Insurance & Banking Subcommittee

Tuesday, February 11, 2014
3:30 PM
Sumner Hall (404 HOB)

MEETING PACKET

Will Weatherford
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Will Weatherford
Speaker

Bryan Nelson
Chair

AGENDA

Tuesday, February 11, 2014
404 HOB
3:30 pm – 5:30 pm

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):
   a. HB 129 Insurance by Raburn
   b. HB 565 Insurance by Santiago
   c. HB 623 Check Cashing Services by K. Roberson
   d. HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders by Workman

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Tuesday, February 11, 2014 03:30 pm
End Date and Time:	Tuesday, February 11, 2014 05:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 129 Insurance by Raburn
HB 565 Insurance by Santiago
HB 623 Check Cashing Services by Roberson, K.
HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders by Workman

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., Monday, February 10, 2014.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 10, 2014.

NOTICE FINALIZED on 02/04/2014 15:35 by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Insurance
SPONSOR(S): Raburn
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

A sinkhole is defined in law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. Catastrophic ground cover collapse is also defined in the law and is more severe than sinkhole loss. Florida law requires property insurers to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy. But, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage.

If a covered building suffers a sinkhole loss, the policyholder must repair the damage using the repair method recommended by the insurer's professional engineer. But, if repairs cannot be completed within policy limits, the insurer can pay to complete the repairs or tender policy limits without a reduction for any repair expenses incurred. A sinkhole repair contract must be entered into within 90 days after the policyholder is notified that the insurer confirms a sinkhole loss and the repairs must be completed within 12 months, with limited exceptions. Although current law requires the homeowner to repair property affected by a verified sinkhole, oftentimes the sinkhole claim is settled before repair work is started. Homeowners that settle sinkhole claims are not required to use claim settlements to repair or remediate the home and land.

Citizens Property Insurance Corporation (Citizens) has proposed a voluntary sinkhole managed repair program to ensure property insured by the corporation and damaged by a sinkhole is repaired. The program is not yet operational. If a policyholder participates in the program, once it is determined sinkhole stabilization services are needed, the policyholder chooses a vendor in the program to provide the services. Vendors in the program are experienced, credentialed and meet minimum qualifications determined by Citizens. Vendors give a five year warranty on repair work done. Citizens periodically remits payment for work completed to the vendor directly and the policyholder does not directly receive any payment for the sinkhole claim. The bill establishes a Citizens Sinkhole Repair Program to be operational by March 31, 2015 to ensure sinkhole repairs are done by approved repair contractors. The primary difference between the sinkhole repair program established under the bill and the repair program currently being set up by Citizens is that participation in the program established by the bill is mandatory, whereas the current program is voluntary.

The bill requires Citizens to submit a biannual report on the number of residential sinkhole policies requested, issued, declined, and the reasons for a policy being declined. No report on sinkhole coverage is required in current law for Citizens or other property insurers. The bill also requires Citizens to offer sinkhole deductible amounts of 2%, 5% and 10% of the policy dwelling limits. Current law allows all property insurers, including Citizens, to offer these deductibles, but does not require all three deductible options to be offered, and Citizens, like other insurers, has chosen to only offer a 10% sinkhole deductible.

The bill has no fiscal impact on state or local government. Citizens' policyholders will no longer receive a direct monetary sinkhole claim payment, but will get their property repaired, maintaining the property value of the house and thus, maintaining the local tax base. If sinkhole loss costs are reduced by the mandatory repair program implemented by the bill, premium increases for sinkhole insurance from Citizens may be reduced.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Sinkhole Insurance

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[1] Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[2] In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.[3] Catastrophic ground cover collapse is also defined in the law and is more severe than sinkhole loss. Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[4] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. By law, sinkhole loss coverage by Citizens Property Insurance Corporation (Citizens)[5] does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1% of policy dwelling limits, 2% of policy dwelling limits, 5% of policy dwelling limits, or 10% of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a 10% sinkhole loss deductible.

Notice of all sinkhole claims, including initial, reopened, or supplemental claims must be given to the insurer in accordance with policy terms within two years of the policyholder knowing about the sinkhole loss or within two years from when the policyholder reasonably should have known about the sinkhole loss.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.[6] In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.[7] These increases impacted the financial stability of property insurers in Florida, including Citizens, and were used by insurers to justify property insurance rate increases.

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while

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[1] s. 627.706(2)(b), F.S.
[2] Ch. 1981-280, L.O.F.
[3] Section 30, Ch. 2007-1, L.O.F.
[4] s. 627.706, F.S.
[5] Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.
[6] Ch. 2005-111, L.O.F.; Ch. 2006-12, L.O.F.; Ch. 2011-39, L.O.F.
[7] Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation, dated November 8, 2010, link available at http://www.floir.com/Office/DataReports.aspx (last viewed December 23, 2013).

providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure.

The first complete year the reforms were in effect was 2012.[8] No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so their impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.[9] This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent. In Citizens' rate filing for 2014,[10] their actuary projected Citizens' sinkhole losses will decrease by over 52 percent relative to what they would have been without the 2011 reforms. The actuary further noted, however, that even with the projected reduction in sinkhole losses, Citizens still has a significant rate deficiency in the sinkhole area. In fact, in 2012, Citizens earned almost $57 million in sinkhole premium but paid almost $227 million in sinkhole losses and expenses.

According to data from Citizens,[11] in 2013, new sinkhole claim volume is down 61% from 2012. Also, Citizens has 54% fewer pending sinkhole claims in 2013 than 2012. Paid indemnity, outstanding indemnity reserves, and loss adjustment expenses paid to date for sinkhole claims filed against Citizens have also decreased in 2013 when compared to 2012.

Investigation of Sinkhole Claims

The 2011 legislative sinkhole reforms substantially revised the statutory process for investigating sinkhole claims in s. 627.707, F.S.[12] The process requires the insurer to determine whether the building has incurred structural damage that has been caused by sinkhole activity.[13] Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. The investigation process is as follows:

Initial Inspection & Structural Damage Determination: Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder's premises to determine if there has been structural damage which may be the result of sinkhole activity.[14] This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.

Notice to the Policyholder: The insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing.[15] The policyholder must also be notified of his or her right to demand sinkhole testing and the circumstances under which the policyholder may incur costs associated with testing.[16]

Sinkhole Testing: The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the

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[8] The reforms were effective on May 17, 2011 when the bill (CS/CS/CS/SB 408) was signed by the Governor.
[9] Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis, prepared by Insurance Services Office, dated July 19, 2012, and presented at Citizens' Board of Governors Meeting on July 27, 2012, link available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=419&when=Past (last viewed December 23, 2013).
[10] Information on Citizens' 2014 rate filing is available at https://www.citizensfla.com/about/mediaresources.cfm (last viewed December 20, 2013).
[11] Data is as of the end of September 2013 and is available in meeting materials from the Citizens' Claims Committee meeting on November 14, 2013, available at https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?event=531&when=Past (last viewed December 20, 2013).
[12] Ch. 2001-39, L.O.F.
[13] s. 627.707(1), F.S.
[14] s. 627.707(1), F.S.
[15] s. 627.707(3), F.S.
[16] s. 627.707(3), F.S.

structural damage is consistent with sinkhole loss.[17] If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.[18] The engineer or geologist must issue a report on his or her findings (the report is discussed below).

Testing standards for sinkholes are established in s. 627.7072, F.S. The professional geologist or engineer must perform whatever tests are sufficient to determine the presence or absence of sinkhole loss or cause of damage within reasonable professional probability and to allow the engineer to make recommendations regarding any necessary building stabilization and foundation repair. Typically, the testing procedures used are shallow boring, ground penetrating radar, and deep boring.

Sinkhole Report: Once testing is complete, the engineer or geologist performing the testing issues a report and certification to the insurance company and policyholder.[19] The requirements of the sinkhole report and certification are found in s. 627.7073(1), F.S. and are based upon sinkhole testing. If sinkhole loss is verified in the sinkhole report and certification, in addition to the other statements required by law, the report and certification must state structural damage to the covered building has been identified within a reasonable professional probability. In addition to other statements required by current law, if there is no structural damage or if sinkhole activity is eliminated as the cause of damage to a covered building, the report and certification must state there is no structural damage or the cause of structural damage found is not sinkhole activity within a reasonable professional probability. Florida law gives a presumption of correctness to specified information contained in the report.[20]

Authorization to Deny Sinkhole Claim: Insurers deny the claim upon a determination that there is no sinkhole loss.[21]

Policyholder Demand for Sinkhole Testing: The policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denies the claim without performing sinkhole testing and coverage would be available if a sinkhole loss is confirmed (i.e. the claim denial was not issued due to policy conditions or exclusions of coverage and instead was based on the failure of the loss to meet the definition of sinkhole loss).[22] However, if the policyholder requests such testing, it must pay the insurer 50 percent of the sinkhole testing costs up to $2,500.[23] If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.[24]

Payment of Sinkhole Claims

If a covered building suffers a sinkhole loss or catastrophic ground cover collapse, the insured must repair such damage in accordance with the insurer's professional engineer's recommended repairs.[25] However, if repairs cannot be completed within policy limits, the insurer has the option to either pay to complete the recommended repairs or tender policy limits without a reduction for any repair expenses already incurred.[26]

The insurer may limit the sinkhole claim payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs.[27] Once the contract is entered into, the insurer pays the amount needed to begin repair work. The insurer continues to pay for repair work as the work is completed and repair costs incurred. The policyholder cannot be required to advance money for the

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[17] s. 627.707(2), F.S.
[18] s. 627.707(2), F.S.
[19] s. 627.7073(1), F.S.
[20] s. 627.7073(1)(c), F.S. See Universal Insurance Company of North America v. Warfel, 82 So.3d 47 (Fla. 2012) for a discussion of the presumption of correctness in sinkhole cases.
[21] s. 627.707(4)(a), F.S.
[22] s. 627.707(4)(b), F.S.
[23] s. 627.707(4)(b)2., F.S.
[24] s. 627.707(4)(b)3., F.S.
[25] s. 627.707(5), F.S.
[26] s. 627.707(5), F.S. In this case, insurers pay over policy limits on a sinkhole claim.
[27] s. 627.707(5)(a), F.S.

repairs. The insurer must obtain approval of the property lienholder, and not the policyholder, in order to pay repair costs directly to the repair contractor.

The two most commonly recommended stabilization techniques are grouting and underpinning.[28] Under the grouting procedure, a grout mixture (either cement-based or a chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.[29] Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation.[30] One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone. Underpinning repairs, when performed, are usually combined with grouting.

The contract for below-ground repairs must be made in accordance with the recommendations set forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S., and must be entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss.[31] The time period is tolled if either party invokes neutral evaluation.

Stabilization and all other repairs to the structure and contents must be completed within 12 months after the policyholder enters into the contract for repairs unless the insurer and policyholder mutually agree otherwise, the claim is in litigation, or the claim is in neutral evaluation, appraisal or mediation.[32]

Although current law requires the homeowner to repair the property affected by a verified sinkhole, oftentimes the insurer and homeowner settle the sinkhole claim before repair work is started.[33] Homeowners that settle sinkhole claims are not required to use claim settlements to repair or remediate the home and land. Thus, arguably, homeowners are incentivized to file sinkhole claims, reach a settlement with the insurer, and use the settlement proceeds for something other than repair and replacement of the sinkhole and resulting damage.

Insurers are not allowed to nonrenew a property insurance policy because a sinkhole claim is filed if the sinkhole claim payment equals or is less than policy limits or if the property was repaired. But, insurers can nonrenew a property insurance policy if policy limits or more are paid.

Disclosure of Sinkhole Loss

Insurers who pay a claim for sinkhole loss must file a copy of the engineer or geologist report and certification with the county clerk of court. Information filed must also include:

- the legal description of the property,
- the neutral evaluation report verifying sinkhole activity as the cause of the damage to the property, if the claim has gone to neutral evaluation,
- a copy of the certification indicating sinkhole stabilization has been completed, and
- the amount paid on the sinkhole claim.

The clerk must record the report and certification. The policyholder must also file a copy of any sinkhole report prepared for the policyholder with the clerk of court before accepting payment from the insurer on a sinkhole claim. When sinkhole repairs are completed, the engineer overseeing the repairs must issue a report to the property owner specifying what repairs were done and certifying the repairs were done properly. A copy of this report must also be filed by the engineer with the clerk of court who records the report.

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[28] Citizens Property Insurance Corporation, Sinkhole Repairs: Underpinning and Grouting, (Oct. 30, 2012). https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf (last viewed on January 30, 2014).

[29] *See id.*

[30] *See id.*

[31] See s. 627.707(5)(b), F.S. Although a sinkhole report can be prepared by an engineer or a geologist, only an engineer can recommend sinkhole repairs. Furthermore, insurers are allowed in the law to hire professional structural engineers to recommend repairs on the damaged structure.

[32] See s. 627.707(5)(b), F.S. and s. 627.707(5)(d), F.S.

[33] The OIR noted in its report on the 2010 data call that sinkhole repairs were initiated in only 20 percent of the total claims reported.

When property that is the subject of a paid sinkhole claim is sold, the seller who filed the sinkhole claim must disclose to the buyer that a sinkhole claim has been paid. In addition, the seller must disclose whether or not the full amount of claim payment was used to repair the sinkhole damage.

The Alternative Dispute Resolution Process for Sinkhole Claims

Section 627.7074, F.S., provides an alternative dispute resolution process for sinkhole claims. The process supersedes the mediation procedures for property insurance claims contained in s. 627.7015, F.S., but does not invalidate the appraisal clause in the property insurance policy. Thus, a sinkhole claim can go through the neutral evaluation process and subsequently go through the appraisal process. The neutral evaluation process begins once an insurer receives the sinkhole report under s. 627.7073, F.S., or denies a sinkhole claim. When either occurs, the insurer must notify the policyholder of the right to participate in the neutral evaluation process. The insurer must also send a pamphlet on the neutral evaluation process prepared by the Department of Financial Services (DFS) to the policyholder.

Participation in the neutral evaluation process is mandatory if one party requests it, however, it is nonbinding. Either the policyholder or the insurer can request neutral evaluation of a sinkhole claim. At the conclusion of the neutral evaluation, the neutral evaluator prepares a report containing recommendations about the validity of the sinkhole claim. The specific areas the neutral evaluator must opine on in the report are set forth in s. 627.7074(12), F.S. The recommendation of the neutral evaluator is not binding on either party, thus, either party can opt to litigate the sinkhole claim in court regardless of the neutral evaluator's recommendation on the claim. If the insurer timely agrees to comply with the neutral evaluator's recommendations in writing and does so, but the policyholder declines to resolve the claim and opts to proceed to court on the claim, the insurer is not liable for extracontractual damages for issues determined by the neutral evaluator and the insurer's actions to comply with the recommendation is not a confession of judgment that can be used in the court proceeding as an admission of liability on the part of the insurer. Furthermore, in the court proceeding, the insurer is not liable for attorney's fees unless the policyholder obtains a court judgment more favorable than the neutral evaluator's recommendation.

Sinkhole Claims – Citizens Property Insurance Corporation

Citizens has proposed a sinkhole managed repair program for sinkhole stabilization only and is currently in the process of getting the program operational.[34] Structural and building repairs due to sinkhole loss are not part of the program. Participation in the proposed sinkhole managed repair program is voluntary for Citizens' policyholders. If a policyholder participates in the voluntary managed repair program, once it is determined the policyholder needs sinkhole stabilization services as a result of sinkhole damage, the policyholder chooses a vendor in the program to provide the needed stabilization services. Vendors in the program are experienced and credentialed and meet minimum qualifications determined by Citizens. Qualifications include a performance bond for each project, a five year labor and material warranty, and an agreement to adhere to a line item price guide. Citizens periodically remits payment for work completed to the vendor directly and the policyholder does not directly receive any payment for the sinkhole claim. Citizens projects less than 100 claims per year will be eligible for the program and does not anticipate 100 percent participation for those eligible since participation in the program is voluntary.

[34] Citizens solicited sinkhole repair contractors who would participate in the program through two Invitations to Bid (ITB). Sixteen vendors were chosen for the program from the first ITB. However, Citizens' Board has not yet awarded the vendor contracts due to a bid protest. The second ITB recently closed, but vendors have not yet been chosen. Additional material on the managed repair program is available from meeting materials for the Citizens Claims Committee meeting on November 14, 2013, the Citizens Board of Governors meeting on December 12, 2013, available at https://www.citizensfla.com/about/past_boardmtgs.cfm (last viewed February 3, 2014), ITB 13-0020 for Sinkhole Stabilization Managed Repair Program issued by Citizens dated October 30, 2013, and ITB 13-0028 for Solicitation for Additional Sinkhole Stabilization Managed Repair Program Vendors dated December 12, 2013, available at https://www.citizensfla.com/about/purchasing/purchasing-solicitations.cfm (last viewed February 5, 2014).

Additionally, in December 2013, to try to settle sinkhole claim disputes over the method of sinkhole repairs, Citizens began sending letters to its policyholders who are disputing the repair recommendations on their sinkhole claims.[35] The letters target policyholders who have a confirmed sinkhole loss where the professional engineer verifying the loss has recommended grouting repairs, but not underpinning. The letters encourage policyholders to have the repair work recommended by the engineer completed. For these policyholders, Citizens is also encouraging them to resolve the differing engineering opinions on the method of repair through the neutral evaluation process and is agreeing to abide by the neutral evaluator's decision, regardless of which side prevails. Further, Citizens is agreeing to pay for repairs that exceed policy limits and for cosmetic repairs needed due to the sinkhole repairs made. Citizens estimates that of its 2,100 disputed sinkhole claims, 1,329 deal with disagreements over repair methods and thus are targeted by the settlement proposal.[36] As of February 4, 2014, 50 policyholders have signed repair contracts offered by the letter.[37]

Effect of Proposed Changes

The bill makes changes to the sinkhole law, but only for sinkhole claims submitted to Citizens. The changes do not apply to sinkhole claims submitted to other property insurers. Specifically, the bill requires Citizens to submit a biannual report on the number of residential sinkhole policies requested, issued, declined, and the reasons for a policy being declined to the OIR and the Office of the Insurance Consumer Advocate (ICA). No report on sinkhole coverage is required in current law for Citizens or other property insurers.

The bill requires Citizens to offer deductible amounts of 2%, 5% and 10% of the policy dwelling limits for sinkhole loss coverage. Current law allows all property insurers, including Citizens, to offer sinkhole deductibles of 1%, 2%, 5%, or 10% of the policy's dwelling limits, but does not require an offer of these deductibles. Citizens has chosen to only offer sinkhole policies with a 10% deductible. Similarly, other private insurers also only offer one sinkhole deductible, usually 10%, and do not offer all four deductibles allowed under current law.

The bill also establishes a Citizens Sinkhole Repair Program which must be operational by March 31, 2015. The program established by the bill utilizes approved repair contractors to ensure sinkhole repairs are completed on property insured by Citizens. The Citizens Sinkhole Repair Program established under the bill is different than the program currently proposed by Citizens. The primary difference is that participation in the program established by the bill is mandatory, whereas the current program is voluntary.

In addition, some, but not all, of the process and timeline specified in the bill that Citizens must use in contracting for sinkhole stabilization repairs and operating the repair program is consistent with Citizens' voluntary sinkhole repair program. Under the mandatory program created by the bill, stabilization repair contractors are approved by Citizens to participate in the program if they meet statutory qualifications. The qualifications, in part, require contractors to have experience in sinkhole stabilization and to provide a performance bond and a five year warranty on the work performed. These qualifications are similar to the ones required by the voluntary Citizens sinkhole repair program.

Each covered sinkhole loss claim is submitted to the approved stabilization contractors who can submit itemized offers to Citizens for the stabilization repairs recommended in the engineering report. The contractors must contract with Citizens to perform stabilization repairs for a fixed price. After repair offers from contractors are received by Citizens, Citizens provides a list of contractors to the policyholder, based on quality, cost-effectiveness, and other criteria. The policyholder has 30 days to select a listed contractor. If the policyholder does not make a selection within 30 days, Citizens selects

[35] Citizens Property Insurance Corporation, *Citizens Chairman: Settlement Proposal Benefits Consumers*, (Press Release dated December 12, 2013). https://www.citizensfla.com/about/pressreleases.cfm (last viewed on January 30, 2014); Citizens Property Insurance Corporation, *Citizens Chairman: No blank checks: Sinkholes will be repaired*, (Press Release dated December 24, 2013). https://www.citizensfla.com/about/pressreleases.cfm (last viewed on January 30, 2014).

[36] *Id.*

[37] Information received from a representative of Citizens on February 4, 2014.

the contractor. If an approved stabilization repair contractor does not offer to perform repairs within policy limits, Citizens may either resubmit the repair to the program or pay up to the policy limits to the policyholder. If policy limits are paid, no sinkhole repairs are made.

Repairs must be warranted by the repair contractor for at least five years. The policyholder's sole remedy is the specific performance[38] of sinkhole stabilization repairs in a dispute with Citizens over the method or extent of stabilization repairs. In addition, Citizens' liabilities under the repair program are limited to the policy limits.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, relating to insurance risk apportionment plans.

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.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Citizens' policyholders no longer receive a direct monetary claim payment for sinkhole stabilization. However, their property affected by the sinkhole is repaired. Ensuring homes with sinkhole claims are repaired should maintain the property value of the house which also maintains the local tax base.

If sinkhole loss costs are reduced by the program implemented by the bill, premium increases for sinkhole insurance from Citizens may be reduced.

D. FISCAL COMMENTS:

None.

[38] Specific performance requires a party to a contract to perform as promised in the contract and thus, in many cases, precludes an award of monetary damages for breach of contract.

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:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's provision requiring Citizens to offer sinkhole deductibles of 2%, 5%, and 10% could make sinkhole coverage from Citizens more attractive than that from private insurers who generally offer only a 10% sinkhole deductible. However, the eligibility requirements in current law for insurance in Citizens would still apply and would have to be met in order for the property to be insured by Citizens.[39]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[39] Current law (s. 627.351(6), F.S.) provides eligibility restrictions based on premium amount, value of property insured, and location of property.

A bill to be entitled

An act relating to insurance; amending s. 627.351, F.S.; requiring Citizens Property Insurance Corporation to submit a biannual report on the number of residential sinkhole policies issued and declined; providing legislative findings; establishing a Citizens Sinkhole Stabilization Repair Program for sinkhole claims; providing definitions; providing program components; specifying the corporation's liability with respect to sinkhole claims; requiring the corporation to offer specified deductible amounts for sinkhole loss coverage; providing an effective date.

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

Section 1. Paragraphs (ii), (jj), and (kk) are added to subsection (6) of section 627.351, Florida Statutes, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(ii) At least once every 6 months, the corporation shall submit a report to the office and the Insurance Consumer Advocate disclosing:

1. The total number of requests received for residential sinkhole loss coverage;

2. The total number of policies issued for residential sinkhole loss coverage;

3. The total number of requests declined for residential

sinkhole loss coverage; and

4. The reasons for declining the requests for residential sinkhole loss coverage.

(jj) The Legislature finds that it is in the public interest that sinkhole loss claims be resolved by stabilizing the land and structure and making repairs to the foundation of the damaged structure. Therefore, a Citizens Sinkhole Stabilization Repair Program is established by the corporation. By March 31, 2015, any claim against a corporation policy that covers residential sinkhole loss for which it is determined that a covered sinkhole loss has occurred must be included in and governed by the stabilization repair program for the purpose of stabilizing the land and structure and making repairs to the foundation.

1. As used in this paragraph, the term:

a. "Engineering report" means the report issued pursuant to s. 627.7073(1).

b. "Recommendation of the engineer" means the recommendation of the engineer engaged by the corporation pursuant to s. 627.7073(1)(a)5.

c. "Stabilization repair contractor" means a contractor who stabilizes the land and structure and makes repairs to the foundation of the damaged structure.

d. "Stabilization repairs" means stabilizing the land and structure and making repairs to the foundation.

2. The stabilization repair program may be managed by the corporation or a third-party administrator and, at a minimum, must include the following components:

a. The corporation may not require the policyholder to advance payment for repairs.

b. Stabilization repairs shall be conducted by stabilization repair contractors selected from an approved stabilization repair contractor pool procured by the corporation pursuant to an open and transparent process. Each stabilization repair contractor within the pool must be qualified and approved by the corporation based upon criteria including the following minimum requirements:

(I) The stabilization repair contractor must be certified as a contractor pursuant s. 489.113(1).

(II) The stabilization repair contractor corporate entity must demonstrate experience in stabilization of sinkhole activity pursuant to requirements to be established by the corporation.

(III) The stabilization repair contractor must demonstrate capacity to be bonded and provide performance, surety, or other bonds as described in this paragraph, which may be supplemented by additional requirements as determined by the corporation.

(IV) The stabilization repair contractor must demonstrate insurance coverage requirements, including, but not limited to, commercial general liability coverage and workers' compensation, to be established by the corporation.

(V) The stabilization repair contractor must maintain a valid drug-free workplace program.

(VI) Such other requirements as established by the corporation.

c. Pursuant to the stabilization repair program, qualified

stabilization repair contractors shall be selected from the approved stabilization repair contractor pool to stabilize the land and structure and repair the foundation of the damaged structure pursuant to a fixed-price contract between the contractor and the corporation. Such contracts are not subject to paragraph (e) or s. 287.057. Pursuant to the terms of the contract, the selected stabilization repair contractor is solely responsible for the performance of all necessary stabilization repairs specified in the engineering report and recommendations of the engineer.

d. The corporation shall develop a standard stabilization repair contract for the purpose of stabilizing the land and structure and repairing the foundation of all properties within the stabilization repair program. The contract must include the following minimum requirements:

(I) The assigned stabilization repair contractor must agree to make all stabilization repairs identified in the engineering report based upon a fixed price.

(II) Each stabilization repair contractor must post a payment bond in favor of the corporation as obligee for each project assigned and must post a performance bond, secured by a third-party surety, in favor of the corporation as obligee, in a principal amount equal to the total cost of all fixed-price contracts annually awarded to that contractor.

(III) In addition to the required performance bond, each stabilization repair contractor must provide a warranty, secured by a third-party surety, to the policyholder which covers all repairs provided by the stabilization repair contractor for at

least 5 years after completion of the stabilization repairs.

(IV) Throughout the course of the stabilization repairs performed by the stabilization repair contractor, the engineer shall monitor the property and confirm that stabilization has been satisfactorily completed and that no further stabilization is necessary to remedy the damage identified in the engineering report and recommendation of the engineer.

(V) If the engineer concludes that additional stabilization repair is necessary to complete the repairs specified in the engineering report and recommendations of the engineer, the stabilization repair contractor must perform the additional stabilization repairs at no cost to the corporation or the policyholder. The contract between the corporation and the stabilization repair contractor must contain provisions specifying the remedy and sanctions for failing to perform additional repairs pursuant to this sub-sub-subparagraph.

e. The corporation shall enter into contracts to perform repairs pursuant to a process that includes, but is not limited to, the following requirements:

(I) Within 30 days after the completion of the engineering report, the report shall be identified on a list which shall be made available to all stabilization repair contractors.

(II) The corporation shall establish a selection process for assigning stabilization repair contractors to perform repairs for each property within the stabilization repair program. The selection process shall proceed as follows:

(A) All stabilization repair contractors within the stabilization repair contractor pool shall be provided with an

opportunity to submit an offer, which includes an itemized statement of work, to perform the stabilization repairs recommended in the engineering report.

(B) The corporation shall review the offers and provide the policyholder with a list of qualified stabilization repair contractors from whom the policyholder shall be provided a reasonable time, not to exceed 30 days, to choose a stabilization repair contractor.

(C) If the policyholder has not made such a selection within the 30-day period, the corporation may make the selection.

(D) The corporation may include any or all stabilization repair contractors on the list provided to the policyholder based upon quality, cost-effectiveness, and such other criteria as the corporation determines.

(III) If no stabilization repair contractor submits an offer to perform the stabilization repairs for a property within the stabilization repair program or all offers are above the policyholder's policy limit, the corporation may enter the property into the selection process again or may pay the policyholder an amount up to the policy limits on the structure.

f. The corporation is not responsible for serving as a stabilization repair contractor. The corporation's obligations pursuant to the stabilization repair program are not an election to repair by the corporation and therefore do not imply or result in a new contractual relationship with the policyholder.

g. The corporation's liability related to repair activity, including stabilization repairs pursuant to the sinkhole

stabilization repair program and all other repairs to the structure in accordance with the terms of the policy, is no greater than the policy limits on the structure.

h. This paragraph does not prohibit the corporation from establishing a managed repair program for other repairs to the structure in accordance with the terms of the policy.

i. If a dispute arises between the corporation and the policyholder as to the nature or extent of stabilization repairs to be conducted under the stabilization repair program, the sole remedy for resolving such disputes shall be specific performance.

j. This paragraph supersedes s. 627.707(5), except for s. 627.707(5)(e).

3. The corporation shall pay for other repairs to the structure and contents in accordance with the terms of the policy.

(kk) A policy for residential property insurance issued by the corporation must include a deductible amount applicable to sinkhole losses, offered in amounts equal to 2 percent, 5 percent, and 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 565 Insurance
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

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 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 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; and
- licensing and duties of unaffiliated insurance agents.

The bill has no fiscal impact on state or local government. The fiscal impact on the private sector is outlined in the fiscal section of this analysis.

The bill is effective July 1, 2014.

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 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 premium;
- financial requirements for service warranty associations;
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- 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; and
- licensing and duties of unaffiliated insurance agents.

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.

Current law also requires each insurance agency location be licensed. Other states do not have a similar licensing requirement for branch locations of agencies. 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, 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] The bill eliminates the three year expiration of an agency license. Thus, agency licenses will no longer have a definite expiration date.

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

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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.

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.

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, 2014.

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.

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

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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.

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 include each employee working at the rental business. 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.

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

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

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 use loss estimates from one or more models in their rate filing for property insurance rates and allows insurers to average the results of the models use. 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

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.

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[12] s. 627.0628, F.S.

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

[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).

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

Generally, in Florida, a misstatement in, or omission from, an application for insurance does not have to be intentional in order for the insurer to deny a claim under the insurance policy. Section 627.409, F.S., provides a policyholder's misrepresentation, omission, concealment of fact, or incorrect statement on the insurance application may prevent recovery under the policy if it is fraudulent or material either to the acceptance of the risk by the insurer or to the hazard assumed by the insurer.

Post-claim underwriting occurs when an insurer reviews a policyholder's application for insurance after an insurance claim has been filed and then denies the claim or cancels or voids the insurance policy because of misrepresentation, omission, concealment or fact, or an incorrect statement on the application. In many cases, the insurer's review of the insurance application is done months or years after it was submitted to the insurer and insurance written by the insurer on the risk. When an insurer does a post-claim review of the application and finds a discrepancy, even a minor discrepancy that is not material to the claim nor intentionally fraudulent or misleading, the insurer may deny the claim and cancel or void the insurance coverage under s. 627.409, F.S., alleging the policyholder made a material misrepresentation on the insurance application.

The bill gives insurers 90 days after an insurance policy is effective to determine there is a misrepresentation or omission in an insurance application relating to the policyholder's credit history using a credit report or other public record to make that determination. The insurer is prohibited from cancelling or rescinding the insurance policy or denying coverage of a claim under the policy on the

[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.)

basis of a misstatement or omission on the insurance application relating to credit history after the 90 day period as long as the inaccurate information on the application could have reasonably been discovered by the insurer by a review of the policyholder's credit history or of public records. Thus, post-claim underwriting based on a policyholder's credit history is curtailed by the bill.

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[17] 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.[18] Insurance is specifically included in E-SIGN.[19] 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-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[20] 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.[21] A

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[17] 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.)

[18] 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.

[19] *Id.*

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

[21] s. 627.43141, F.S.

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.[22] 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:

- 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,[23] 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*

[22] 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.)

[23] Ch. 2012-151, L.O.F.

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,[24] 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.[25] 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.

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.[26]

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

[24] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: February 4, 2014).
[25] s. 627.841, F.S.
[26] 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.

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 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)[27] to provide the Legislature, by February 1st each year, a report on the aggregate net probable maximum losses,[28] financing options, and potential assessments of the FHCF and Citizens. This statute was enacted in 2006.[29] The FSC has provided the required report on to the Legislature each February since 2008.

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 OIR prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information needed in the report is already computed by the FHCF and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the FHCF and Citizens.

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[27] The Financial Services Commission is comprised of the Governor and Cabinet (s. 20.121(3), F.S.).

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

[29] Section 20, Ch. 2006-12.

Thus, OIR gathers the information already computed from FHCF and Citizens and presents the information in a report format. The bill requires the FHCF and Citizens, rather than the FSC, to prepare the report and provide it to the Legislature. The bill also requires the report be provided to the FSC.

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.[30] 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.[31] 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 quality assurance program approved by Citizens reviewed and verified the form when it was submitted. 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.

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[30] 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).

[31] s. 627.711(8), F.S.

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.[32]

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 adopted by rule by DFS, and must provide information on the product to be 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

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

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.[33]

As a member of the NAIC, the OIR is required to participate in the organization's Financial Regulation Standards and Accreditation Program.[34] 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,[35] and revises accreditation requirements to adapt to evolving industry practices. The OIR has identified elements of several NAIC model acts that are not in the current Insurance Code,[36] 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.[37]

In response to the recent financial crisis, the NAIC's Solvency Modernization Initiative (SMI)[38] 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.[39]

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.[40] These revisions include:

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[33] About the NAIC, http://www.naic.org/index_about.htm (last accessed February 27, 2013).
[34] NAIC Financial Regulation Standards and Accreditation Committee: http://www.naic.org/committees_f.htm
[35] NAIC Model Laws, Regulations and Guidelines: http://www.naic.org/store_model_laws.htm
[36] The Insurance Code consists of chs. 624, 632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[37] Bill analysis by the OIR (received March 9, 2013), on file with the Insurance & Banking Subcommittee.
[38] NAIC Solvency Modernization Initiative (last viewed February 3, 2014), at http://www.naic.org/index_smi.htm
[39] Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.
[40] 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 &

- 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.[41]

Current Situation
Currently, s. 628.461, F.S., provides that a person or affiliated person[42] 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%).

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 which will be in effect, unless the OIR disallows the disclaimer.
    - **Allows for an automatic disclaimer when an affiliated person of a party acquiring less than 20% of the outstanding voting securities has filed a Schedule 13G with**

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
[41] NAIC Group Supervision, http://www.naic.org/cipr_topics/topic_group_supervision.htm (last viewed February 27, 2013).
[42] 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.

the SEC; such filing is automatically deemed to be a filing of disclaimer of affiliation and control without further action of the OIR.

- 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."[43]
- 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.[44]

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 (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,[45] 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").[46]

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

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[43] In the OIR bill from 2013 (HB 813) and in the most recent OIR draft for this year's bill, the definition of "affiliated person" was moved to s. 624.085, F.S., and modified slightly (changed controlling stock threshold from 5% to 10%).

[44] In the OIR bill from 2013 (HB 813) and in the most recent OIR draft for this year's bill, the definition of "controlling company" was moved to s. 624.085, and now shows a 10% threshold instead of 25%.

[45] 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."

[46] 17 C.F.R. §240.13d-1(i).

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)[47] 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.[48]

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.[49] 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[50] 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 or premium refunds that cannot be paid to former insureds of the FWCJUA because they cannot reasonably be located. Currently, the FWCJUA reports the property[51] 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.[52] 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.

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[47] The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994.

[48] *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 accessed February 5, 2014).

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

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

[51] 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.

[52] *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.

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.

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. 624.501, F.S., relating to filing, licensing, appointment, and miscellaneous fees.

Section 5: Amends s. 626.015, F.S., relating to definitions.

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 required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.

Section 8: Amends s. 626.172, F.S., relating to application for insurance agency license.

Section 9: Amends s. 626.311, F.S., relating to scope of license.

Section 10: Amends s. 626.321, F.S., relating to limited licenses.

Section 11: Amends s. 626.382, F.S., relating to continuation, expiration of license; insurance agencies.

Section 12: Amends s. 626.601, F.S., relating to improper conduct; inquiry; fingerprinting.

Section 13: Repeals s. 626.747, F.S., relating to branch agencies.

Section 14: Amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 15: Amends s. 626.8805, F.S., relating to certificate of authority to act as administrator.

Section 16: Amends s. 626.8817, F.S., relating to responsibilities of insurance company with respect to administration of coverage insured.

Section 17: Amends s. 626.882, F.S., relating to agreement between administrator and insurer; required provisions; maintenance of records.

Section 18: 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 19: Amends s. 626.884, F.S., relating to maintenance of records by administrator; access; confidentiality.

Section 20: Amends s. 626.89, F.S., relating to annual financial statement and filing fee; notice of change of ownership.

Section 21: Amends s. 626.931, F.S., relating to insurer reporting requirements.

Section 22: Amends s. 626.932, F.S., relating to surplus lines tax.

Section 23: Amends s. 626.935, F.S., relating to suspension, revocation, or refusal of surplus lines agent's license.

Section 24: Amends s. 626.936, F.S., relating to failure to file reports or pay tax or service fee; administrative penalty.

Section 25: Amends s. 627.062, F.S., relating to rate standards.

Section 26: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 27: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 28: Amends s. 627.072, relating to making and use of rates.

Section 29: Amends s. 627.281, F.S., relating to appeal from rating organization; workers' compensation and employer's liability insurance filings.

Section 30: Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemption.

Section 31: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 32: Amends s. 627.3519, F.S., relating to annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 33: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 34: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

Section 35: Amends s. 627.421, F.S., relating to delivery of policy.

Section 36: Amends s. 627.43141, F.S., relating to notice of change in policy terms.
Section 37: Creates s. 627.4553, F.S., relating to recommendations to surrender.

Section 38: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 39: Creates s. 627.70151, F.S., relating to appraisal; conflicts of interest.

Section 40: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 41: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 42: Amends s. 627.711, F.S., relating to notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection forms.

Section 43: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 44: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 45: Amends s. 627.745, F.S., relating to mediation of claims.

Section 46: Amends s. 627.782, F.S., relating to adoption of rates.

Section 47: Amends s. 627.841, F.S., relating to delinquency, collection, cancellation, and return payment charges; attorney fees.

Section 48: Amends s. 628.461, F.S., relating to acquisition of controlling stock.

Section 49: Amends s. 634.406, F.S., relating to financial requirements.

Section 50: 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.

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.

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.

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

None.

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. 624.501, F.S.; revising original appointment and renewal fees related to certain insurance representatives; amending s. 626.015, F.S.; defining the term "unaffiliated insurance agent"; amending s. 626.0428, F.S.; 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; 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 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 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 finding; providing that the requirement to adhere to such findings does not limit an insurer from using an average of results of certain models 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 rating factors used to calculate premiums; amending ss. 627.281 and 627.3518, F.S.; conforming cross-references; amending s. 627.311, F.S.; providing that

certain dividends or premium refunds shall be retained by the joint underwriting plan for future use; amending s. 627.3519, F.S.; requiring the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation to provide an annual report to the Legislature and the Financial Services Commission of their respective aggregate net probable maximum losses, financing options, and potential assessments; 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; 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.; requiring the department to adopt rules relating to certification of neutral evaluators; revising notification requirements for participation in the neutral evaluation program; 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 or certification of a neutral evaluator; 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; 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 an effective date.

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. Paragraphs (a) and (c) of subsection (6) and subsection (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 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 agent making an appointment.....$60.00

(8) Health insurance agents.

(a) Agent's original appointment and biennial renewal or

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

Section 5. Subsection (18) of section 626.015, Florida Statutes, 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:

(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. Subsection (4) is added to section 626.0428, Florida Statutes, to read:

626.0428 Agency personnel powers, duties, and limitations.—

(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 the 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) An insurance agency location may not conduct the business of insurance unless an agent in charge is designated

and employed by the agency at all times. If the agent in charge designated with the department leaves the agency's employment 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 last date of employment of the last designated agent in charge.

(e) For purposes of this subsection, an "agent in charge" is the licensed and appointed agent 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.

(f) 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 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 code.

Section 7. 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 location as required by s. 626.0428, and has submitted the address and telephone number of the location to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the 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, 2014, 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. 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 the owner or owners of the agency. If the agency is incorporated, the application must ~~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 of the insurance agency.

(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 partner;

3. Each owner of an unincorporated agency;

4. Each 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, by ownership of any agency bank accounts, 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 9. 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 10. 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, <u>employee,</u> 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 11. 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 12. 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 13. Section 626.747, Florida Statutes, is repealed.

Section 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 whether ~~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 models or methods ~~a model or method~~ 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 26. 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 averaging the model results or output ranges or using acceptable models or methods for the purposes of a rate filing under s. 627.062.

Section 27. 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 as a rating territory shall be deemed submitted pursuant to paragraph (1)(a) ~~unfairly discriminatory~~.

Section 28. 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 negotiation between the employer and the insurer to determine the retrospective rating factors used to calculate the premium for employers that have exposure in more than one state, 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 29. 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 30. 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 or premium refund 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 31. 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)4. ~~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 32. Section 627.3519, Florida Statutes, is amended to read:

627.3519 Annual report of aggregate net probable maximum

losses, financing options, and potential assessments.—No later than February 1 of each year, the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation ~~Financial Services Commission~~ shall provide to the Legislature and the Financial Services Commission a report of their respective ~~the~~ aggregate net probable maximum losses, financing options, and potential assessments ~~of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation~~. The report of the fund and the corporation must include their ~~the~~ respective 50-year, 100-year, and 250-year probable maximum losses ~~of the fund and the corporation~~; analysis of all reasonable financing strategies for each such probable maximum loss, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each of the probable maximum losses. ~~The commission shall require the fund and the corporation to provide the commission with such data and analysis as the commission considers necessary to prepare the report.~~

Section 33. 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 class of insureds. An insurer that uses a credit report or information available as a public record to determine whether there is a misrepresentation or omission in the application for insurance related to the applicant's credit history must make such determination within 90 days after the policy has been in effect. After such 90-day period, an insurer may not cancel or rescind the policy or deny coverage for a claim based on a misstatement or omission in the application regarding credit history that the insurer could reasonably have discovered by a review of credit history or public record. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

~~4. 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.~~

4.~~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.~~

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.

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 34. 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 35. 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 36. 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 37. 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 is not recommending 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 adopted by rule by the department, information concerning the annuity or policy to be surrendered, including the amount of any surrender charge, the loss of any minimum interest rate guarantees, the amount of any tax consequences resulting from the surrender, the amount of any forfeited death benefit, and the value of any other investment performance guarantees being forfeited as a result of the surrender. This section also applies to a person performing insurance agent activities pursuant to an exemption from licensure under this part.

Section 38. 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 39. 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 40. 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 41. Subsections (1) and (3) of section 627.7074, Florida Statutes, are amended to read:

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

(1) The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) Adopt rules for certifying, denying certification of, suspending certification of, and revoking certification as a neutral evaluator in keeping with qualifications specified in this section and ss. 627.706 and 627.745(4).

(c) ~~(b)~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information necessary for the policyholder to request a neutral evaluation.

(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.

Section 42. 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. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or 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 43. 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 44. 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 45. 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, 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 or certification of a neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications for approval or certification specified in this section.

(b) Material misstatement, misrepresentation, or fraud in obtaining, or attempting to obtain, the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation 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 46. 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 47. 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 48. 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. 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. An affiliated person of a party acquiring less than 20 percent of the outstanding voting securities of an insurer that has filed a Schedule 13G 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, with respect to the securities of the party acquiring voting securities of an insurer shall automatically, without further action of the department, be deemed to have filed a disclaimer of affiliation and control pursuant to this paragraph. ~~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 49. 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 50. This act shall take effect July 1, 2014.

INSURANCE & BANKING SUBCOMMITTEE

HB 565 by Rep. Santiago
Insurance

AMENDMENT SUMMARY
February 11, 2014

Amendment 1 by Rep. Santiage (strike all): Makes numerous changes to the bill. Changes include:

- Clarifies appointment fees apply to unaffiliated agents self-appointed for all types of insurance.

- Delays 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.

- Delays 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.

- Delays 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.

- Terminates issuance of new limited customer representative licenses by the Department of Financial Services (DFS) as of October 1, 2014.

- Changes 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.

- Delays the effective date of the elimination of the expiration of an agency license from July 1, 2014 until January 1, 2015.

- Restores rulemaking authority for DFS relating to nonresident agency licenses.

- Revises 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.

- Adds provisions specifying the grounds DFS has to deny an application of a neutral evaluator or suspend or revoke its prior certification of the evaluator.

- Requires DFS to adopt rules relating to the certification of neutral evaluators.

- Adds 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.

- Adds a provision allowing insurers to exempt mitigation verification forms from independent verification when there is a quality assurance program.

- Specifies insurers who want to use an average of results from hurricane models in a property insurance rate filing must use a straight average.

- Allows 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.

- Changes 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.

- Allows the Workers' Compensation Joint Underwriting Association to retain dividends, but not premium refunds, owed to former insureds when they cannot be located.

- Regarding acquisition of controlling stock of an insurer, allows 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.

Amendment a1 to Strike All Amendment by Rep. Santiago (Lines 972-994): Removes the provision in the bill relating to annual reports required of Citizens Property Insurance Corporation (Citizens) and the Florida Hurricane Catastrophe Fund (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.

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: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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) is amended, and subsection (18) of section 626.015, Florida Statutes, 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, no new limited customer representative licenses may 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) are amended, and subsection (4) is added to section 626.0428, Florida Statutes, 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 with the department ends their 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 from the date the designated agent in charge ended their 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 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, 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 paragraph (a) ~~partner~~;

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

~~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, an 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 whether ~~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)4. ~~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 amended to read:

627.3519 Annual report of aggregate net probable maximum losses, financing options, and potential assessments.—No later than February 1 of each year, the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation ~~Financial Services Commission~~ shall provide to the Legislature and the Financial Services Commission a report of their respective ~~the~~

aggregate net probable maximum losses, financing options, and potential assessments ~~of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation~~. The report of the fund and the corporation must include their ~~the~~ respective 50-year, 100-year, and 250-year probable maximum losses ~~of the fund and the corporation~~; analysis of all reasonable financing strategies for each such probable maximum loss, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each of the probable maximum losses. ~~The commission shall require the fund and the corporation to provide the commission with such data and analysis as the commission considers necessary to prepare the report.~~

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 ~~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 has been in effect for more than 90 days, a claim filed by the insured cannot 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, a substantial change in the risk covered by the policy, or 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 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.

~~4. 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 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 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 which meets standards established by the insurer. A uniform mitigation verification form provided by a policyholder, a policyholder's agent, or an authorized mitigation inspector or 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 any 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 in committing 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-C 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-C 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.

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

Remove everything before the enacting clause and insert:

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.; providing 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; 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 of 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 limit an insurer from using a straight average of results of certain models 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 rating factors used to calculate 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; amending s. 627.3519, F.S.; requiring the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation to provide an annual report to the Legislature and the Financial Services Commission of their respective aggregate net probable maximum losses, financing options, and potential assessments; amending s. 627.409, F.S.; providing that a claim for residential property insurance cannot 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 cannot 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.; requiring the department to adopt rules relating to certification of neutral evaluators; 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 rulemaking 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; 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 an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 565 (2014)

Amendment No. a1

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: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment to Amendment (736039) by Representative Santiago **(with title amendment)**

Remove lines 972-994 of the amendment and insert:

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

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

Remove lines 1985-1990 of the amendment and insert:

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.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Check Cashing Services
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Criminal Justice Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Money services businesses ("MSBs") offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in Florida or do business in this state must comply with the federal Bank Secrecy Act and implementing regulations, as well as the Florida Money Services Businesses Act (ch. 560, F.S., "the Act"), which is administered and enforced by the Florida Office of Financial Regulation ("OFR").

The bill provides the following changes to the Act:

- Allows the OFR to summarily suspend the license of a MSB pursuant to s. 120.60(6), F.S., if certain criminal charges are filed against a natural person listed on the application or if such person is arrested for specified crimes.
- Expands prohibited acts to include violations under s. 560.310, F.S., relating to records retention and OFR database reporting requirements applicable to check cashers. A violation of this act would be a third-degree felony.
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized under the Act, and such person has no right to collect funds relating to such transaction.
- Updates outdated cross-references to federal MSB regulations.

The bill does not have a fiscal impact on state or local government, and the bill's provision regarding unauthorized deferred presentment transactions may have a positive impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Money services businesses (MSBs) offer a variety of non-depository financial services involving the receipt and transmission of currency, monetary value, or payment instruments through a variety of means, including wire, electronic transfer, or through third-party payment systems. MSBs that are located in or does business in this state (whether within Florida or into Florida from locations outside Florida or country)[1] must comply with the following federal and state laws and regulations.

Federal Regulation of MSBs – Bank Secrecy Act

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury, and its mission is to "safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."[2]

FinCEN enforces the Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."[3] The BSA was amended by Title III of the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering. The BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. In addition, MSBs conducting more than $1,000 in business with one person in one or more transaction are required to register with FinCEN or be subject to civil money penalties and criminal prosecution.[4]

The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations under 31 C.F.R. Part 103.[5] On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight. There have been no substantive changes made to the underlying regulation as a result of this transfer and reorganization.[6]

State Regulation of MSBs - Money Services Businesses Act

In 1994, the Florida Legislature enacted the Money Transmitters' Code (renamed the Money Services Business Act, ch. 560, F.S., "the Act"). The Act consists of four parts: (I) general provisions, (II) payment instruments and funds transmission; (III) check cashing and foreign currency exchange; and (IV) deferred presentment. The Act does not apply to state and federally chartered banks, credit unions, trust companies, and other financial depository institutions, nor does it apply to the sovereign.[7] Part I of the Act gives supervisory, licensing, and enforcement authority to the Florida Office of Financial Regulation

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[1] See s. 560.103(22), F.S. (definition of "money services business").
[2] FinCEN, "What We Do," at http://www.fincen.gov/about_fincen/wwd/ (last accessed January 21, 2014).
[3] FinCEN, "FinCEN's Mandate from Congress / Bank Secrecy Act," at http://www.fincen.gov/statutes_regs/bsa/ (last accessed January 21, 2014).
[4] 31 C.F.R. § 1022.380.
[5] U.S. Department of the Treasury, Treasury Order 180-01, at http://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx (last accessed January 21, 2014).
[6] FinCEN, Chapter X, at http://www.fincen.gov/statutes_regs/ChapterX/ (last accessed January 21, 2014).
[7] Section 560.104, F.S.

("OFR"), and authorizes the OFR's rulemaking body, the Financial Services Commission (Commission), to adopt rules to implement the Act's requirements regarding books and records, examinations, forms, and fees.

According to the Act, MSBs are persons who act as one or more of the following:

- Part II:
  - *Payment instrument seller*: a qualified entity that sells instruments like checks, money orders, and travelers checks. Payment instruments do not include gift cards, credit card vouchers, and letters of credit.
  - *Money transmitter*: a qualified entity that receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means to, within, or from the U.S.

- Part III:
  - *Foreign currency exchanger*: a person who exchanges currency of one country to that of another for compensation.
  - *Check casher:* a person who sells currency in exchange for payment instruments received, excluding travelers checks.
    - Licensed check cashers are required to comply with federal requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding $1,000, the licensed check casher must submit specified transactional data to an electronic log or check-cashing database.
      - In 2013, the Florida Legislature enacted CS/CS/HB 217,[8] which authorized the OFR to issue a competitive solicitation for a statewide, real-time online check cashing database. The database will hold the same transactional information required from licensed check cashers for checks exceeding $1,000 that is currently required in an electronic log format. The implementation of check cashing database will also be used by the Department of Financial Services' Division of Workers Compensation and Division of Insurance Fraud and various law enforcement agencies in efforts to combat workers' compensation insurance fraud.

- Part IV:
  - *Deferred presentment provider ("DPP", commonly known as payday lenders):* DPPs are a MSB designation, not a separate license. DPPs are persons licensed under part II or part III of the Act, and have filed a declaration of intent with the OFR to engage in *deferred presentment transactions*, which means providing currency or a payment instrument in exchange for a customer's check and agreeing to hold the check for a deferment period.
    - Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.6 The face amount of a check taken for a deferred presentment may not exceed $500.7 A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

The current licensee statistics from the OFR[9] are:

- Part II: 163 licensees
- Part III: 1,133 licensees

[8] CS/CS/HB 217 was approved by the Governor on June 7, 2013 (ch. 2013-139, Laws of Florida).

[9] E-mail from the OFR (received January 21, 2014), on file with the Insurance & Banking Subcommittee staff.

- Part IV: 162 declarations of intent
    - 21 DPPs are licensed under Part II
    - 141 DPPs are licensed under Part III

To qualify for licensure as a MSB under the Act, an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully.
- Be legally authorized to do business in Florida.
- Be registered as a money services business with the FinCEN as required by 31 C.F.R. s. 103.41, if applicable.
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125.[10]
- Provide the OFR with information required under the Act and related rules.[11]

Prohibited Acts

The Act prohibits MSBs, authorized vendors, and affiliated parties from engaging in specified acts in s. 560.111, F.S., such as embezzlement and making false entries in books and documents with the intent to deceive or defraud. A person who violates any of these acts commits a third-degree felony. In addition, the Act prohibits a willful violation of certain DPP requirements (i.e., willfully failing to file a declaration of intent, willfully failing to with the requirements for deferred presentment transactions, or willfully failing to comply with deposit and redemption requirements[12]), which is also a third-degree felony.

Emergency Suspension Authority

Currently, the Act authorizes the OFR to immediately suspend the license of a MSB that fails to provide the office specified records or fails to maintain a federally insured depository account, and such failure constitutes immediate and serious danger to the public health, safety, and welfare, for purposes of s. 120.60(6), F.S.[13]

The OFR (and all agencies subject to the Administrative Procedures Act (ch. 120, F.S.)) have an emergency suspension and restriction authority pursuant to s. 120.60(6), F.S., which provides that:

> (6) If the agency *finds that* immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
> (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
> (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
> (c) The agency states in writing at the time of, or prior to, its action the *specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances*. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon (emphasis added).

A licensee who is the subject of an emergency order may request an expedited administrative hearing with the Division of Administrative Hearings to challenge the factual basis of an ESO, or may seek to enjoin the

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[10] In 2008, the Florida Legislature adopted a number of BSA/AML regulations in the Act and provided that it was a violation of state law, subject to administrative sanctions by the OFR, to fail to comply with federal BSA/AML regulations. Ch. 2008-177, Laws of Florida.

[11] Section 560.1401, F.S.

[12] These DPP requirements are found at ss. 560.403, 560.404, and 560.405, F.S.

[13] Section 560.114(2), F.S.

ESO and immediately appeal to a district court of appeal to determine the limited issue of whether the ESO complies with the statutory and due process requirements of the Administrative Procedures Act.[14]

The case law surrounding emergency suspension orders (ESOs) has repeatedly held that general conclusory predictions of harm are not sufficient to support the issuance of an emergency suspension order; rather, the agency's stated reasons "must be factually explicit and persuasive concerning the existence of a genuine emergency."[15] In finding that an agency's sole reliance on the allegations contained within a federal indictment were insufficient to sustain an ESO, the First District Court of Appeal held:

> It is not enough for the ESO merely to allege statutory violations. *Robin Hood Group, Inc. v. Fla. Office of Ins. Regulation,* 885 So.2d 393, 396 (Fla. 4th DCA 2004)...[T]o be sustained, the ESO must contain *factual allegations* which demonstrate that (i) the complained of conduct was likely to continue; (ii) the order was necessary to stop the emergency; and (iii) the order was sufficiently narrowly tailored to be fair. *Bertany Assoc.* for *Travel and Leisure. Inc.* v. *Fla. Dep't* of *Fin. Servs.,* 877 So. 2d 854.855 (Fla.1st DCA 2004)(citing *Premier Travel Int'l. Inc.* v. *State. Dep't of Agric. and Consumer Servs.,* 849 So. 2d 1132. 1134-37 (Fla. 1st DCA 2003).[16]

The *Bio-Med* court further held that although proof of a specific statutory violation (such as being criminally charged with a felony) may satisfy an agency's burden in an ordinary non-emergency administrative proceeding, "an allegation of such a violation does not, by itself, satisfy the requirements of s. 120.60(6)" and the specific regulatory statute authorizing emergency action.[17]

Effect of the Bill

Prohibited Acts – s. 560.111, F.S.

The bill provides that any licensed check casher who willfully *and knowingly* violates the check casher record retention or database reporting requirements of s. 560.310, F.S., commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.0784, F.S.

In addition, the bill revises the intent standard for failing to comply with the DPP requirements, which is currently a third-degree felony if such violation is "willful." The bill provides that a person must not only willfully violate, but also *knowingly* violate such provisions (ss. 560.310, 560.403, 560.404, or 560.405, F.S.).

According to one legal commentator, the distinction between "willfully" and "knowingly":

> Generally, courts only require that the proscribed conduct be performed consciously and intentionally, except in the rare instances in which there is a clear legislative intent to impose more stringent requirements. As a corollary, juries are usually instructed that "knowingly" means an act of which the individual is conscious and which is performed voluntarily and not through "ignorance, mistake, or accident." Similarly, juries are commonly instructed that "willfully" refers to conduct that was intentional and deliberate rather than careless, inadvertent, or negligent. Furthermore, they are usually told that they need not find that the defendant intended to disobey the law for the conduct to have been willful. These definitions of "knowingly" and "willfully" are in accord with the general rule that ignorance of the law is not a defense to a criminal charge.[18]

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[14] *Robin Hood Group, Inc. v. Fla. Office of Ins. Regulation*, 885, So.2d 393, 396 (Fla. 4th DCA 2004) and *Bertany Ass'n for Travel and Leisure, Inc. v. Fla. Dep't of Fin. Servs.*, 877 So.2d 854, 855 (Fla. 1st DCA 2004).
[15] *Fla. Home Builders v. Div. of Labor*, 355 So. 2d 1245, 1246 (Fla. 1st DCA 1978).
[16] *Bio-Med Plus, Inc., v. Fla. Dep't of Health*, 915 So.2d 669 at 672 (Fla. 1st DCA 2005).
[17] *Id.* at 673.
[18] Douglas A. Blair, *The "Knowingly and Willfully" Continuum of the Anti-Kickback Statute's Scienter Requirement: Its Origins, Complexities, and Most Recent Judicial Developments*, 8 Annals Health L. 1, 9 (1990).

In construing a "willfully and knowingly" intent requirement in the usury statute, the Florida Supreme Court held that there must be a designed, conscious motion of the will, intending the result which actually comes to pass; i.e., with an unlawful intent.[19]

BSA/Chapter X citation updates
Sections 2, 3, 5, 6, and 7 of the bill update and conform the Act's cross-references to federal BSA/AML regulations that have been moved and renumbered by FinCEN on March 1, 2011.

Summary suspension powers – 560.114(2)
The bill gives the OFR an additional ground to summarily suspend a MSB's license if the OFR "has reason to believe that the licensee poses an immediate, serious danger to the public health, safety, and welfare." Specifically, the bill provides that the OFR may summarily suspend a MSB's license when criminal charges are filed against a natural person who is required to be listed on the application, or arrest for the following enumerated crimes:

- 1(o) - Felony or equivalent which involves fraud, moral turpitude, or dishonest dealing;
- 1(p) – A crime under 18 U.S.C. 1956 [laundering of monetary instruments] or 31 U.S.C. s. 5324 [structuring transactions to evade reporting requirement]; and
- 1(q) – Misappropriation, conversion, or unlawful withholding of moneys belonging to others.

As explained above, the APA and the case law regarding emergency orders still requires that agencies provide *specific facts* showing immediate, serious danger to the public health, safety, and welfare to meet statutory and due process requirements.

Unauthorized payday lending – s. 560.125, F.S.

Current Situation
Often, out-of-state payday lenders evade applicable rate caps and state licensing requirements by operating through the Internet, which present challenges for regulatory detection and enforcement. Persons who provide deferred presentment transactions in Florida without the appropriate Part II or Part III license and declaration of intent, as required by the Act, typically operate through the Internet and thus evade other regulatory requirements that were intended to provide consumer protections (such as the Act's prohibitions on DPP rollovers, excessive fees, and extensions of multiple, simultaneous loans, or interest rate in excess of the caps set forth in the Florida Consumer Finance Act, ch. 516, F.S.[20]). In addition, unlicensed internet payday lenders may also seek subterfuge by operating offshore, affiliating with Native American tribes in order to claim tribal immunity, or incorporating in states with no usury caps with the belief that only the home state law applies despite reaching other states' residents through the Internet.

A number of states have recently increased enforcement efforts and/or legislative measures towards payday lending abuses, such as enacting rate caps, reaching affiliates (banks and debt collectors) who participate in the making or servicing of unauthorized loans,[21] and exercising state jurisdiction to out-of-state lenders who make usurious loans.[22] In addition, state and federal courts have ruled in favor of state jurisdiction over online payday lenders.[23]

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[19] *Dixon v. Sharp*, 276 So.2d 817 (Fla. 1973).
[20] The Florida Consumer Finance Act (ch. 516, F.S.), is also administered by the OFR and sets forth allowable interest rates for small unsecured loans. That act also provides a similar provision in that "[a] loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, is not enforceable is this state." (s. 516.02(2)(c), F.S.).
[21] New York Department of Financial Services press release on payday loan investigation (August 6, 2013), at http://www.dfs.ny.gov/about/press2013/pr1308061.htm (last accessed February 5, 2014).
[22] *See* Center for Responsible Lending, *Issue Brief: Effective State and Federal Payday Lending Enforcement: Paving the Way for Broader, Stronger Protections* (October 4, 2013), on file with the Insurance & Banking Subcommittee staff.
[23] Consumer Federation of America, *States Have Jurisdiction over Online Payday Lenders* (May 2010), on file with the Insurance & Banking Subcommittee staff.

Effect of the bill on unauthorized deferred presentment transactions

The bill provides that a deferred presentment transaction conducted by a person not licensed (authorized by the OFR under the Act) as a DPP is void and that the unlicensed person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions. This would mean that the unauthorized lender does not have the legal authority to collect on the loan via garnishment, court action, or otherwise.

B. SECTION DIRECTORY:

Section 1: Amends s. 560.111, F.S., relating to definitions.

Section 2: Amends s. 560.114, F.S., relating to disciplinary actions; penalties.

Section 3: Amends s. 560.1235, F.S., relating to anti-money laundering requirements.

Section 4: Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5: Amends s. 560.1401, F.S., relating to licensing standards.

Section 6: Amends s. 560.141, F.S., relating to license application.

Section 7: Amends s. 560.309, F.S., relating to conduct of business.

Section 8: 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.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's prohibition on unlicensed deferred presentment transactions may be beneficial to consumers and may provide competitive equality for licensed MSBs who comply with the Part IV/DPP requirements of the Act.

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:

Article III, s. 6, of the Florida Constitution requires every law to embrace only one subject and matter properly connected. Sections 1-6 of the bill affect all MSBs, including check cashers. However, the title of the bill is "an act relating to check cashing services."

B. RULE-MAKING AUTHORITY:

None provided in the bill. However, the bill's updating of the federal regulations cited in the Act will also require updating of the same citations currently in Chapter 69V-560, Fla. Admin. Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A strike-all amendment is anticipated to:

- Provide a title change to reflect the substance of the bill more accurately;
- Clarify that failure to provide certain information relating to a check cashing transaction is a felony;
- Clarify the OFR's summary suspension powers;
- Correct several BSA/AML cross-references in the Act; and
- Clarify the regulatory approval required of deferred presentment providers. Section 4 of the bill refers to the "licensure" of DPPs. However, the OFR does not license DPPs as a separate licensure category. A deferred presentment provider must be licensed under part II or part III of the Act, file a declaration of intent with the OFR, and meet other requirements to engage in deferred presentment transactions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to check cashing services; amending s. 560.111, F.S.; revising the elements of prohibited acts; updating cross-references; reenacting and amending s. 560.114, F.S.; updating cross-references; authorizing the Office of Financial Regulation to summarily suspend a license if criminal charges are filed against certain persons or such persons are arrested for certain offenses; amending s. 560.1235, F.S.; updating cross-references; amending s. 560.125, F.S.; providing that a deferred presentment transaction conducted by an unlicensed person is void; amending ss. 560.1401 and 560.141, F.S.; updating cross-references; amending s. 560.309, F.S.; updating a cross-reference; providing an effective date.

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

Section 1. Subsection (5) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(5) A ~~Any~~ person who knowingly and willfully violates any provision of s. 560.310, s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (e) and (y) of subsection (1) and

subsection (2) of section 560.114, Florida Statutes, are amended, and paragraph (h) of subsection (1) of that section is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(e) Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by this chapter or related rules or orders, by 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410, 1021.311, 1021.313, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, or by an ~~any~~ agreement entered into with the office.

(h) Engaging in an act prohibited under s. 560.111.

(y) Violations of 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410, 1021.311, 1021.313, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, and United States Treasury Interpretive Release 2004-1.

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

suspend the license of a money services business if the office has reason to believe that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding for the summary suspension of a licensee must be conducted by the commissioner of the office, or his or her designee, who shall issue the final summary order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a ~~any~~ money services business if ~~the money services business fails to~~:

(a) The money services business fails to provide to the office, upon written request, any of the records required by s. 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.

(b) The money services business fails to maintain a federally insured depository account as required by s. 560.309.

(c) Criminal charges are filed against a natural person required to be listed on the license application pursuant to s. 560.141(1)(a)3. or such person is arrested for a crime listed in paragraph (1)(o), paragraph (1)(p), or paragraph (1)(q).

~~For purposes of s. 120.60(6), failure to perform any of the acts specified in this subsection constitutes immediate and serious danger to the public health, safety, and welfare.~~

Section 3. Section 560.1235, Florida Statutes, is amended

to read:

560.1235 Anti-money laundering requirements.—

(1) A licensee and authorized vendor must comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, s. 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.313, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410, 1021.311, 1021.313, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and 103.41~~.

(2) A licensee and authorized vendor must maintain an anti-money laundering program in accordance with 31 C.F.R. s. 1022.210 ~~103.125~~. The program must be reviewed and updated as necessary to ensure that the program continues to be effective in detecting and deterring money laundering activities.

(3) A licensee must comply with United States Treasury Interpretive Release 2004-1.

Section 4. Subsection (1) of section 560.125, Florida Statutes, is amended to read:

560.125 Unlicensed activity; penalties.—

(1) A person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter. A deferred presentment transaction conducted by a person not licensed as a deferred presentment provider under this chapter is void, and the unlicensed person has no right to

collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 5. Subsections (3) and (4) of section 560.1401, Florida Statutes, are amended to read:

560.1401 Licensing standards.—To qualify for licensure as a money services business under this chapter, an applicant must:

(3) Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380 ~~103.41~~, if applicable.

(4) Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 6. Paragraph (d) of subsection (1) of section 560.141, Florida Statutes, is amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(d) A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 7. Subsection (5) of section 560.309, Florida Statutes, is amended to read:

560.309 Conduct of business.—

(5) A licensee must report all suspicious activity to the office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s. 1022.320 ~~103.20~~. In lieu of filing such reports, the commission may prescribe by rule that the licensee may file such reports with an appropriate regulator.

Section 8. This act shall take effect July 1, 2014.

INSURANCE & BANKING SUBCOMMITTEE

HB 623 by Rep. Roberson
Check Cashing Services

AMENDMENT SUMMARY
February 11, 2014

Amendment 1 by Rep. Roberson (strike-all amendment): Makes the following changes:

- Provides a title change;
- Clarifies that failure to provide certain information relating to a check cashing transaction is a felony;
- Clarifies the OFR's summary suspension powers;
- Corrects several cross-references to federal Bank Secrecy Act regulations in the Act; and
- Clarifies the regulatory approval required of deferred presentment providers.

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: Insurance & Banking Subcommittee

Representative Roberson, K. offered the following:

Amendment 1 (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (6) is added to section 560.111, Florida Statutes, to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084.

Section 2. Paragraphs (e) and (y) of subsection (1) and subsection (2) of section 560.114, Florida Statutes, are amended, and paragraph (h) of subsection (1) of that section is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(e) Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by this chapter or related rules or orders, by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, or by an ~~any~~ agreement entered into with the office.

(h) Engaging in an act prohibited under s. 560.111.

(y) Violations of 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41, and 103.125~~, and United States Treasury Interpretive Release 2004-1.

(2) Pursuant to s. 120.60(6), the office may summarily suspend the license of a money services business if the office finds that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding in which the office seeks the issuance of a final order for the summary

suspension of a licensee shall be conducted by the commissioner of the office, or his or her designee, who shall issue such order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a ~~any~~ money services business if ~~the money services business fails to~~:

(a) The money services business fails to provide to the office, upon written request, any of the records required by s. 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.

(b) The money services business fails to maintain a federally insured depository account as required by s. 560.309.

(c) A natural person required to be listed on the license application for a money service business pursuant to s. 560.141(1)(a)3. is criminally charged with, or arrested for, a crime described in paragraph (1)(o), paragraph (1)(p), or paragraph(1)(q).

~~For purposes of s. 120.60(6), failure to perform any of the acts specified in this subsection constitutes immediate and serious danger to the public health, safety, and welfare.~~

Section 3. Section 560.1235, Florida Statutes, is amended to read:

560.1235 Anti-money laundering requirements.—

(1) A licensee and authorized vendor must comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, s. 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and 103.41~~.

(2) A licensee and authorized vendor must maintain an anti-money laundering program in accordance with 31 C.F.R. s. 1022.210 ~~103.125~~. The program must be reviewed and updated as necessary to ensure that the program continues to be effective in detecting and deterring money laundering activities.

(3) A licensee must comply with United States Treasury Interpretive Release 2004-1.

Section 4. Subsection (1) of section 560.125, Florida Statutes, is amended to read:

560.125 Unlicensed activity; penalties.—

(1) A person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter. A deferred presentment transaction conducted by a person not authorized to conduct such transaction under this chapter is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 5. Subsections (3) and (4) of section 560.1401, Florida Statutes, are amended to read:

560.1401 Licensing standards.—To qualify for licensure as a money services business under this chapter, an applicant must:

(3) Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380 ~~103.41~~, if applicable.

(4) Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 6. Paragraph (d) of subsection (1) of section 560.141, Florida Statutes, is amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(d) A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

Section 7. Subsection (5) of section 560.309, Florida Statutes, is amended to read:

560.309 Conduct of business.—

(5) A licensee must report all suspicious activity to the office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s. 1022.320 ~~103.20~~. In lieu of filing such reports, the commission may prescribe by rule that the licensee may file such reports with an appropriate regulator.

Section 8. This act shall take effect July 1, 2014.

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121 ----------
122 **T I T L E A M E N D M E N T**
123 Remove lines 2-5 and insert:
124 An act relating to money services businesses; amending s.
125 560.111, F.S.; providing that failing to provide certain
126 information relating to a check cashing transaction is a felony;
127 reenacting and amending s.
128

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders
SPONSOR(S): Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

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 Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and implementing legislation in 2009.

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 now conflict 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;
- Repeals duplicative or redundant regulation; in areas not addressed by Dodd-Frank or the CFPB's regulations;
- 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 an indeterminate fiscal impact on state revenues and expenditures, because the number of licensees that would use the late renewals and reactivation capability is unknown. The bill may have a positive impact on the private sector, in that the bill simplifies regulatory requirements for the residential, non-depository mortgage professionals in Florida.

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 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
- 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, including the District of Columbia and U.S. Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system 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 (AARMR)[1] and began operations in January 2008. It is owned and operated by the State Regulatory Registry LLC (SRR)[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)

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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).

- Truth in Lending Act (TILA)
- 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

The bill:

- Makes several changes to the Act's provisions regarding mortgage fees and disclosures, which now conflict 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;
- Provides regulatory relief in areas not addressed by Dodd-Frank or the CFPB's regulations;
- Provides for a "failed to renew" license status and an option to reactivate such a license by paying a fee; and
- Makes technical, clarifying changes to the Act.

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 to 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 Florida Association of Mortgage Professionals (FAMP) has recommended an additional 60 days to be provided to all mortgage license types to allow for late renewals. The bill's language for late renewals, which has been modeled after several other state lending laws, provides that all licensees who not renew between December 31 and February 28[16] will be placed in a "failed to renew" status, and would be required to pay a reinstatement fee (which varies depending on the license type) outside of the registry to reactivate the license. However, licensees who do not complete the renewal process after February 28 would then

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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).

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 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 with other regulators

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 Chapter 119 and Chapter 494.[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 prelicensing examination.

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[17] Sections 494.00321 and 494.0067, F.S.

[18] Section 494.001(6), F.S.

[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).

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, 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] The bill 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.[28]

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 particular

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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] Section 494.001(16), F.S.

mortgage products.[29] 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.[30] 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 transactions; specifically, it removes 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.

However, 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%).[31] 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. FAMP is requesting 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 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.[32]

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[29] Section 1403 of Dodd-Frank; effective January 1, 2014.
[30] FAMP bill analysis of HB 623 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.
[31] *Id.*; see also Integrated Mortgage Disclosures Under RESPA (Regulation X) and TILA (Regulation Z), 78 FR 79730 (December 31, 2013).
[32] 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.
- Removes 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.
- Removes 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.[33]

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), 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 their 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).[34] 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.[35] 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.

- 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), F.S.

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[33] 12 CFR § 1026.4.

[34] Section 494.00611(2)(f), F.S.

[35] 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.[36] 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.[37] Section 19 of the bill repeals part IV, ch. 494, F.S.

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[38] 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.[39] 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 have adopted this model act.[40]

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, relating to definitions.

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.

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[36] 78 FR 6855 (January 31, 2013). See also ss. 1431-1432 of Dodd-Frank.
[37] FAMP bill analysis of HB 631 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.
[38] Section 3, ch. 77-397, L.O.F.
[39] FAMP bill analysis of HB 413, on file with the Insurance & Banking Subcommittee staff.
[40] 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 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 Act.

Section 21 of the bill provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the OFR, additional revenues are possible based on license reactivations after December 31 every year, but the number of such reactivations is unknown at this time. An exact fiscal impact is indeterminate.[41]

2. Expenditures:

   According to the OFR, additional expenditures are possible based on license reactivations after December 31 every year, but the number of such reactivations is unknown at this time. An exact fiscal impact is indeterminate.[42]

[41] OFR's analysis of HB 631 (received February 4, 2014), on file with the Insurance & Banking Subcommittee.
[42] *Id.*

However, the OFR has provided the mortgage licensure renewal rates for 2013[43]:

	Eligible	Renewing	
Mortgage Loan Originators	17,593	14,269	81%
Mortgage Broker & Lender Businesses	1,925	1,740	90%
Mortgage Broker & Lender Branches	1,460	1,204	82%
Total	20,978	17,213	82%

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.[44]

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: According to the OFR, the bill will require minimal configuration changes to the OFR's Regulatory Enforcement and Licensing System, but such changes can be accommodated within their current operations and maintenance contract.[45]

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:

   Currently, s. 494.00255(1)(m), F.S., provides the OFR the authority to enforce the federal RESPA and TILA and regulations adopted thereunder. However, in light of the significant changes to these federal laws, reenactment of this provision is necessary for the OFR to enforce these federal

[43] *Id.*
[44] *Id.*
[45] *Id.*

changes that have been adopted after the last time the Florida Legislature reenacted s. 494.00255(1)(m), F.S.[46]

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.[47] 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."[48]

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 (lines 336-338 and 475-477). It removes rulemaking authority relating to an acceptable form for disclosure of brokerage fees (lines 217-218 and 232-233). 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 (lines 426-427).

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.

Amendments are anticipated to clarify the following:

- The bill provides a deadline for late license renewals of "the last day of February." However, the OFR has requested that the bill use a "March 1" deadline to align with dates required by the NMLS;
- A technical amendment to lines 117-119 regarding the prelicensure examination.
- Reenactment of the OFR's authority to enforce the federal RESPA and TILA as well as the federal regulations adopted thereunder.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[46] 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.).
[47] See *Overstreet v. Blum,* 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).
[48] *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).

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 provide a proper application for license renewal for the following year 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 provide a proper application for license renewal for the following year 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 provide a proper application for license renewal for the following year 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 provide a proper application for license renewal for the following year 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) is added to subsection (1) of section 494.00255, Florida Statutes, 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:

(y) Having been found in violation of the Nationwide Mortgage Licensing System Rules of Conduct in connection with a prelicensing examination.

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 person licensed under this chapter fails to file a proper application for license renewal for the following year, including the proper application fee, on or before December 31 and files an application after December 31 but before the last day of February, his or her license status shall be changed to "failed to renew." A reinstatement fee of $150 shall be charged

outside of the registry. The license may not be reinstated until the required information is completed and fees are paid. If the licensee fails to complete the required information and pay all necessary fees by the last day of February, the license status shall be changed to "terminated/expired."

Section 6. Subsection (3) is added to section 494.00322, Florida Statutes, to read:

494.00322 Mortgage broker license renewal.—

(3) If an entity licensed under this chapter fails to file a proper application for license renewal for the following year, including the proper application fee, on or before December 31 and files an application after December 31 but before the last day of February, the entity's license status shall be changed to "failed to renew." A reinstatement fee of $250 shall be charged outside of the registry. The license may not be reinstated until the required information is completed and fees are paid. If the licensee fails to complete the required information and pay all necessary fees by the last day of February, the license status shall be changed to "terminated/expired."

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 branch office licensed under this chapter fails to file a proper application for license renewal for the following year, including the proper application fee, on or before December 31 and files an application after December 31 but before the last day of February, the branch office's license status shall be changed to "failed to renew." A reinstatement fee of $225 shall be charged outside of the registry. The license may not be reinstated until the required information is completed and fees are paid. If the licensee fails to complete the required information and pay all necessary fees by the last day of February, the license status shall be changed to "terminated/expired."

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 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 an entity licensed under this chapter fails to file a proper application for license renewal for the following year, including the proper application fee, on or before December 31 and files an application after December 31 but before the last day of February, the entity's license status shall be changed to "failed to renew." A reinstatement fee of $475 shall be charged outside of the registry. The license may not be reinstated until the required information is completed and fees are paid. If the licensee fails to complete the required information and pay all necessary fees by the last day of February, the license status shall be changed to "terminated/expired."

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 branch office licensed under this chapter fails to file a proper application for license renewal for the following year, including the proper application fee, on or before December 31 and files an application after December 31 but before the last day of February, the branch office's license status shall be changed to "failed to renew." A reinstatement fee of $225 shall be charged outside of the registry. The license may not be reinstated until the required information is completed and fees are paid. If the licensee fails to complete the required information and pay all necessary fees by the last day of February, the license status shall be changed to "terminated/expired."

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~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~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.

INSURANCE & BANKING SUBCOMMITTEE

HB 631 by Rep. Workman
Loan Originators, Mortgage Brokers, and Mortgage Lenders

AMENDMENT SUMMARY
February 11, 2014

Amendment 1 by Rep. Workman (line 109): Makes the following changes:

- Updates and reenacts the Office'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 laws.
- Provides clarifying language regarding the Office's administrative authority over an applicant who is found to be violating the rules of conduct in a pre-licensing examination.

Amendment 2 by Rep. Workman (line 125): Makes the following changes:

- Provides clarifying language regarding the bill's allowance for late license renewals and reactivation fees for all license types under chapter 494, Florida Statutes.
- Provides a March 1 late renewal deadline to align with the national registry's renewal timeframes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. 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: Insurance & Banking Subcommittee

Representative Workman offered the following:

Amendment

Remove lines 109-119 and insert:

Section 1. Paragraph (y) of subsection (1) of section 494.00255, Florida Statutes, is amended, and (m) of subsection (1) of that section 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.

Amendment No. 2

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: Insurance & Banking Subcommittee

Representative Workman offered the following:

Amendment (with title amendment)

Remove lines 125-408 and insert:

(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 licensed 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 complete the required information and pay all required fees by March 1, such license

is expired and such licensed 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 complete the required information 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 complete the required information 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 subsection (2).

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 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 complete the required information and pay all required fees by March 1, such license is expired and such licensed 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 complete the required information 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 subsection (2).

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

Remove lines 12-42 and insert:

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;