7355, F.S.; revising qualifications for a temporary customer representative's license; repealing s. 626.747, F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances on a specified date; amending s. 626.7845, F.S.; revising a prohibition against unlicensed transaction of life insurance; amending ss. 626.8411, 626.861, and 626.862, F.S.; conforming cross-references; amending s. 626.9272, F.S.; revising requirements for the licensure of nonresident surplus lines agents; creating s. 627.4553, F.S.; requiring an insurance agent who recommends the surrender of certain annuity or life insurance to provide certain information to the department; amending s. 627.7015, F.S.; revising the rulemaking authority of the

department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; amending s. 627.706, F.S.; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; providing grounds for the department to deny an application, or suspend or revoke approval of certification, of a neutral evaluator; requiring the department to adopt rules; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or suspend or revoke approval, of a mediator; authorizing the department to adopt rules; amending s. 627.952, F.S.; providing that certain persons who are not residents of this state must be licensed and appointed as nonresident surplus lines agents in this state in order to engage in specified activities with respect to servicing insurance contracts, certificates, or agreements for purchasing or risk retention groups; deleting a fidelity bond requirement applicable to certain nonresident agents who are licensed as surplus lines agents in another state; amending s. 648.43, F.S.; revising requirements for the submission of a power of attorney; amending s. 648.49, F.S.; revising provisions relating to the duration of suspension or

revocation of a license; amending ss. 943.0585 and 943.059, F.S.; prohibiting persons seeking to be licensed by the Division of Insurance Agent and Agency Services from denying or failing to acknowledge certain expunged or sealed records; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (g) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions:

(g) The Division of Insurance Agent ~~Agents~~ and Agency Services.

Section 2. Subsection (6) of section 624.310, Florida Statutes, is amended to read:

624.310 Enforcement; cease and desist orders; removal of certain persons; fines.—

(6) ADMINISTRATIVE PROCEDURES.—All administrative proceedings under subsections (3), (4), and (5) shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the department or office under this code shall be made:

(a)1. By certified mail, return receipt requested, delivered to the addressee only; or

2. If service by certified mail cannot be obtained at the last address provided to the department by the recipient, then by e-mail, delivery receipt required, sent to the most recent e-mail address provided to the department by the applicant or licensee in accordance with s. 626.171, s. 626.551, s. 648.34, or s. 648.421;

(b) By personal delivery, including hand delivery by a department investigator;

(c) By publication in accordance with s. 120.60; or

(d) In accordance with chapter 48.

The service provided for in this subsection ~~herein~~ shall be effective from the date of delivery.

Section 3. Subsection (5) of section 624.318, Florida Statutes, is amended to read:

624.318 Conduct of examination or investigation; access to records; correction of accounts; appraisals.—

(5) ~~Neither~~ The department, the office, or an ~~nor any~~ examiner may not ~~shall~~ remove any original record, account, document, file, or other property of the person being examined from the offices of such person except with the written consent of such person given in advance of such removal or pursuant to an order of court duly obtained.

Section 4. Paragraphs (a) and (c) of subsection (6) and

subsections (7) and (8) of section 624.501, Florida Statutes, are amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(6) Insurance representatives, property, marine, casualty, and surety insurance.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00
Total.....$60.00

(c) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(7) Life insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00
State tax.....12.00
County tax.....6.00

Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or continuation thereof, each insurer or unaffiliated agent making an appointment:

Appointment fee.....$42.00

State tax.....12.00

County tax.....6.00

Total.....$60.00

(b) Nonresident agent's original appointment and biennial renewal or continuation thereof, appointment fee, each insurer or unaffiliated agent making an appointment.....$60.00

Section 5. Subsection (11) of section 626.015, Florida Statutes, is amended, subsection (18) of that section is renumbered as subsection (19), and a new subsection (18) is added to that section, to read:

626.015 Definitions.—As used in this part:

(11) "Limited customer representative" means a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency. A limited customer representative is subject to the Florida Insurance Code in the same manner as a

customer representative, unless otherwise specified. Effective October 1, 2014, a new limited customer representative license may not be issued.

(18) "Unaffiliated insurance agent" means a licensed insurance agent, except a limited lines agent, who is self-appointed and who practices as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by written contract signed by the parties. An unaffiliated insurance agent may not be affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents.

Section 6. Effective January 1, 2015, subsections (2) and (3) of section 626.0428, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

626.0428 Agency personnel powers, duties, and limitations.—

(2) An employee or an authorized representative located at a designated branch of an agent or agency may not bind insurance coverage unless licensed and appointed as an agent or customer representative.

(3) An employee or an authorized representative located at a designated branch of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance

unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure pursuant to s. 626.8417(4).

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when an agent is not physically present and unlicensed employees at the location do not engage in insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the physical address of the insurance agency location with the department at the department's designated website. The designation of the agent in charge may be changed at the option of the agency. A change of the designated agent in charge is

effective upon notification to the department, which shall be provided within 30 days after such change.

(d) For the purposes of this subsection, an "agent in charge" is the licensed and appointed agent who is responsible for the supervision of all individuals within an insurance agency location, regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

(e) An agent in charge of an insurance agency is accountable for wrongful acts, misconduct, or violations of this code committed by the licensee or agent or by any person under his or her supervision while acting on behalf of the agency. This section does not render an agent in charge criminally liable for an act unless the agent in charge personally committed the act or knew or should have known of the act and of the facts constituting a violation of this chapter.

(f) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. If the agent in charge designated with the department ends his or her affiliation with the agency for any reason and the agency fails to designate another agent in charge within the 30 days provided for in paragraph (c) and such failure continues for 90 days, the agency license shall automatically expire on the 91st day from the date the designated agent in charge ended his or her

affiliation with the agency.

Section 7. Effective January 1, 2015, subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) An ~~Effective October 1, 2006, no~~ individual, firm, partnership, corporation, association, or ~~any~~ other entity shall not act in its own name or under a trade name, directly or indirectly, as an insurance agency~~,~~ unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an ~~any~~ activity that ~~which~~ may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees shall be exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has designated with the department a licensed agent in charge of the branch location as required by s. 626.0428 and the address and telephone number of the branch location have been submitted to the department for inclusion in

the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006~~.

(c) ~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty ~~in an amount~~ of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $5,000.~~

(d) ~~(b)~~ Effective October 1, 2015, the department must automatically convert the registration of an approved ~~a~~

registered insurance agency to ~~shall, as a condition precedent to continuing business, obtain~~ an insurance agency license ~~if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases~~.

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or~~

~~financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.~~

~~l. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 8. Subsection (6) of section 626.171, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(6) Members of the United States Armed Forces and their spouses, and veterans of the United States Armed Forces who have retired within 24 months before application for licensure, are exempt from the application filing fee prescribed in s. 624.501. Qualified individuals must provide a copy of a military identification card, military dependent identification card,

military service record, military personnel file, veteran record, discharge paper, or separation document, or a separation document that indicates such members of the United States Armed Forces are currently in good standing or were honorably discharged.

Section 9. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by an individual required to be listed in the application under paragraph (a) ~~the owner or owners of the agency. If the agency is incorporated, the application shall be signed by the president and secretary of the corporation~~. An insurance agency may permit a third party to complete, submit, and sign an application on the insurance agency's behalf; however, the insurance agency is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each ~~majority~~ owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the insurance agency, whether through ownership of voting securities, by contract, by ownership of any agency bank account, or otherwise.

(b) The residence address of each person required to be

listed in the application under paragraph (a).

(c) The name, principal business street address, and valid e-mail address of the insurance agency and the name, address, and e-mail address of the agency's registered agent or person or company authorized to accept service on behalf of the agency ~~and its principal business address~~.

(d) The physical address ~~location~~ of each branch agency, including its name, e-mail address, and telephone number, and the date that the branch location began transacting insurance ~~office and the name under which each agency office conducts or will conduct business~~.

(e) The name of the ~~each~~ agent ~~to be~~ in full-time charge of the ~~an~~ agency office, including branch locations, and his or her corresponding location ~~specification of which office~~.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each individual required to be listed in the application under paragraph (a) ~~partner~~; and

~~3. Each owner of an unincorporated agency;~~

3.~~4.~~ Each individual ~~owner~~ who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange~~;~~

~~5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and~~

~~6. Any other person who directs or participates in the management or control of the agency, whether through the~~

~~ownership of voting securities, by contract, or otherwise~~.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for an ~~any~~ individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for persons required to be listed on the application.

(3)~~(h) Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under~~

~~subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(4) The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or~~

~~registration~~ prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency location.

Section 10. Subsection (7) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(7) After the disqualifying period has been met, the burden is on the applicant to demonstrate that the applicant has been rehabilitated, does not pose a risk to the insurance-buying public, is fit and trustworthy to engage in the business of insurance pursuant to s. 626.611(1)(g) ~~626.611(7)~~, and is otherwise qualified for licensure.

Section 11. Subsection (5) of section 626.241, Florida Statutes, is amended to read:

626.241 Scope of examination.—

(5) Examinations given applicants for a limited agent license ~~as agent or as customer representative~~ shall be limited in scope to the kind of business to be transacted under such license.

Section 12. Subsection (5) of section 626.261, Florida Statutes, is amended to read:

626.261 Conduct of examination.—

(5) The department may provide licensure examinations in Spanish. ~~Applicants requesting examination or reexamination in Spanish must bear the full cost of the department's development,~~

~~preparation, administration, grading, and evaluation of the Spanish-language examination.~~ When determining whether it is in the public interest to allow the examination to be translated into and administered in Spanish, the department shall consider the percentage of the population who speak Spanish.

Section 13. Subsection (6) of section 626.311, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section to read:

626.311 Scope of license.—

(6) An agent who appoints his or her license as an unaffiliated insurance agent may not hold an appointment from an insurer for any license he or she holds; transact, solicit, or service an insurance contract on behalf of an insurer; interfere with commissions received or to be received by an insurer-appointed insurance agent or an insurance agency contracted with or employing insurer-appointed insurance agents; or receive compensation or any other thing of value from an insurer, an insurer-appointed insurance agent, or an insurance agency contracted with or employing insurer-appointed insurance agents for any transaction or referral occurring after the date of appointment as an unaffiliated insurance agent. An unaffiliated insurance agent may continue to receive commissions on sales that occurred before the date of appointment as an unaffiliated insurance agent if the receipt of such commissions is disclosed when making recommendations or evaluating products for a client that involve products of the entity from which the commissions

are received.

Section 14. Paragraph (d) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) Motor vehicle rental insurance.—

1. License covering only insurance of the risks set forth in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for no more than 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended one time only for a period not to exceed an additional 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor vehicles for rent or lease encompasses each office, branch office, employee, authorized representative located at a designated branch, or place of business making use of the

entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 15. Effective January 1, 2015, section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—The license of an ~~any~~ insurance agency ~~shall be issued for a period of 3 years and~~ shall continue in force until canceled, suspended, or revoked~~,~~ or until it is otherwise terminated or expires by operation of law. ~~A license may be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Section 16. Section 626.601, Florida Statutes, is amended

to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed, approved, or certified licensee, insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, navigator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of any ~~the~~ alleged misconduct, an individual or entity ~~the licensee~~ shall, whenever so required by the department or office, cause the individual's or entity's ~~his or her~~ books and records to be open for inspection for the purpose of such investigation ~~inquiries~~.

(3) ~~The~~ Complaints against an individual or entity ~~any licensee~~ may be informally alleged and are not required to include ~~need not be in any such~~ language ~~as is~~ necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations conducted under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from ~~the provisions of~~ s. 119.07~~,~~ unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the

status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

Section 17. Section 626.611, Florida Statutes, is amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(a) ~~(1)~~ Lack of one or more of the qualifications for the license or appointment as specified in this code.

(b) ~~(2)~~ Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.

(c) ~~(3)~~ Failure to pass to the satisfaction of the department any examination required under this code.

(d) ~~(4)~~ If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or

prohibitions of this code.

(e)~~(5)~~ Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(f)~~(6)~~ If, as an adjuster, or agent licensed and appointed to adjust claims under this code, he or she has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(g)~~(7)~~ Demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(h)~~(8)~~ Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(i)~~(9)~~ Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(j)~~(10)~~ Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.

(k)~~(11)~~ Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.

(l) ~~(12)~~ Having obtained or attempted to obtain, or having used or using, a license or appointment as agent or customer representative for the purpose of soliciting or handling "controlled business" as defined in s. 626.730 with respect to general lines agents, s. 626.784 with respect to life agents, and s. 626.830 with respect to health agents.

(m) ~~(13)~~ Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this code.

(n) ~~(14)~~ Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(o) ~~(15)~~ Fraudulent or dishonest practice in submitting or aiding or abetting any person in the submission of an application for workers' compensation coverage under chapter 440 containing false or misleading information as to employee payroll or classification for the purpose of avoiding or reducing the amount of premium due for such coverage.

(p) ~~(16)~~ Sale of an unregistered security that was required to be registered, pursuant to chapter 517.

(q) ~~(17)~~ In transactions related to viatical settlement contracts as defined in s. 626.9911:

1. ~~(a)~~ Commission of a fraudulent or dishonest act.

2. ~~(b)~~ No longer meeting the requirements for initial licensure.

3. ~~(c)~~ Having received a fee, commission, or other valuable consideration for his or her services with respect to viatical settlements that involved unlicensed viatical settlement providers or persons who offered or attempted to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911 and who were not licensed life agents.

4. ~~(d)~~ Dealing in bad faith with viators.

(2) The department shall, upon receipt of information or an indictment, immediately temporarily suspend a license or appointment issued under this chapter when the licensee is charged with a felony enumerated in s. 626.207(3). Such suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of his or her license or appointment.

Section 18. Subsection (2) of section 626.641, Florida Statutes, is amended to read:

626.641 Duration of suspension or revocation.—

(2) No person or appointee under any license or appointment revoked by the department, nor any person whose eligibility to hold same has been revoked by the department, shall have the right to apply for another license or appointment

under this code within 2 years from the effective date of such revocation or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. An applicant for another license or appointment pursuant to this subsection must apply and qualify for licensure in the same manner as a first-time applicant, and the application may be denied on the same grounds that apply to first-time applicants for licensure pursuant to ss. 626.207, 626.611, and 626.621. In addition, the department shall not grant a new license or appointment or reinstate eligibility to hold such license or appointment if it finds that the circumstance or circumstances for which the eligibility was revoked or for which the previous license or appointment was revoked still exist or are likely to recur; if an individual's license as agent or customer representative or eligibility to hold same has been revoked upon the ground specified in s. 626.611(1)(l) ~~626.611(12)~~, the department shall refuse to grant or issue any new license or appointment so applied for.

Section 19. Section 626.733, Florida Statutes, is amended to read:

626.733 Agency firms and corporations; special requirements.—If a sole proprietorship, partnership, corporation, or association holds an agency contract, all members thereof who solicit, negotiate, or effect insurance contracts, and all officers and stockholders of the corporation who solicit, negotiate, or effect insurance contracts, must ~~are~~

~~required to~~ qualify and be licensed individually as agents or customer representatives,~~.~~ and all of such agents must be individually appointed as to each property and casualty insurer entering into an agency contract with such agency. Each ~~such~~ appointing insurer ~~as soon as known to it~~ shall comply with this section and shall determine and require that each agent so associated ~~in or so connected~~ with such agency is likewise appointed as to the same such insurer and for the same type and class of license. However, an ~~no~~ insurer is not required to comply with the appointment provisions of this section for an agent within an agency who does not solicit, negotiate, or effect insurance contracts for that insurer ~~if such insurer satisfactorily demonstrates to the department that the insurer has issued an aggregate net written premium, in an agency, in an amount of $25,000 or less~~.

Section 20. Paragraphs (a) and (g) of subsection (1) of section 626.7355, Florida Statutes, are amended to read:

626.7355 Temporary license as customer representative pending examination.—

(1) The department shall issue a temporary customer representative's license with respect to a person who has applied for such license upon finding that the person:

(a) Has filed an application for a customer representative's license ~~or a limited customer representative's license~~ and has paid any fees required under s. 624.501(5) in connection with such application for a customer representative's

license ~~or limited customer representative's license~~.

(g) Is not disqualified from licensure by the department under s. 626.207. ~~Within the last 5 years, has not been convicted, found guilty or pleaded nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of any municipality, county, state, territory, or country, whether or not a judgment of conviction has been entered.~~

Section 21. Effective January 1, 2015, section 626.747, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(1) An individual may not solicit or sell variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract as defined in s. 627.8015~~,~~ unless the individual has successfully completed a licensure examination relating to variable ~~annuity~~ contracts authorized and approved by the department.

Section 23. Effective January 1, 2015, subsection (1) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions ~~of part II~~ applicable to general lines agents or agencies also apply to title insurance

agents or agencies:

(a) Section 626.734, relating to liability of certain agents.

(b) Section 626.0428(4)(a) and (b) ~~626.747~~, relating to branch agencies.

(c) Section 626.749, relating to place of business in residence.

(d) Section 626.753, relating to sharing of commissions.

(e) Section 626.754, relating to rights of agent following termination of appointment.

Section 24. Subsection (2) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal insurer's representatives; adjustments by.—

(2) If any such officer, employee, attorney, or agent in connection with the adjustment of any such claim, loss, or damage engages in any of the misconduct described in or contemplated by s. 626.611(1)(f) ~~626.611(6)~~, the office may suspend or revoke the insurer's certificate of authority.

Section 25. Section 626.862, Florida Statutes, is amended to read:

626.862 Agents; adjustments by.—A licensed and appointed insurance agent may, without being licensed as an adjuster, adjust losses for the insurer represented by him or her as agent if so authorized by the insurer. The license and appointment of the agent may be suspended or revoked for violation of or

misconduct prohibited by s. 626.611(1)(f) ~~626.611(6)~~.

Section 26. Subsection (2) of section 626.9272, Florida Statutes, is amended to read:

626.9272 Licensing of nonresident surplus lines agents.—

(2) The department may not issue a license unless the applicant satisfies the same licensing requirements under s. 626.927 as required of a resident surplus lines agent, excluding the required experience or coursework and examination. The department may refuse to issue such license or appointment when it has reason to believe that any of the grounds exist for denial, suspension, or revocation of a license as set forth in ss. 626.611 and 626.621.

Section 27. Section 627.4553, Florida Statutes, is created to read:

627.4553 Recommendations to surrender.—If an insurance agent recommends the surrender of an annuity or life insurance policy containing a cash value and does not recommend that the proceeds from the surrender be used to fund or purchase another annuity or life insurance policy, before execution of the surrender, the insurance agent, or insurance company if no agent is involved, shall provide, on a form that satisfies the requirements of the rule adopted by the department, information relating to the annuity or policy to be surrendered. Such information shall include, but is not limited to, the amount of any surrender charge, the loss of any minimum interest rate guarantees, the amount of any tax consequences resulting from

the transaction, the amount of any forfeited death benefit, and the value of any other investment performance guarantees being forfeited as a result of the transaction. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

Section 28. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules shall provide for:

(b) Qualifications, denial of application, suspension, revocation of approval, and other penalties for ~~of~~ mediators as provided in s. 627.745 and in the Florida Rules of Certified and Court Appointed Mediators~~, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 29. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who is not otherwise ineligible for certification as provided in s. 627.7074.

Section 30. Subsections (7) and (18) of section 627.7074, Florida Statutes, are amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship exists between the neutral evaluator and either party or a representative of either party within the third degree.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party, in the same or a substantially

related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

(b) The department shall deny an application, or suspend or revoke its certification, of a neutral evaluator to serve in such capacity if the department finds that one or more of the following grounds exist:

1. Lack of one or more of the qualifications specified in this section for certification.

2. Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the certification.

3. Demonstrated lack of fitness or trustworthiness to act as a neutral evaluator.

4. Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business.

5. Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party in committing such a violation.

(c) ~~(b)~~ The parties shall appoint a neutral evaluator from the department list and promptly inform the department. If the parties cannot agree to a neutral evaluator within 14 business days, the department shall appoint a neutral evaluator from the list of certified neutral evaluators. The department shall allow each party to disqualify two neutral evaluators without cause. Upon selection or appointment, the department shall promptly refer the request to the neutral evaluator.

(d) ~~(c)~~ Within 14 business days after the referral, the neutral evaluator shall notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference. The conference may be held by telephone, if feasible and desirable. The neutral evaluator shall make reasonable efforts to hold the conference within 90 days after the receipt of the request by the department. Failure of the neutral evaluator to hold the conference within 90 days does not invalidate either party's right to neutral evaluation or to a neutral evaluation conference held outside this timeframe.

(18) The department shall adopt rules of procedure for the neutral evaluation process and adopt rules for certifying, denying certification of, suspending certification of, and revoking certification as a neutral evaluator.

Section 31. Subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)(a) The department shall approve mediators to conduct mediations pursuant to this section. All mediators must file an application under oath for approval as a mediator.

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Supreme Court certified circuit court mediator. A Florida Supreme Court certified circuit court mediator in a lapsed, suspended, sanctioned, or decertified status is not eligible to participate in the mediation program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department. The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~e. Insurance nomenclature~~.

(4) The department shall deny an application, or suspend or revoke its approval, of a mediator to serve in such capacity if the department finds that one or more of the following grounds exist:

(a) Lack of one or more of the qualifications specified in this section for approval.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator.

(d) Fraudulent or dishonest practices in the conduct of mediation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department, violation of the Florida Rules of Certified and Court Appointed Mediators, or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 32. Paragraph (b) of subsection (1) of section 627.952, Florida Statutes, is amended to read:

627.952 Risk retention and purchasing group agents.—

(1) Any person offering, soliciting, selling, purchasing, administering, or otherwise servicing insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any resident of this state, either directly or indirectly, by the use of mail, advertising, or other means of communication, shall obtain a license and appointment to act as a resident general lines agent, if a resident of this state, or a nonresident general lines agent if not a resident. Any such person shall be subject to all requirements of the Florida Insurance Code.

(b) Any person required to be licensed and appointed under this subsection, in order to place business through Florida eligible surplus lines carriers, must, if a resident of this state, be licensed and appointed as a surplus lines agent. If not a resident of this state, such person must be licensed and appointed as a surplus lines agent in her or his state of residence and be licensed and appointed as a nonresident surplus lines agent in this state ~~file and maintain a fidelity bond in favor of the people of the State of Florida executed by a surety company admitted in this state and payable to the State of Florida; however, such nonresident is limited to the provision of insurance for purchasing groups. The bond must be continuous in form and in the amount of not less than $50,000, aggregate liability. The bond must remain in force and effect until the surety is released from liability by the department or until the~~

~~bond is canceled by the surety. The surety may cancel the bond and be released from further liability upon 30 days' prior written notice to the department. The cancellation does not affect any liability incurred or accrued before the termination of the 30-day period. Upon receipt of a notice of cancellation, the department shall immediately notify the agent~~.

Section 33. Subsection (1) of section 648.43, Florida Statutes, is amended to read:

648.43 Power of attorney; to be approved by department; filing of copies; notification of transfer bond.—

(1) Every insurer engaged in the writing of bail bonds through bail bond agents in this state shall submit to ~~and have approved by~~ the office for prior approval ~~department~~ a sample power of attorney, which shall ~~will~~ be the only form of power of attorney the insurer issues ~~will issue~~ to bail bond agents in this state.

Section 34. Subsection (3) of section 648.49, Florida Statutes, is amended to read:

648.49 Duration of suspension or revocation.—

(3) During the period of suspension~~,~~ or ~~after~~ revocation of the license and until the license is reinstated or a new license is issued, the former licensee may not engage in or attempt to profess to engage in any transaction or business for which a license or appointment is required under this chapter. A ~~Any~~ person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083,

or s. 775.084.

Section 35. Paragraphs (a) and (c) of subsection (4) of section 943.0585, Florida Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether

adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the

sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; ~~or~~

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or

7. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. ~~7.~~ for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective

criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. ~~subparagraph (a)7.~~ to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 36. Paragraphs (a) and (c) of subsection (4) of section 943.059, Florida Statutes, are amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a

criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court

to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. ~~8.~~ for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; ~~or~~

7. Is attempting to purchase a firearm from a licensed

importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or

8. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. ~~8.~~ for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. ~~subparagraph (a)8.~~ to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 37. Except as otherwise expressly provided in this

act, this act shall take effect July 1, 2014.