



Insurance & Banking Subcommittee

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

MEETING PACKET



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

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 <i>WJL</i>	Cooper <i>MC</i>
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

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.flair.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

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/mediareources.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

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.

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 performance³⁸ 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.

1 A bill to be entitled
 2 An act relating to insurance; amending s. 627.351,
 3 F.S.; requiring Citizens Property Insurance
 4 Corporation to submit a biannual report on the number
 5 of residential sinkhole policies issued and declined;
 6 providing legislative findings; establishing a
 7 Citizens Sinkhole Stabilization Repair Program for
 8 sinkhole claims; providing definitions; providing
 9 program components; specifying the corporation's
 10 liability with respect to sinkhole claims; requiring
 11 the corporation to offer specified deductible amounts
 12 for sinkhole loss coverage; providing an effective
 13 date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraphs (ii), (jj), and (kk) are added to
 18 subsection (6) of section 627.351, Florida Statutes, to read:

19 627.351 Insurance risk apportionment plans.—

20 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

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

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

28 3. The total number of requests declined for residential

29 sinkhole loss coverage; and

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

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

43 1. As used in this paragraph, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

84 | c. Pursuant to the stabilization repair program, qualified

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

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

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

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

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

113 least 5 years after completion of the stabilization repairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 j. This paragraph supersedes s. 627.707(5), except for s.
 181 627.707(5)(e).



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

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

191 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;
- 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.

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 locations² 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 competency³ 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

³Section 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

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 levels¹³ 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 plans¹⁴ 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.

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 policy¹⁷ 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, legislation²⁰ 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

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.flair.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.

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.

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 or 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:

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 person⁴² 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.

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 3⁵⁰ 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 property⁵¹ 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.

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.flair.com/search/search.aspx#2013 workers compensation annual report](http://www.flair.com/search/search.aspx#2013%20workers%20compensation%20annual%20report) (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.

1 A bill to be entitled
2 An act relating to insurance; amending s. 554.1021,
3 F.S.; defining the term "authorized inspection
4 agency"; amending s. 554.107, F.S.; requiring the
5 chief inspector of the state boiler inspection program
6 to issue a certificate of competency as a special
7 inspector to certain individuals; specifying the
8 duration of such certificate; amending s. 554.109,
9 F.S.; authorizing specified insurers to contract with
10 an authorized inspection agency for boiler
11 inspections; requiring such insurers to annually
12 report the identity of contracted authorized
13 inspection agencies to the Department of Financial
14 Services; amending s. 624.501, F.S.; revising original
15 appointment and renewal fees related to certain
16 insurance representatives; amending s. 626.015, F.S.;
17 defining the term "unaffiliated insurance agent";
18 amending s. 626.0428, F.S.; requiring a branch place
19 of business to have an agent in charge; authorizing an
20 agent to be in charge of more than one branch office
21 under certain circumstances; providing requirements
22 relating to the designation of an agent in charge;
23 providing that the agent in charge is accountable for
24 misconduct and violations committed by the licensee
25 and any person under his or her supervision;
26 prohibiting an insurance agency from conducting

27 insurance business at a location without a designated
 28 agent in charge; amending s. 626.112, F.S.; providing
 29 licensure exemptions that allow specified individuals
 30 or entities to conduct insurance business at specified
 31 locations under certain circumstances; revising
 32 licensure requirements and penalties with respect to
 33 registered insurance agencies; providing that the
 34 registration of an approved registered insurance
 35 agency automatically converts to an insurance agency
 36 license on a specified date; amending s. 626.172,
 37 F.S.; revising requirements relating to applications
 38 for insurance agency licenses; conforming provisions
 39 to changes made by the act; amending s. 626.311, F.S.;
 40 limiting the types of business that may be transacted
 41 by certain agents; amending s. 626.321, F.S.;
 42 providing that a limited license to offer motor
 43 vehicle rental insurance issued to a business that
 44 rents or leases motor vehicles encompasses the
 45 employees of such business; amending s. 626.382, F.S.;
 46 providing that an insurance agency license continues
 47 in force until canceled, suspended, revoked, or
 48 terminated or expired; amending s. 626.601, F.S.;
 49 revising terminology relating to investigations
 50 conducted by the Department of Financial Services and
 51 the Office of Insurance Regulation with respect to
 52 individuals and entities involved in the insurance

53 industry; revising a confidentiality provision;
 54 repealing s. 626.747, F.S., relating to branch
 55 agencies, agents in charge, and the payment of
 56 additional county tax under certain circumstances;
 57 amending s. 626.8411, F.S.; conforming a cross-
 58 reference; amending s. 626.8805, F.S.; revising
 59 insurance administrator application requirements;
 60 amending s. 626.8817, F.S.; authorizing an insurer's
 61 designee to provide certain coverage information to an
 62 insurance administrator; authorizing an insurer to
 63 subcontract the review of an insurance administrator;
 64 amending s. 626.882, F.S.; prohibiting a person from
 65 acting as an insurance administrator without a
 66 specific written agreement; amending s. 626.883, F.S.;
 67 requiring an insurance administrator to furnish
 68 fiduciary account records to an insurer; requiring
 69 administrator withdrawals from a fiduciary account to
 70 be made according to a specific written agreement;
 71 providing that an insurer's designee may authorize
 72 payment of claims; amending s. 626.884, F.S.; revising
 73 an insurer's right of access to certain administrator
 74 records; amending s. 626.89, F.S.; revising the
 75 deadline for filing certain financial statements;
 76 amending s. 626.931, F.S.; deleting provisions
 77 requiring a surplus lines agent to file a quarterly
 78 affidavit with the Florida Surplus Lines Service

79 Office; amending s. 626.932, F.S.; revising the due
 80 date of surplus lines tax; amending ss. 626.935 and
 81 626.936, F.S.; conforming provisions to changes made
 82 by the act; amending s. 627.062, F.S.; requiring the
 83 Office of Insurance Regulation to use certain models
 84 or methods to estimate hurricane losses when
 85 determining whether the rates in a rate filing are
 86 excessive, inadequate, or unfairly discriminatory;
 87 amending s. 627.0628, F.S.; increasing the length of
 88 time during which an insurer must adhere to certain
 89 findings made by the Commission on Hurricane Loss
 90 Projection Methodology with respect to certain
 91 methods, principles, standards, models, or output
 92 ranges used in a rate finding; providing that the
 93 requirement to adhere to such findings does not limit
 94 an insurer from using an average of results of certain
 95 models or output ranges under specified circumstances;
 96 amending s. 627.0651, F.S.; revising provisions for
 97 making and use of rates for motor vehicle insurance;
 98 amending s. 627.072, F.S.; authorizing retrospective
 99 rating plans relating to workers' compensation and
 100 employer's liability insurance to allow negotiations
 101 between certain employers and insurers with respect to
 102 rating factors used to calculate premiums; amending
 103 ss. 627.281 and 627.3518, F.S.; conforming cross-
 104 references; amending s. 627.311, F.S.; providing that

105 certain dividends or premium refunds shall be retained
 106 by the joint underwriting plan for future use;
 107 amending s. 627.3519, F.S.; requiring the Florida
 108 Hurricane Catastrophe Fund and Citizens Property
 109 Insurance Corporation to provide an annual report to
 110 the Legislature and the Financial Services Commission
 111 of their respective aggregate net probable maximum
 112 losses, financing options, and potential assessments;
 113 amending s. 627.4133, F.S.; increasing the amount of
 114 prior notice required with respect to the nonrenewal,
 115 cancellation, or termination of certain insurance
 116 policies; deleting certain provisions that require
 117 extended periods of prior notice with respect to the
 118 nonrenewal, cancellation, or termination of certain
 119 insurance policies; prohibiting the cancellation of
 120 certain policies that have been in effect for a
 121 specified amount of time except under certain
 122 circumstances; amending s. 627.4137, F.S.; adding
 123 licensed company adjusters to the list of persons who
 124 may respond to a claimant's written request for
 125 information relating to liability insurance coverage;
 126 amending s. 627.421, F.S.; authorizing a policyholder
 127 of personal lines insurance to affirmatively elect
 128 delivery of policy documents by electronic means;
 129 amending s. 627.43141, F.S.; authorizing a notice of
 130 change in policy terms to be sent in a separate

131 mailing to an insured under certain circumstances;
 132 requiring an insurer to provide such notice to
 133 insured's insurance agent; creating s. 627.4553, F.S.;
 134 providing requirements for the recommendation to
 135 surrender an annuity or life insurance policy;
 136 amending s. 627.7015, F.S.; revising the rulemaking
 137 authority of the department with respect to
 138 qualifications and specified types of penalties
 139 covered under the property insurance mediation
 140 program; creating s. 627.70151, F.S.; providing
 141 criteria for an insurer or policyholder to challenge
 142 the impartiality of a loss appraisal umpire for
 143 purposes of disqualifying such umpire; amending s.
 144 627.706, F.S.; revising the definition of the term
 145 "neutral evaluator"; amending s. 627.7074, F.S.;
 146 requiring the department to adopt rules relating to
 147 certification of neutral evaluators; revising
 148 notification requirements for participation in the
 149 neutral evaluation program; amending s. 627.711, F.S.;
 150 revising verification requirements for uniform
 151 mitigation verification forms; amending s. 627.736,
 152 F.S.; revising the time period for applicability of
 153 certain Medicare fee schedules or payment limitations;
 154 amending s. 627.744, F.S.; revising preinsurance
 155 inspection requirements for private passenger motor
 156 vehicles; amending s. 627.745, F.S.; revising

157 qualifications for approval as a mediator by the
 158 department; providing grounds for the department to
 159 deny an application, or suspend or revoke approval of
 160 a mediator or certification of a neutral evaluator;
 161 authorizing the department to adopt rules; amending s.
 162 627.782, F.S.; revising the date by which title
 163 insurance agencies and certain insurers must annually
 164 submit specified information to the Office of
 165 Insurance Regulation; amending s. 627.841, F.S.;

166 providing that an insurance premium finance company
 167 may impose a charge for payments returned, declined,
 168 or unable to be processed due to insufficient funds;
 169 amending s. 628.461, F.S.; revising filing
 170 requirements relating to the acquisition of
 171 controlling stock; revising the amount of outstanding
 172 voting securities of a domestic stock insurer or a
 173 controlling company that a person is prohibited from
 174 acquiring unless certain requirements have been met;
 175 prohibiting persons acquiring a certain percentage of
 176 voting securities from acquiring certain securities;
 177 providing that a presumption of control may be
 178 rebutted by filing a disclaimer of control; deleting a
 179 definition; amending s. 634.406, F.S.; revising
 180 criteria authorizing premiums of certain service
 181 warranty associations to exceed their specified net
 182 assets limitations; revising requirements relating to

183 contractual liability policies that insure warranty
 184 associations; providing an effective date.

185

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

187

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

190 554.1021 Definitions.—As used in ss. 554.1011-554.115:

191 (8) "Authorized inspection agency" means:

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

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

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

203 554.107 Special inspectors.—

204 (1) Upon application by an authorized inspection agency
 205 ~~any company licensed to insure boilers in this state,~~ the chief
 206 inspector shall issue a certificate of competency as a special
 207 inspector to an ~~any~~ inspector employed by the agency if he or
 208 she ~~company, provided that such inspector~~ satisfies the

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209 competency requirements for inspectors as provided in s.
 210 554.113.

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

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

221 554.109 Exemptions.—

222 (1) An ~~Any~~ insurance company that insures ~~insuring~~ a
 223 boiler located in a public assembly location in this state shall
 224 inspect or contract with an authorized inspection agency to
 225 inspect such boiler ~~so insured~~, and shall annually report to the
 226 department the identity of any authorized inspection agency that
 227 performs a required boiler inspection on behalf of the company.
 228 A ~~any~~ county, city, town, or other governmental subdivision that
 229 ~~which~~ has adopted into law the Boiler and Pressure Vessel Code
 230 of the American Society of Mechanical Engineers and the National
 231 Board Inspection Code for the construction, installation,
 232 inspection, maintenance, and repair of boilers, regulating such
 233 boilers in public assembly locations, shall inspect such boilers
 234 so regulated. ~~; provided that~~ Such inspection shall be conducted

235 by a special inspector licensed pursuant to ss. 554.1011-
236 554.115. Upon filing of a report of satisfactory inspection with
237 the department, such boiler is exempt from inspection by the
238 department.

239 Section 4. Paragraphs (a) and (c) of subsection (6) and
240 subsection (8) of section 624.501, Florida Statutes, are amended
241 to read:

242 624.501 Filing, license, appointment, and miscellaneous
243 fees.—The department, commission, or office, as appropriate,
244 shall collect in advance, and persons so served shall pay to it
245 in advance, fees, licenses, and miscellaneous charges as
246 follows:

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

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

252	Appointment fee.....	\$42.00
253	State tax.....	12.00
254	County tax.....	6.00
255	Total.....	\$60.00

256 (c) Nonresident agent's original appointment and biennial
257 renewal or continuation thereof, appointment fee, each insurer
258 or agent making an appointment.....\$60.00

259 (8) Health insurance agents.

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

261 continuation thereof, each insurer or agent making an
 262 appointment:
 263 Appointment fee.....\$42.00
 264 State tax.....12.00
 265 County tax.....6.00
 266 Total.....\$60.00

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

270 Section 5. Subsection (18) of section 626.015, Florida
 271 Statutes, is renumbered as subsection (19), and a new subsection
 272 (18) is added to that section to read:

273 626.015 Definitions.—As used in this part:

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

285 Section 6. Subsection (4) is added to section 626.0428,
 286 Florida Statutes, to read:

287 626.0428 Agency personnel powers, duties, and
 288 limitations.-

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

294 (b) Notwithstanding paragraph (a), the licensed agent in
 295 charge of an insurance agency may also be the agent in charge of
 296 additional branch office locations of the agency if insurance
 297 activities requiring licensure as an insurance agent do not
 298 occur at any location when the agent is not physically present
 299 and unlicensed employees at the location do not engage in
 300 insurance activities requiring licensure as an insurance agent
 301 or customer representative.

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

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

313 and employed by the agency at all times. If the agent in charge
 314 designated with the department leaves the agency's employment
 315 for any reason and the agency fails to designate another agent
 316 in charge within 30 days as provided in paragraph (c) and such
 317 failure continues for 90 days, the agency license shall
 318 automatically expire on the 91st day after the last date of
 319 employment of the last designated agent in charge.

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

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

335 Section 7. Subsection (7) of section 626.112, Florida
 336 Statutes, is amended to read:

337 626.112 License and appointment required; agents, customer
 338 representatives, adjusters, insurance agencies, service

339 representatives, managing general agents.-

340 (7) (a) An ~~Effective October 1, 2006,~~ no individual, firm,
 341 partnership, corporation, association, or ~~any~~ other entity shall
 342 not act in its own name or under a trade name, directly or
 343 indirectly, as an insurance agency, unless it complies with s.
 344 626.172 with respect to possessing an insurance agency license
 345 for each place of business at which it engages in an ~~any~~
 346 activity that ~~which~~ may be performed only by a licensed
 347 insurance agent. However, an insurance agency that is owned and
 348 operated by a single licensed agent conducting business in his
 349 or her individual name and not employing or otherwise using the
 350 services of or appointing other licensees is exempt from the
 351 agency licensing requirements of this subsection.

352 (b) A branch place of business that is established by a
 353 licensed agency is considered a branch agency and is not
 354 required to be licensed so long as it transacts business under
 355 the same name and federal tax identification number as the
 356 licensed agency, has designated a licensed agent in charge of
 357 the location as required by s. 626.0428, and has submitted the
 358 address and telephone number of the location to the department
 359 for inclusion in the licensing record of the licensed agency
 360 within 30 days after insurance transactions begin at the
 361 location ~~Each agency engaged in business in this state before~~
 362 ~~January 1, 2003, which is wholly owned by insurance agents~~
 363 ~~currently licensed and appointed under this chapter, each~~
 364 ~~incorporated agency whose voting shares are traded on a~~

365 ~~securities exchange, each agency designated and subject to~~
 366 ~~supervision and inspection as a branch office under the rules of~~
 367 ~~the National Association of Securities Dealers, and each agency~~
 368 ~~whose primary function is offering insurance as a service or~~
 369 ~~member benefit to members of a nonprofit corporation may file an~~
 370 ~~application for registration in lieu of licensure in accordance~~
 371 ~~with s. 626.172(3). Each agency engaged in business before~~
 372 ~~October 1, 2006, shall file an application for licensure or~~
 373 ~~registration on or before October 1, 2006.~~

374 (c)1. If an agency is required to be licensed but fails to
 375 file an application for licensure in accordance with this
 376 section, the department shall impose on the agency an
 377 administrative penalty ~~in an amount~~ of up to \$10,000.

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

383 (d)(b) Effective October 1, 2014, the department must
 384 automatically convert the registration of an approved a
 385 registered insurance agency to shall, as a condition precedent
 386 to continuing business, obtain an insurance agency license if
 387 the department finds that, with respect to any majority owner,
 388 partner, manager, director, officer, or other person who manages
 389 or controls the agency, any person has:

390 ~~1. Been found guilty of, or has pleaded guilty or nolo~~

391 ~~contendere to, a felony in this state or any other state~~
 392 ~~relating to the business of insurance or to an insurance agency,~~
 393 ~~without regard to whether a judgment of conviction has been~~
 394 ~~entered by the court having jurisdiction of the cases.~~

395 ~~2. Employed any individual in a managerial capacity or in~~
 396 ~~a capacity dealing with the public who is under an order of~~
 397 ~~revocation or suspension issued by the department. An insurance~~
 398 ~~agency may request, on forms prescribed by the department,~~
 399 ~~verification of any person's license status. If a request is~~
 400 ~~mailed within 5 working days after an employee is hired, and the~~
 401 ~~employee's license is currently suspended or revoked, the agency~~
 402 ~~shall not be required to obtain a license, if the unlicensed~~
 403 ~~person's employment is immediately terminated.~~

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

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

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

415 ~~b. Misappropriated, converted, or unlawfully withheld~~
 416 ~~moneys belonging to insurers, insureds, beneficiaries, or others~~

417 ~~and received in the conduct of business under the license.~~

418 ~~e. Unlawfully rebated, attempted to unlawfully rebate, or~~
 419 ~~unlawfully divided or offered to divide commissions with~~
 420 ~~another.~~

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

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

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

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

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

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

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

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

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

443 ~~related to insurance or the insurance agency.~~

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

446 ~~5. Knowingly employed any person who within the preceding~~
 447 ~~3 years has had his or her relationship with an agency~~
 448 ~~terminated in accordance with paragraph (d).~~

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

451 Section 8. Subsections (2), (3), and (4) of section
 452 626.172, Florida Statutes, are amended to read:

453 626.172 Application for insurance agency license.-

454 (2) An application for an insurance agency license must
 455 ~~shall~~ be signed by the owner or owners of the agency. If the
 456 agency is incorporated, the application must shall be signed by
 457 the president and secretary of the corporation. An insurance
 458 agency may permit a third party to complete, submit, and sign an
 459 application on the insurance agency's behalf, but the insurance
 460 agency is responsible for ensuring that the information on the
 461 application is true and correct and is accountable for any
 462 misstatements or misrepresentations. The application for an
 463 insurance agency license must shall include:

464 (a) The name of each majority owner, partner, officer, and
 465 director of the insurance agency.

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

468 (c) The name, principal business street address, and valid

469 e-mail address of the insurance agency and the name, address,
 470 and e-mail address of the agency's registered agent or person or
 471 company authorized to accept service on behalf of the agency ~~its~~
 472 ~~principal business address.~~

473 (d) The physical address ~~location~~ of each branch agency,
 474 including its name, e-mail address, and telephone number, and
 475 the date that the branch location began transacting insurance
 476 ~~office and the name under which each agency office conducts or~~
 477 ~~will conduct business.~~

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

481 (f) The fingerprints of each of the following:

- 482 1. A sole proprietor;
- 483 2. Each partner;
- 484 3. Each owner of an unincorporated agency;
- 485 4. Each owner who directs or participates in the
 486 management or control of an incorporated agency whose shares are
 487 not traded on a securities exchange;
- 488 5. The president, senior vice presidents, treasurer,
 489 secretary, and directors of the agency; and
- 490 6. Any other person who directs or participates in the
 491 management or control of the agency, whether through the
 492 ownership of voting securities, by contract, by ownership of any
 493 agency bank accounts, or otherwise.

494

495 Fingerprints must be taken by a law enforcement agency or other
 496 entity approved by the department and must be accompanied by the
 497 fingerprint processing fee specified in s. 624.501. Fingerprints
 498 must ~~shall~~ be processed in accordance with s. 624.34. However,
 499 fingerprints need not be filed for an ~~any~~ individual who is
 500 currently licensed and appointed under this chapter. This
 501 paragraph does not apply to corporations whose voting shares are
 502 traded on a securities exchange.

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

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

514 ~~(3) The department shall issue a registration as an~~
 515 ~~insurance agency to any agency that files a written application~~
 516 ~~with the department and qualifies for registration. The~~
 517 ~~application for registration shall require the agency to provide~~
 518 ~~the same information required for an agency licensed under~~
 519 ~~subsection (2), the agent identification number for each owner~~
 520 ~~who is a licensed agent, proof that the agency qualifies for~~

521 ~~registration as provided in s. 626.112(7), and any other~~
 522 ~~additional information that the department determines is~~
 523 ~~necessary in order to demonstrate that the agency qualifies for~~
 524 ~~registration. The application must be signed by the owner or~~
 525 ~~owners of the agency. If the agency is incorporated, the~~
 526 ~~application must be signed by the president and the secretary of~~
 527 ~~the corporation. An agent who owns the agency need not file~~
 528 ~~fingerprints with the department if the agent obtained a license~~
 529 ~~under this chapter and the license is currently valid.~~

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

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

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

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

547 agency location.

548 Section 9. Subsection (6) of section 626.311, Florida
 549 Statutes, is renumbered as subsection (7), and a new subsection
 550 (6) is added to that section to read:

551 626.311 Scope of license.—

552 (6) An agent who appoints his or her license as an
 553 unaffiliated insurance agent may not hold an appointment from an
 554 insurer for any license he or she holds; transact, solicit, or
 555 service an insurance contract on behalf of an insurer; interfere
 556 with commissions received or to be received by an insurer-
 557 appointed insurance agent or an insurance agency contracted with
 558 or employing insurer-appointed insurance agents; or receive
 559 compensation or any other thing of value from an insurer, an
 560 insurer-appointed insurance agent, or an insurance agency
 561 contracted with or employing insurer-appointed insurance agents
 562 for any transaction or referral occurring after the date of
 563 appointment as an unaffiliated insurance agent. An unaffiliated
 564 insurance agent may continue to receive commissions on sales
 565 that occurred before the date of appointment as an unaffiliated
 566 insurance agent if the receipt of such commissions is disclosed
 567 when making recommendations or evaluating products for a client
 568 that involve products of the entity from which the commissions
 569 are received.

570 Section 10. Paragraph (d) of subsection (1) of section
 571 626.321, Florida Statutes, is amended to read:

572 626.321 Limited licenses.—

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

577 (d) Motor vehicle rental insurance.-

578 1. License covering only insurance of the risks set forth
 579 in this paragraph when offered, sold, or solicited with and
 580 incidental to the rental or lease of a motor vehicle and which
 581 applies only to the motor vehicle that is the subject of the
 582 lease or rental agreement and the occupants of the motor
 583 vehicle:

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

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

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

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

598 2. Insurance under a motor vehicle rental insurance

599 license may be issued only if the lease or rental agreement is
 600 for no more than 60 days, the lessee is not provided coverage
 601 for more than 60 consecutive days per lease period, and the
 602 lessee is given written notice that his or her personal
 603 insurance policy providing coverage on an owned motor vehicle
 604 may provide coverage of such risks and that the purchase of the
 605 insurance is not required in connection with the lease or rental
 606 of a motor vehicle. If the lease is extended beyond 60 days, the
 607 coverage may be extended one time only for a period not to
 608 exceed an additional 60 days. Insurance may be provided to the
 609 lessee as an additional insured on a policy issued to the
 610 licensee's employer.

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

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

622 b. The application for licensure must list the name,
 623 address, and phone number for each office, branch office, or
 624 place of business that is to be covered by the license. The

625 licensee shall notify the department of the name, address, and
 626 phone number of any new location that is to be covered by the
 627 license before the new office, branch office, or place of
 628 business engages in the sale of insurance pursuant to this
 629 paragraph. The licensee must notify the department within 30
 630 days after closing or terminating an office, branch office, or
 631 place of business. Upon receipt of the notice, the department
 632 shall delete the office, branch office, or place of business
 633 from the license.

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

636 Section 11. Section 626.382, Florida Statutes, is amended
 637 to read:

638 626.382 Continuation, expiration of license; insurance
 639 agencies.—The license of an ~~any~~ insurance agency ~~shall be issued~~
 640 ~~for a period of 3 years and~~ shall continue in force until
 641 canceled, suspended, or ~~revoked,~~ or until it is otherwise
 642 terminated or becomes expired by operation of law. ~~A license may~~
 643 ~~be renewed by submitting a renewal request to the department on~~
 644 ~~a form adopted by department rule.~~

645 Section 12. Section 626.601, Florida Statutes, is amended
 646 to read:

647 626.601 Improper conduct; inquiry; fingerprinting.—

648 (1) The department or office may, upon its own motion or
 649 upon a written complaint signed by any interested person and
 650 filed with the department or office, inquire into any alleged

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651 | improper conduct of any licensed, approved, or certified
 652 | licensee, insurance agency, agent, adjuster, service
 653 | representative, managing general agent, customer representative,
 654 | title insurance agent, title insurance agency, mediator, neutral
 655 | evaluator, navigator, continuing education course provider,
 656 | instructor, school official, or monitor group under this code.

657 | The department or office may thereafter initiate an
 658 | investigation of any such individual or entity licensee if it
 659 | has reasonable cause to believe that the individual or entity
 660 | licensee has violated any provision of the insurance code.

661 | During the course of its investigation, the department or office
 662 | shall contact the individual or entity licensee being
 663 | investigated unless it determines that contacting such
 664 | individual or entity person could jeopardize the successful
 665 | completion of the investigation or cause injury to the public.

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

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

675 | (4) The expense for any hearings or investigations
 676 | conducted under this law, as well as the fees and mileage of

677 witnesses, may be paid out of the appropriate fund.

678 (5) If the department or office, after investigation, has
 679 reason to believe that an individual ~~a licensee~~ may have been
 680 found guilty of or pleaded guilty or nolo contendere to a felony
 681 or a crime related to the business of insurance in this or any
 682 other state or jurisdiction, the department or office may
 683 require the individual licensee to file with the department or
 684 office a complete set of his or her fingerprints, which shall be
 685 accompanied by the fingerprint processing fee set forth in s.
 686 624.501. The fingerprints shall be taken by an authorized law
 687 enforcement agency or other department-approved entity.

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

700 Section 13. Section 626.747, Florida Statutes, is
 701 repealed.

702 Section 14. Subsection (1) of section 626.8411, Florida

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703 Statutes, is amended to read:

704 626.8411 Application of Florida Insurance Code provisions
705 to title insurance agents or agencies.—

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

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

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

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

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

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

718 Section 15. Paragraph (c) of subsection (2) and subsection
719 (3) of section 626.8805, Florida Statutes, are amended to read:

720 626.8805 Certificate of authority to act as
721 administrator.—

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

727 (c) The names, addresses, official positions, and
728 professional qualifications of the individuals employed or

729 retained by the administrator and who are responsible for the
 730 conduct of the affairs of the administrator, including all
 731 members of the board of directors, board of trustees, executive
 732 committee, or other governing board or committee, and the
 733 principal officers in the case of a corporation or, the partners
 734 or members in the case of a partnership or association, ~~and any~~
 735 ~~other person who exercises control or influence over the affairs~~
 736 of the administrator.

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

741 Section 16. Subsections (1) and (3) of section 626.8817,
 742 Florida Statutes, are amended to read:

743 626.8817 Responsibilities of insurance company with
 744 respect to administration of coverage insured.-

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

754 (3) In cases in which an administrator administers

755 benefits for more than 100 certificateholders on behalf of an
 756 insurer, the insurer shall, at least semiannually, conduct a
 757 review of the operations of the administrator. At least one such
 758 review must be an onsite audit of the operations of the
 759 administrator. The insurer may contract with a qualified third
 760 party to conduct such review.

761 Section 17. Subsections (1) and (4) of section 626.882,
 762 Florida Statutes, is amended to read:

763 626.882 Agreement between administrator and insurer;
 764 required provisions; maintenance of records.—

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

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

775 Section 18. Subsections (3), (4), and (5) of section
 776 626.883, Florida Statutes, are amended to read:

777 626.883 Administrator as intermediary; collections held in
 778 fiduciary capacity; establishment of account; disbursement;
 779 payments on behalf of insurer.—

780 (3) If charges or premiums deposited in a fiduciary

781 account have been collected on behalf of or for more than one
 782 insurer, the administrator shall keep records clearly recording
 783 the deposits in and withdrawals from such account on behalf of
 784 or for each insurer. The administrator shall, upon request of an
 785 insurer or its designee, furnish such insurer or designee with
 786 copies of records pertaining to deposits and withdrawals on
 787 behalf of or for such insurer.

788 (4) The administrator may not pay any claim by withdrawals
 789 from a fiduciary account. Withdrawals from such account shall be
 790 made as provided in the written agreement required under ss.
 791 626.8817 and 626.882 ~~between the administrator and the insurer~~
 792 for any of the following:

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

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

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

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

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

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

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

807 Section 19. Subsection (3) of section 626.884, Florida
808 Statutes, is amended to read:

809 626.884 Maintenance of records by administrator; access;
810 confidentiality.-

811 (3) The insurer shall retain the right of continuing
812 access to books and records maintained by the administrator
813 sufficient to permit the insurer to fulfill all of its
814 contractual obligations to insured persons, subject to any
815 restrictions in the written agreement pertaining to ~~between the~~
816 ~~insurer and the administrator on~~ the proprietary rights of the
817 parties in such books and records.

818 Section 20. Subsections (1) and (2) of section 626.89,
819 Florida Statutes, are amended to read:

820 626.89 Annual financial statement and filing fee; notice
821 of change of ownership.-

822 (1) Each authorized administrator shall file with the
823 office a full and true statement of its financial condition,
824 transactions, and affairs. The statement shall be filed annually
825 on or before April ~~March~~ 1 or within such extension of time
826 therefor as the office for good cause may have granted and shall
827 be for the preceding calendar year or for the preceding fiscal
828 year if the administrator's accounting is on a fiscal-year
829 basis. The statement shall be in such form and contain such
830 matters as the commission prescribes and shall be verified by at
831 least two officers of such administrator. ~~An administrator whose~~
832 ~~sole stockholder is an association representing health care~~

833 ~~providers which is not an affiliate of an insurer, an~~
 834 ~~administrator of a pooled governmental self-insurance program,~~
 835 ~~or an administrator that is a university may submit the~~
 836 ~~preceding fiscal year's statement within 2 months after its~~
 837 ~~fiscal year end.~~

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

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

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

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

858 Section 21. Section 626.931, Florida Statutes, is amended

859 to read:

860 626.931 ~~Agent affidavit and~~ Insurer reporting
861 requirements.-

862 ~~(1) Each surplus lines agent shall on or before the 45th~~
863 ~~day following each calendar quarter file with the Florida~~
864 ~~Surplus Lines Service Office an affidavit, on forms as~~
865 ~~prescribed and furnished by the Florida Surplus Lines Service~~
866 ~~Office, stating that all surplus lines insurance transacted by~~
867 ~~him or her during such calendar quarter has been submitted to~~
868 ~~the Florida Surplus Lines Service Office as required.~~

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

872 (1)~~(3)~~ Each foreign insurer accepting premiums shall, on
873 or before the end of the month following each calendar quarter,
874 file with the Florida Surplus Lines Service Office a verified
875 report of all surplus lines insurance transacted by such insurer
876 for insurance risks located in this state during such calendar
877 quarter.

878 (2)~~(4)~~ Each alien insurer accepting premiums shall, on or
879 before June 30 of each year, file with the Florida Surplus Lines
880 Service Office a verified report of all surplus lines insurance
881 transacted by such insurer for insurance risks located in this
882 state during the preceding calendar year.

883 (3)~~(5)~~ The department may waive the filing requirements
884 described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

885 ~~(4)(6)~~ Each insurer's report and supporting information
 886 shall be in a computer-readable format as determined by the
 887 Florida Surplus Lines Service Office or shall be submitted on
 888 forms prescribed by the Florida Surplus Lines Service Office and
 889 shall show for each applicable agent:

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

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

896 Section 22. Paragraph (a) of subsection (2) of section
 897 626.932, Florida Statutes, is amended to read:

898 626.932 Surplus lines tax.—

899 (2)(a) The surplus lines agent shall make payable to the
 900 department the tax related to each calendar quarter's business
 901 as reported to the Florida Surplus Lines Service Office~~7~~ and
 902 remit the tax to the Florida Surplus Lines Service Office on or
 903 before the 45th day following each calendar quarter ~~at the same~~
 904 ~~time as provided for the filing of the quarterly affidavit,~~
 905 ~~under s. 626.931.~~ The Florida Surplus Lines Service Office shall
 906 forward to the department the taxes and any interest collected
 907 pursuant to paragraph (b)~~7~~ within 10 days after ~~of~~ receipt.

908 Section 23. Subsection (1) of section 626.935, Florida
 909 Statutes, is amended to read:

910 626.935 Suspension, revocation, or refusal of surplus

911 lines agent's license.-

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

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

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

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

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

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

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

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

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

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

937 Section 24. Subsection (1) of section 626.936, Florida
938 Statutes, is amended to read:

939 626.936 Failure to file reports or pay tax or service fee;
940 administrative penalty.—

941 (1) A ~~Any~~ licensed surplus lines agent who neglects to
942 file a report ~~or an affidavit~~ in the form and within the time
943 required or provided for in the Surplus Lines Law may be fined
944 up to \$50 per day for each day the neglect continues, beginning
945 the day after the report ~~or affidavit~~ was due until the date the
946 report ~~or affidavit~~ is received. All sums collected under this
947 section shall be deposited into the Insurance Regulatory Trust
948 Fund.

949 Section 25. Paragraph (b) of subsection (2) of section
950 627.062, Florida Statutes, is amended to read:

951 627.062 Rate standards.—

952 (2) As to all such classes of insurance:

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

- 959 1. Past and prospective loss experience within and without
960 this state.
- 961 2. Past and prospective expenses.
- 962 3. The degree of competition among insurers for the risk

963 insured.

964 4. Investment income reasonably expected by the insurer,
 965 consistent with the insurer's investment practices, from
 966 investable premiums anticipated in the filing, plus any other
 967 expected income from currently invested assets representing the
 968 amount expected on unearned premium reserves and loss reserves.
 969 The commission may adopt rules using reasonable techniques of
 970 actuarial science and economics to specify the manner in which
 971 insurers calculate investment income attributable to classes of
 972 insurance written in this state and the manner in which
 973 investment income is used to calculate insurance rates. Such
 974 manner must contemplate allowances for an underwriting profit
 975 factor and full consideration of investment income that ~~which~~
 976 produce a reasonable rate of return; however, investment income
 977 from invested surplus may not be considered.

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

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

983 7. The adequacy of loss reserves.

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

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

991 10. Conflagration and catastrophe hazards, if applicable.

992 11. Projected hurricane losses, if applicable, which must
 993 be estimated using models or methods ~~a model or method~~ found to
 994 be acceptable or reliable by the Florida Commission on Hurricane
 995 Loss Projection Methodology⁷ and as further provided in s.
 996 627.0628.

997 12. A reasonable margin for underwriting profit and
 998 contingencies.

999 13. The cost of medical services, if applicable.

1000 14. Other relevant factors that affect the frequency or
 1001 severity of claims or expenses.

1002 Section 26. Paragraph (d) of subsection (3) of section
 1003 627.0628, Florida Statutes, is amended to read:

1004 627.0628 Florida Commission on Hurricane Loss Projection
 1005 Methodology; public records exemption; public meetings
 1006 exemption.—

1007 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

1008 (d) With respect to a rate filing under s. 627.062, an
 1009 insurer shall employ and may not modify or adjust actuarial
 1010 methods, principles, standards, models, or output ranges found
 1011 by the commission to be accurate or reliable in determining
 1012 hurricane loss factors for use in a rate filing under s.
 1013 627.062. An insurer shall employ and may not modify or adjust
 1014 models found by the commission to be accurate or reliable in

1015 determining probable maximum loss levels pursuant to paragraph
 1016 (b) with respect to a rate filing under s. 627.062 made more
 1017 than 180 ~~60~~ days after the commission has made such findings.
 1018 This paragraph does not prohibit an insurer from averaging the
 1019 model results or output ranges or using acceptable models or
 1020 methods for the purposes of a rate filing under s. 627.062.

1021 Section 27. Subsection (8) of section 627.0651, Florida
 1022 Statutes, is amended to read:

1023 627.0651 Making and use of rates for motor vehicle
 1024 insurance.—

1025 (8) Rates are not unfairly discriminatory if averaged
 1026 broadly among members of a group; nor are rates unfairly
 1027 discriminatory even though they are lower than rates for
 1028 nonmembers of the group. However, such rates are unfairly
 1029 discriminatory if they are not actuarially measurable and
 1030 credible and sufficiently related to actual or expected loss and
 1031 expense experience of the group so as to ensure ~~assure~~ that
 1032 nonmembers of the group are not unfairly discriminated against.
 1033 New programs or changes to existing programs that result in at
 1034 least ~~Use of~~ a single United States Postal Service zip code as a
 1035 rating territory shall be deemed submitted pursuant to paragraph
 1036 (1)(a) unfairly discriminatory.

1037 Section 28. Subsections (2), (3), and (4) of section
 1038 627.072, Florida Statutes, are renumbered as subsections (3),
 1039 (4), and (5), respectively, and a new subsection (2) is added to
 1040 that section to read:

1041 627.072 Making and use of rates.-

1042 (2) A retrospective rating plan may contain a provision
 1043 that allows negotiation between the employer and the insurer to
 1044 determine the retrospective rating factors used to calculate the
 1045 premium for employers that have exposure in more than one state,
 1046 an estimated annual standard premium in this state of \$175,000,
 1047 and an estimated annual countrywide standard premium of \$1
 1048 million or more for workers' compensation.

1049 Section 29. Subsection (2) of section 627.281, Florida
 1050 Statutes, is amended to read:

1051 627.281 Appeal from rating organization; workers'
 1052 compensation and employer's liability insurance filings.-

1053 (2) If such appeal is based upon the failure of the rating
 1054 organization to make a filing on behalf of such member or
 1055 subscriber which is based on a system of expense provisions
 1056 which differs, in accordance with the right granted in s.
 1057 627.072(3) ~~627.072(2)~~, from the system of expense provisions
 1058 included in a filing made by the rating organization, the office
 1059 shall, if it grants the appeal, order the rating organization to
 1060 make the requested filing for use by the appellant. In deciding
 1061 such appeal, the office shall apply the applicable standards set
 1062 forth in ss. 627.062 and 627.072.

1063 Section 30. Paragraph (h) of subsection (5) of section
 1064 627.311, Florida Statutes, is amended to read:

1065 627.311 Joint underwriters and joint reinsurers; public
 1066 records and public meetings exemptions.-

1067 (5)
 1068 (h) Any premium or assessments collected by the plan in
 1069 excess of the amount necessary to fund projected ultimate
 1070 incurred losses and expenses of the plan and not paid to
 1071 insureds of the plan in conjunction with loss prevention or
 1072 dividend programs shall be retained by the plan for future use.
 1073 Any state funds received by the plan in excess of the amount
 1074 necessary to fund deficits in subplan D or any tier shall be
 1075 returned to the state. Any dividend or premium refund that
 1076 cannot be paid to a former insured of the plan because the
 1077 former insured cannot be reasonably located shall be retained by
 1078 the plan for future use.

1079 Section 31. Subsection (9) of section 627.3518, Florida
 1080 Statutes, is amended to read:

1081 627.3518 Citizens Property Insurance Corporation
 1082 policyholder eligibility clearinghouse program.—The purpose of
 1083 this section is to provide a framework for the corporation to
 1084 implement a clearinghouse program by January 1, 2014.

1085 (9) The 45-day notice of nonrenewal requirement set forth
 1086 in s. 627.4133(2)(b)4. ~~627.4133(2)(b)4.b.~~ applies when a policy
 1087 is nonrenewed by the corporation because the risk has received
 1088 an offer of coverage pursuant to this section which renders the
 1089 risk ineligible for coverage by the corporation.

1090 Section 32. Section 627.3519, Florida Statutes, is amended
 1091 to read:

1092 627.3519 Annual report of aggregate net probable maximum

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1093 losses, financing options, and potential assessments.—No later
 1094 than February 1 of each year, the Florida Hurricane Catastrophe
 1095 Fund and Citizens Property Insurance Corporation Financial
 1096 ~~Services Commission~~ shall provide to the Legislature and the
 1097 Financial Services Commission a report of their respective ~~the~~
 1098 aggregate net probable maximum losses, financing options, and
 1099 potential assessments ~~of the Florida Hurricane Catastrophe Fund~~
 1100 ~~and Citizens Property Insurance Corporation~~. The report of the
 1101 fund and the corporation must include their ~~the~~ respective 50-
 1102 year, 100-year, and 250-year probable maximum losses ~~of the fund~~
 1103 ~~and the corporation~~; analysis of all reasonable financing
 1104 strategies for each such probable maximum loss, including the
 1105 amount and term of debt instruments; specification of the
 1106 percentage assessments that would be needed to support each of
 1107 the financing strategies; and calculations of the aggregate
 1108 assessment burden on Florida property and casualty policyholders
 1109 for each of the probable maximum losses. ~~The commission shall~~
 1110 ~~require the fund and the corporation to provide the commission~~
 1111 ~~with such data and analysis as the commission considers~~
 1112 ~~necessary to prepare the report.~~

1113 Section 33. Paragraph (b) of subsection (2) of section
 1114 627.4133, Florida Statutes, is amended to read:

1115 627.4133 Notice of cancellation, nonrenewal, or renewal
 1116 premium.—

1117 (2) With respect to any personal lines or commercial
 1118 residential property insurance policy, including, but not

1119 limited to, any homeowner's, mobile home owner's, farmowner's,
 1120 condominium association, condominium unit owner's, apartment
 1121 building, or other policy covering a residential structure or
 1122 its contents:

1123 (b) The insurer shall give the first-named insured written
 1124 notice of nonrenewal, cancellation, or termination at least 120
 1125 ~~100~~ days before the effective date of the nonrenewal,
 1126 cancellation, or termination. ~~However, the insurer shall give at~~
 1127 ~~least 100 days' written notice, or written notice by June 1,~~
 1128 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
 1129 ~~termination that would be effective between June 1 and November~~
 1130 ~~30.~~ The notice must include the reason or reasons for the
 1131 nonrenewal, cancellation, or termination, except that:

1132 ~~1. The insurer shall give the first-named insured written~~
 1133 ~~notice of nonrenewal, cancellation, or termination at least 120~~
 1134 ~~days prior to the effective date of the nonrenewal,~~
 1135 ~~cancellation, or termination for a first-named insured whose~~
 1136 ~~residential structure has been insured by that insurer or an~~
 1137 ~~affiliated insurer for at least a 5-year period immediately~~
 1138 ~~prior to the date of the written notice.~~

1139 1.2. If cancellation is for nonpayment of premium, at
 1140 least 10 days' written notice of cancellation accompanied by the
 1141 reason therefor must be given. As used in this subparagraph, the
 1142 term "nonpayment of premium" means failure of the named insured
 1143 to discharge when due her or his obligations for ~~in connection~~
 1144 ~~with~~ the payment of premiums on a policy or any installment of

1145 such premium, whether the premium is payable directly to the
 1146 insurer or its agent or indirectly under any premium finance
 1147 plan or extension of credit, or failure to maintain membership
 1148 in an organization if such membership is a condition precedent
 1149 to insurance coverage. The term also means the failure of a
 1150 financial institution to honor an insurance applicant's check
 1151 after delivery to a licensed agent for payment of a premium,
 1152 even if the agent has previously delivered or transferred the
 1153 premium to the insurer. If a dishonored check represents the
 1154 initial premium payment, the contract and all contractual
 1155 obligations are void ab initio unless the nonpayment is cured
 1156 within the earlier of 5 days after actual notice by certified
 1157 mail is received by the applicant or 15 days after notice is
 1158 sent to the applicant by certified mail or registered mail, ~~and~~
 1159 If the contract is void, any premium received by the insurer
 1160 from a third party must be refunded to that party in full.

1161 ~~2.3.~~ If ~~such~~ cancellation or termination occurs during the
 1162 first 90 days the insurance is in force and the insurance is
 1163 canceled or terminated for reasons other than nonpayment of
 1164 premium, at least 20 days' written notice of cancellation or
 1165 termination accompanied by the reason therefor must be given
 1166 unless there has been a material misstatement or
 1167 misrepresentation or failure to comply with the underwriting
 1168 requirements established by the insurer.

1169 3. After the policy has been in effect for 90 days, the
 1170 policy may not be canceled by the insurer unless there has been

1171 a material misstatement, a nonpayment of premium, a failure to
 1172 comply with underwriting requirements established by the insurer
 1173 within 90 days after the date of effectuation of coverage, or a
 1174 substantial change in the risk covered by the policy or unless
 1175 the cancellation is for all insureds under such policies for a
 1176 class of insureds. An insurer that uses a credit report or
 1177 information available as a public record to determine whether
 1178 there is a misrepresentation or omission in the application for
 1179 insurance related to the applicant's credit history must make
 1180 such determination within 90 days after the policy has been in
 1181 effect. After such 90-day period, an insurer may not cancel or
 1182 rescind the policy or deny coverage for a claim based on a
 1183 misstatement or omission in the application regarding credit
 1184 history that the insurer could reasonably have discovered by a
 1185 review of credit history or public record. This subparagraph
 1186 does not apply to individually rated risks having a policy term
 1187 of less than 90 days.

1188 ~~4. The requirement for providing written notice by June 1~~
 1189 ~~of any nonrenewal that would be effective between June 1 and~~
 1190 ~~November 30 does not apply to the following situations, but the~~
 1191 ~~insurer remains subject to the requirement to provide such~~
 1192 ~~notice at least 100 days before the effective date of~~
 1193 ~~nonrenewal:~~

1194 ~~a. A policy that is nonrenewed due to a revision in the~~
 1195 ~~coverage for sinkhole losses and catastrophic ground cover~~
 1196 ~~collapse pursuant to s. 627.706.~~

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1197 4.b. A policy that is nonrenewed by Citizens Property
 1198 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 1199 that has been assumed by an authorized insurer offering
 1200 replacement coverage to the policyholder is exempt from the
 1201 notice requirements of paragraph (a) and this paragraph. In such
 1202 cases, the corporation must give the named insured written
 1203 notice of nonrenewal at least 45 days before the effective date
 1204 of the nonrenewal.

1205

1206 ~~After the policy has been in effect for 90 days, the policy may~~
 1207 ~~not be canceled by the insurer unless there has been a material~~
 1208 ~~misstatement, a nonpayment of premium, a failure to comply with~~
 1209 ~~underwriting requirements established by the insurer within 90~~
 1210 ~~days after the date of effectuation of coverage, or a~~
 1211 ~~substantial change in the risk covered by the policy or if the~~
 1212 ~~cancellation is for all insureds under such policies for a given~~
 1213 ~~class of insureds. This paragraph does not apply to individually~~
 1214 ~~rated risks having a policy term of less than 90 days.~~

1215 5. Notwithstanding any other provision of law, an insurer
 1216 may cancel or nonrenew a property insurance policy after at
 1217 least 45 days' notice if the office finds that the early
 1218 cancellation of some or all of the insurer's policies is
 1219 necessary to protect the best interests of the public or
 1220 policyholders and the office approves the insurer's plan for
 1221 early cancellation or nonrenewal of some or all of its policies.
 1222 The office may base such finding upon the financial condition of

1223 the insurer, lack of adequate reinsurance coverage for hurricane
 1224 risk, or other relevant factors. The office may condition its
 1225 finding on the consent of the insurer to be placed under
 1226 administrative supervision pursuant to s. 624.81 or to the
 1227 appointment of a receiver under chapter 631.

1228 6. A policy covering both a home and a motor vehicle may
 1229 be nonrenewed for any reason applicable to ~~either~~ the property
 1230 or motor vehicle insurance after providing 90 days' notice.

1231 Section 34. Subsection (1) of section 627.4137, Florida
 1232 Statutes, is amended to read:

1233 627.4137 Disclosure of certain information required.—

1234 (1) Each insurer that provides ~~which does~~ or may provide
 1235 liability insurance coverage to pay all or a portion of a ~~any~~
 1236 claim that ~~which~~ might be made shall provide, within 30 days
 1237 after ~~of~~ the written request of the claimant, a statement, under
 1238 oath, of a corporate officer or the insurer's claims manager, ~~or~~
 1239 superintendent, or licensed company adjuster setting forth the
 1240 following information with regard to each known policy of
 1241 insurance, including excess or umbrella insurance:

1242 (a) The name of the insurer.

1243 (b) The name of each insured.

1244 (c) The limits of the liability coverage.

1245 (d) A statement of any policy or coverage defense that the
 1246 ~~which such~~ insurer reasonably believes is available to the ~~such~~
 1247 insurer at the time of filing such statement.

1248 (e) A copy of the policy.

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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

1275 owners' insurance, and the types of commercial lines risks set
 1276 forth in s. 627.062(3)(d), constitutes ~~shall constitute~~ delivery
 1277 to the insured or to the person entitled to delivery, unless the
 1278 insured or the person entitled to delivery communicates to the
 1279 insurer in writing or electronically that he or she does not
 1280 agree to delivery by electronic means. Electronic transmission
 1281 shall include a notice to the insured or to the person entitled
 1282 to delivery of a policy of his or her right to receive the
 1283 policy via United States mail rather than via electronic
 1284 transmission. A paper copy of the policy shall be provided to
 1285 the insured or to the person entitled to delivery at his or her
 1286 request.

1287 Section 36. Subsection (2) of section 627.43141, Florida
 1288 Statutes, is amended to read:

1289 627.43141 Notice of change in policy terms.—

1290 (2) A renewal policy may contain a change in policy terms.
 1291 If a renewal policy contains ~~does contain~~ such change, the
 1292 insurer must give the named insured written notice of the
 1293 change, which may ~~must~~ be enclosed along with the written notice
 1294 of renewal premium required by ss. 627.4133 and 627.728 or be
 1295 sent in a separate notice that complies with the nonrenewal
 1296 mailing time requirement for that particular line of business.
 1297 The insurer must also provide a sample copy of the notice to the
 1298 insured's insurance agent before or at the same time that notice
 1299 is given to the insured. Such notice shall be entitled "Notice
 1300 of Change in Policy Terms."

1301 Section 37. Section 627.4553, Florida Statutes, is created
 1302 to read:

1303 627.4553 Recommendations to surrender.—If an insurance
 1304 agent recommends the surrender of an annuity or life insurance
 1305 policy containing a cash value and is not recommending that the
 1306 proceeds from the surrender be used to fund or purchase another
 1307 annuity or life insurance policy, before execution of the
 1308 surrender, the insurance agent, or the insurance company if no
 1309 agent is involved, shall provide, on a form adopted by rule by
 1310 the department, information concerning the annuity or policy to
 1311 be surrendered, including the amount of any surrender charge,
 1312 the loss of any minimum interest rate guarantees, the amount of
 1313 any tax consequences resulting from the surrender, the amount of
 1314 any forfeited death benefit, and the value of any other
 1315 investment performance guarantees being forfeited as a result of
 1316 the surrender. This section also applies to a person performing
 1317 insurance agent activities pursuant to an exemption from
 1318 licensure under this part.

1319 Section 38. Paragraph (b) of subsection (4) of section
 1320 627.7015, Florida Statutes, is amended to read:

1321 627.7015 Alternative procedure for resolution of disputed
 1322 property insurance claims.—

1323 (4) The department shall adopt by rule a property
 1324 insurance mediation program to be administered by the department
 1325 or its designee. The department may also adopt special rules
 1326 which are applicable in cases of an emergency within the state.

1327 The rules shall be modeled after practices and procedures set
 1328 forth in mediation rules of procedure adopted by the Supreme
 1329 Court. The rules shall provide for:

1330 (b) Qualifications, denial of application, suspension,
 1331 revocation of approval, and other penalties for ~~of~~ mediators as
 1332 provided in s. 627.745 and in the Florida Rules of Certified and
 1333 Court Appointed Mediators, ~~and for such other individuals as are~~
 1334 ~~qualified by education, training, or experience as the~~
 1335 ~~department determines to be appropriate.~~

1336 Section 39. Section 627.70151, Florida Statutes, is
 1337 created to read:

1338 627.70151 Appraisal; conflicts of interest.—An insurer
 1339 that offers residential coverage, as defined in s. 627.4025, or
 1340 a policyholder that uses an appraisal clause in the property
 1341 insurance contract to establish a process of estimating or
 1342 evaluating the amount of the loss through the use of an
 1343 impartial umpire may challenge the umpire's impartiality and
 1344 disqualify the proposed umpire only if:

1345 (1) A familial relationship within the third degree exists
 1346 between the umpire and any party or a representative of any
 1347 party;

1348 (2) The umpire has previously represented any party or a
 1349 representative of any party in a professional capacity in the
 1350 same or a substantially related matter;

1351 (3) The umpire has represented another person in a
 1352 professional capacity on the same or a substantially related

1353 matter, which includes the claim, same property, or an adjacent
 1354 property and that other person's interests are materially
 1355 adverse to the interests of any party; or

1356 (4) The umpire has worked as an employer or employee of
 1357 any party within the preceding 5 years.

1358 Section 40. Paragraph (c) of subsection (2) of section
 1359 627.706, Florida Statutes, is amended to read:

1360 627.706 Sinkhole insurance; catastrophic ground cover
 1361 collapse; definitions.—

1362 (2) As used in ss. 627.706-627.7074, and as used in
 1363 connection with any policy providing coverage for a catastrophic
 1364 ground cover collapse or for sinkhole losses, the term:

1365 (c) "Neutral evaluator" means a professional engineer or a
 1366 professional geologist who has completed a course of study in
 1367 alternative dispute resolution designed or approved by the
 1368 department for use in the neutral evaluation process, ~~and~~ who is
 1369 determined by the department to be fair and impartial, and who
 1370 is not otherwise ineligible for certification as provided in s.
 1371 627.7074.

1372 Section 41. Subsections (1) and (3) of section 627.7074,
 1373 Florida Statutes, are amended to read:

1374 627.7074 Alternative procedure for resolution of disputed
 1375 sinkhole insurance claims.—

1376 (1) The department shall:

1377 (a) Certify and maintain a list of persons who are neutral
 1378 evaluators.

1379 (b) Adopt rules for certifying, denying certification of,
 1380 suspending certification of, and revoking certification as a
 1381 neutral evaluator in keeping with qualifications specified in
 1382 this section and ss. 627.706 and 627.745(4).

1383 (c) ~~(b)~~ Prepare a consumer information pamphlet for
 1384 distribution by insurers to policyholders which clearly
 1385 describes the neutral evaluation process and includes
 1386 information necessary for the policyholder to request a neutral
 1387 evaluation.

1388 (3) Following the receipt of the report provided under s.
 1389 627.7073 or the denial of a claim for a sinkhole loss, the
 1390 insurer shall notify the policyholder of his or her right to
 1391 participate in the neutral evaluation program under this
 1392 section, if there is coverage available under the policy and the
 1393 claim was submitted within the timeframe provided in s.
 1394 627.706(5). Neutral evaluation supersedes the alternative
 1395 dispute resolution process under s. 627.7015 but does not
 1396 invalidate the appraisal clause of the insurance policy. The
 1397 insurer shall provide to the policyholder the consumer
 1398 information pamphlet prepared by the department pursuant to
 1399 subsection (1) electronically or by United States mail.

1400 Section 42. Subsection (8) of section 627.711, Florida
 1401 Statutes, is amended to read:

1402 627.711 Notice of premium discounts for hurricane loss
 1403 mitigation; uniform mitigation verification inspection form.—

1404 (8) At its expense, the insurer may require that a uniform

1405 mitigation verification form provided by a policyholder, a
 1406 policyholder's agent, or an authorized mitigation inspector or
 1407 inspection company be independently verified by an inspector, an
 1408 inspection company, or an independent third-party quality
 1409 assurance provider which possesses a quality assurance program
 1410 before accepting the uniform mitigation verification form as
 1411 valid. A uniform mitigation verification form provided by a
 1412 policyholder, a policyholder's agent, or an authorized
 1413 mitigation inspector or inspection company to Citizens Property
 1414 Insurance Corporation is not subject to such additional
 1415 verification and the property is not subject to reinspection by
 1416 the corporation, absent material changes to the structure for
 1417 the term stated on the form, if the form signed by a qualified
 1418 inspector was submitted to, reviewed, and verified by a quality
 1419 assurance program approved by the corporation before submission
 1420 of the form to the corporation.

1421 Section 43. Paragraph (a) of subsection (5) of section
 1422 627.736, Florida Statutes, is amended to read:

1423 627.736 Required personal injury protection benefits;
 1424 exclusions; priority; claims.—

1425 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

1426 (a) A physician, hospital, clinic, or other person or
 1427 institution lawfully rendering treatment to an injured person
 1428 for a bodily injury covered by personal injury protection
 1429 insurance may charge the insurer and injured party only a
 1430 reasonable amount pursuant to this section for the services and

1431 supplies rendered, and the insurer providing such coverage may
 1432 pay for such charges directly to such person or institution
 1433 lawfully rendering such treatment if the insured receiving such
 1434 treatment or his or her guardian has countersigned the properly
 1435 completed invoice, bill, or claim form approved by the office
 1436 upon which such charges are to be paid for as having actually
 1437 been rendered, to the best knowledge of the insured or his or
 1438 her guardian. However, such a charge may not exceed the amount
 1439 the person or institution customarily charges for like services
 1440 or supplies. In determining whether a charge for a particular
 1441 service, treatment, or otherwise is reasonable, consideration
 1442 may be given to evidence of usual and customary charges and
 1443 payments accepted by the provider involved in the dispute,
 1444 reimbursement levels in the community and various federal and
 1445 state medical fee schedules applicable to motor vehicle and
 1446 other insurance coverages, and other information relevant to the
 1447 reasonableness of the reimbursement for the service, treatment,
 1448 or supply.

1449 1. The insurer may limit reimbursement to 80 percent of
 1450 the following schedule of maximum charges:

1451 a. For emergency transport and treatment by providers
 1452 licensed under chapter 401, 200 percent of Medicare.

1453 b. For emergency services and care provided by a hospital
 1454 licensed under chapter 395, 75 percent of the hospital's usual
 1455 and customary charges.

1456 c. For emergency services and care as defined by s.

1457 395.002 provided in a facility licensed under chapter 395
 1458 rendered by a physician or dentist, and related hospital
 1459 inpatient services rendered by a physician or dentist, the usual
 1460 and customary charges in the community.

1461 d. For hospital inpatient services, other than emergency
 1462 services and care, 200 percent of the Medicare Part A
 1463 prospective payment applicable to the specific hospital
 1464 providing the inpatient services.

1465 e. For hospital outpatient services, other than emergency
 1466 services and care, 200 percent of the Medicare Part A Ambulatory
 1467 Payment Classification for the specific hospital providing the
 1468 outpatient services.

1469 f. For all other medical services, supplies, and care, 200
 1470 percent of the allowable amount under:

1471 (I) The participating physicians fee schedule of Medicare
 1472 Part B, except as provided in sub-sub-subparagraphs (II) and
 1473 (III).

1474 (II) Medicare Part B, in the case of services, supplies,
 1475 and care provided by ambulatory surgical centers and clinical
 1476 laboratories.

1477 (III) The Durable Medical Equipment Prosthetics/Orthotics
 1478 and Supplies fee schedule of Medicare Part B, in the case of
 1479 durable medical equipment.

1480

1481 However, if such services, supplies, or care is not reimbursable
 1482 under Medicare Part B, as provided in this sub-subparagraph, the

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1483 insurer may limit reimbursement to 80 percent of the maximum
 1484 reimbursable allowance under workers' compensation, as
 1485 determined under s. 440.13 and rules adopted thereunder which
 1486 are in effect at the time such services, supplies, or care is
 1487 provided. Services, supplies, or care that is not reimbursable
 1488 under Medicare or workers' compensation is not required to be
 1489 reimbursed by the insurer.

1490 2. For purposes of subparagraph 1., the applicable fee
 1491 schedule or payment limitation under Medicare is the fee
 1492 schedule or payment limitation in effect on March 1 of the year
 1493 in which the services, supplies, or care is rendered and for the
 1494 area in which such services, supplies, or care is rendered, and
 1495 the applicable fee schedule or payment limitation applies from
 1496 March 1 until the last day of February ~~throughout the remainder~~
 1497 of the following ~~that~~ year, notwithstanding any subsequent
 1498 change made to the fee schedule or payment limitation, except
 1499 that it may not be less than the allowable amount under the
 1500 applicable schedule of Medicare Part B for 2007 for medical
 1501 services, supplies, and care subject to Medicare Part B.

1502 3. Subparagraph 1. does not allow the insurer to apply any
 1503 limitation on the number of treatments or other utilization
 1504 limits that apply under Medicare or workers' compensation. An
 1505 insurer that applies the allowable payment limitations of
 1506 subparagraph 1. must reimburse a provider who lawfully provided
 1507 care or treatment under the scope of his or her license,
 1508 regardless of whether such provider is entitled to reimbursement

1509 | under Medicare due to restrictions or limitations on the types
 1510 | or discipline of health care providers who may be reimbursed for
 1511 | particular procedures or procedure codes. However, subparagraph
 1512 | 1. does not prohibit an insurer from using the Medicare coding
 1513 | policies and payment methodologies of the federal Centers for
 1514 | Medicare and Medicaid Services, including applicable modifiers,
 1515 | to determine the appropriate amount of reimbursement for medical
 1516 | services, supplies, or care if the coding policy or payment
 1517 | methodology does not constitute a utilization limit.

1518 | 4. If an insurer limits payment as authorized by
 1519 | subparagraph 1., the person providing such services, supplies,
 1520 | or care may not bill or attempt to collect from the insured any
 1521 | amount in excess of such limits, except for amounts that are not
 1522 | covered by the insured's personal injury protection coverage due
 1523 | to the coinsurance amount or maximum policy limits.

1524 | 5. ~~Effective July 1, 2012,~~ An insurer may limit payment as
 1525 | authorized by this paragraph only if the insurance policy
 1526 | includes a notice at the time of issuance or renewal that the
 1527 | insurer may limit payment pursuant to the schedule of charges
 1528 | specified in this paragraph. A policy form approved by the
 1529 | office satisfies this requirement. If a provider submits a
 1530 | charge for an amount less than the amount allowed under
 1531 | subparagraph 1., the insurer may pay the amount of the charge
 1532 | submitted.

1533 | Section 44. Subsection (1) and paragraphs (a) and (b) of
 1534 | subsection (2) of section 627.744, Florida Statutes, are amended

1535 to read:

1536 627.744 Required preinsurance inspection of private
1537 passenger motor vehicles.—

1538 (1) A private passenger motor vehicle insurance policy
1539 providing physical damage coverage, including collision or
1540 comprehensive coverage, may not be issued in this state unless
1541 the insurer has inspected the motor vehicle in accordance with
1542 this section. Physical damage coverage on a motor vehicle may
1543 not be suspended during the term of the policy due to the
1544 applicant's failure to provide required documents. However,
1545 payment of a claim may be conditioned upon the insurer's receipt
1546 of the required documents, and physical damage loss occurring
1547 after the effective date of coverage is not payable until the
1548 documents are provided to the insurer.

1549 (2) This section does not apply:

1550 (a) To a policy for a policyholder who has been insured
1551 for 2 years or longer, without interruption, under a private
1552 passenger motor vehicle policy that ~~which~~ provides physical
1553 damage coverage for any vehicle if the agent of the insurer
1554 verifies the previous coverage.

1555 (b) To a new, unused motor vehicle purchased or leased
1556 from a licensed motor vehicle dealer or leasing company if the
1557 insurer is provided with:

1558 1. A bill of sale, ~~or~~ buyer's order, or lease agreement
1559 that ~~which~~ contains a full description of the motor vehicle,
1560 ~~including all options and accessories; or~~

1561 2. A copy of the title or registration that ~~which~~
 1562 establishes transfer of ownership from the dealer or leasing
 1563 company to the customer and a copy of the window sticker ~~or the~~
 1564 ~~dealer invoice showing the itemized options and equipment and~~
 1565 ~~the total retail price of the vehicle.~~

1566
 1567 ~~For the purposes of this paragraph, the physical damage coverage~~
 1568 ~~on the motor vehicle may not be suspended during the term of the~~
 1569 ~~policy due to the applicant's failure to provide the required~~
 1570 ~~documents. However, payment of a claim is conditioned upon the~~
 1571 ~~receipt by the insurer of the required documents, and no~~
 1572 ~~physical damage loss occurring after the effective date of the~~
 1573 ~~coverage is payable until the documents are provided to the~~
 1574 ~~insurer.~~

1575 Section 45. Paragraph (b) of subsection (3) of section
 1576 627.745, Florida Statutes, is amended, present subsections (4)
 1577 and (5) of that section are renumbered as subsections (5) and
 1578 (6), respectively, and a new subsection (4) is added to that
 1579 section, to read:

1580 627.745 Mediation of claims.-

1581 (3)

1582 (b) To qualify for approval as a mediator, an individual ~~a~~
 1583 ~~person~~ must meet one of the following qualifications:

1584 1. Possess an active certification as a Florida Supreme
 1585 Court certified circuit court mediator. A circuit court mediator
 1586 whose certification is in a lapsed, suspended, or decertified

1587 status is not eligible to participate in the program ~~a masters~~
 1588 ~~or doctorate degree in psychology, counseling, business,~~
 1589 ~~accounting, or economics, be a member of The Florida Bar, be~~
 1590 ~~licensed as a certified public accountant, or demonstrate that~~
 1591 ~~the applicant for approval has been actively engaged as a~~
 1592 ~~qualified mediator for at least 4 years prior to July 1, 1990.~~

1593 2. Be an approved department mediator as of July 1, 2014,
 1594 and have conducted at least one mediation on behalf of the
 1595 department within 4 years immediately preceding that ~~the date~~
 1596 ~~the application for approval is filed with the department, have~~
 1597 ~~completed a minimum of a 40-hour training program approved by~~
 1598 ~~the department and successfully passed a final examination~~
 1599 ~~included in the training program and approved by the department.~~
 1600 ~~The training program shall include and address all of the~~
 1601 ~~following:~~

- 1602 a. ~~Mediation theory.~~
- 1603 b. ~~Mediation process and techniques.~~
- 1604 c. ~~Standards of conduct for mediators.~~
- 1605 d. ~~Conflict management and intervention skills.~~
- 1606 e. ~~Insurance nomenclature.~~

1607 (4) The department shall deny an application, or suspend
 1608 or revoke its approval of a mediator or certification of a
 1609 neutral evaluator to serve in such capacity, if the department
 1610 finds that any of the following grounds exist:

- 1611 (a) Lack of one or more of the qualifications for approval
 1612 or certification specified in this section.

1613 (b) Material misstatement, misrepresentation, or fraud in
 1614 obtaining, or attempting to obtain, the approval or
 1615 certification.

1616 (c) Demonstrated lack of fitness or trustworthiness to act
 1617 as a mediator or neutral evaluator.

1618 (d) Fraudulent or dishonest practices in the conduct of
 1619 mediation or neutral evaluation or in the conduct of business in
 1620 the financial services industry.

1621 (e) Violation of any provision of this code or of a lawful
 1622 order or rule of the department, violation of the Florida Rules
 1623 of Certified and Court Appointed Mediators, or aiding,
 1624 instructing, or encouraging another party in committing such a
 1625 violation.

1626

1627 The department may adopt rules to administer this subsection.

1628 Section 46. Subsection (8) of section 627.782, Florida
 1629 Statutes, is amended to read:

1630 627.782 Adoption of rates.—

1631 (8) Each title insurance agency and insurer licensed to do
 1632 business in this state and each insurer's direct or retail
 1633 business in this state shall maintain and submit information,
 1634 including revenue, loss, and expense data, as the office
 1635 determines necessary to assist in the analysis of title
 1636 insurance premium rates, title search costs, and the condition
 1637 of the title insurance industry in this state. This information
 1638 must be transmitted to the office annually by May ~~March~~ 31 of

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1639 the year after the reporting year. The commission shall adopt
 1640 rules regarding the collection and analysis of the data from the
 1641 title insurance industry.

1642 Section 47. Subsection (4) of section 627.841, Florida
 1643 Statutes, is amended to read:

1644 627.841 Delinquency, collection, cancellation, and payment
 1645 ~~check~~ return charge charges; attorney attorney's fees.-

1646 (4) In the event that a payment is made to a premium
 1647 finance company by debit, credit, electronic funds transfer,
 1648 check, or draft and such payment the instrument is returned,
 1649 declined, or cannot be processed due to because of insufficient
 1650 funds ~~to pay it~~, the premium finance company may, if the premium
 1651 finance agreement so provides, impose a return payment charge of
 1652 \$15.

1653 Section 48. Subsections (1), (3), (10), and (12) of
 1654 section 628.461, Florida Statutes, are amended to read:

1655 628.461 Acquisition of controlling stock.-

1656 (1) A person may not, individually or in conjunction with
 1657 any affiliated person of such person, acquire directly or
 1658 indirectly, conclude a tender offer or exchange offer for, enter
 1659 into any agreement to exchange securities for, or otherwise
 1660 finally acquire 10 ~~5~~ percent or more of the outstanding voting
 1661 securities of a domestic stock insurer or of a controlling
 1662 company, unless:

1663 (a) The person or affiliated person has filed with the
 1664 office and sent to the insurer and controlling company a letter

1665 of notification regarding the transaction or proposed
 1666 transaction within ~~no later than~~ 5 days after any form of tender
 1667 offer or exchange offer is proposed, or within ~~no later than~~ 5
 1668 days after the acquisition of the securities if no tender offer
 1669 or exchange offer is involved. The notification must be provided
 1670 on forms prescribed by the commission containing information
 1671 determined necessary to understand the transaction and identify
 1672 all purchasers and owners involved;

1673 (b) The person or affiliated person has filed with the
 1674 office a statement as specified in subsection (3). The statement
 1675 must be completed and filed within 30 days after:

- 1676 1. Any definitive acquisition agreement is entered;
- 1677 2. Any form of tender offer or exchange offer is proposed;

1678 or

1679 3. The acquisition of the securities, if no definitive
 1680 acquisition agreement, tender offer, or exchange offer is
 1681 involved; and

1682 (c) The office has approved the tender or exchange offer,
 1683 or acquisition if no tender offer or exchange offer is involved,
 1684 and approval is in effect.

1685

1686 ~~In lieu of a filing as required under this subsection, a party~~
 1687 ~~acquiring less than 10 percent of the outstanding voting~~
 1688 ~~securities of an insurer may file a disclaimer of affiliation~~
 1689 ~~and control. The disclaimer shall fully disclose all material~~
 1690 ~~relationships and basis for affiliation between the person and~~

1691 ~~the insurer as well as the basis for disclaiming the affiliation~~
 1692 ~~and control. After a disclaimer has been filed, the insurer~~
 1693 ~~shall be relieved of any duty to register or report under this~~
 1694 ~~section which may arise out of the insurer's relationship with~~
 1695 ~~the person unless and until the office disallows the disclaimer.~~
 1696 ~~The office shall disallow a disclaimer only after furnishing all~~
 1697 ~~parties in interest with notice and opportunity to be heard and~~
 1698 ~~after making specific findings of fact to support the~~
 1699 ~~disallowance.~~ A filing as required under this subsection must be
 1700 made as to any acquisition that equals or exceeds 10 percent of
 1701 the outstanding voting securities.

1702 (3) The statement to be filed with the office under
 1703 subsection (1) and furnished to the insurer and controlling
 1704 company shall contain the following information and any
 1705 additional information as the office deems necessary to
 1706 determine the character, experience, ability, and other
 1707 qualifications of the person or affiliated person of such person
 1708 for the protection of the policyholders and shareholders of the
 1709 insurer and the public:

1710 (a) The identity of, and the background information
 1711 specified in subsection (4) on, each natural person by whom, or
 1712 on whose behalf, the acquisition is to be made; and, if the
 1713 acquisition is to be made by, or on behalf of, a corporation,
 1714 association, or trust, as to the corporation, association, or
 1715 trust and as to any person who controls either directly or
 1716 indirectly the corporation, association, or trust, the identity

1717 of, and the background information specified in subsection (4)
 1718 on, each director, officer, trustee, or other natural person
 1719 performing duties similar to those of a director, officer, or
 1720 trustee for the corporation, association, or trust;

1721 (b) The source and amount of the funds or other
 1722 consideration used, or to be used, in making the acquisition;

1723 (c) Any plans or proposals which such persons may have
 1724 made to liquidate such insurer, to sell any of its assets or
 1725 merge or consolidate it with any person, or to make any other
 1726 major change in its business or corporate structure or
 1727 management; and any plans or proposals which such persons may
 1728 have made to liquidate any controlling company of such insurer,
 1729 to sell any of its assets or merge or consolidate it with any
 1730 person, or to make any other major change in its business or
 1731 corporate structure or management;

1732 (d) The number of shares or other securities which the
 1733 person or affiliated person of such person proposes to acquire,
 1734 the terms of the proposed acquisition, and the manner in which
 1735 the securities are to be acquired; ~~and~~

1736 (e) Information as to any contract, arrangement, or
 1737 understanding with any party with respect to any of the
 1738 securities of the insurer or controlling company, including, but
 1739 not limited to, information relating to the transfer of any of
 1740 the securities, option arrangements, puts or calls, or the
 1741 giving or withholding of proxies, which information names the
 1742 party with whom the contract, arrangement, or understanding has

1743 been entered into and gives the details thereof;

1744 (f) Effective January 1, 2015, an agreement by the person
 1745 required to file the statement that the person will provide the
 1746 annual report specified in s. 628.801(2) if control exists; and

1747 (g) Effective January 1, 2015, an acknowledgement by the
 1748 person required to file the statement that the person and all
 1749 subsidiaries within the person's control in the insurance
 1750 holding company system will provide, as necessary, information
 1751 to the office upon request to evaluate enterprise risk to the
 1752 insurer.

1753 (10) Upon notification to the office by the domestic stock
 1754 insurer or a controlling company that any person or any
 1755 affiliated person of such person has acquired 10 ~~5~~ percent or
 1756 more of the outstanding voting securities of the domestic stock
 1757 insurer or controlling company without complying with ~~the~~
 1758 ~~provisions of~~ this section, the office shall order that the
 1759 person and any affiliated person of such person cease
 1760 acquisition of any further securities of the domestic stock
 1761 insurer or controlling company; however, the person or any
 1762 affiliated person of such person may request a proceeding, which
 1763 proceeding shall be convened within 7 days after the rendering
 1764 of the order for the sole purpose of determining whether the
 1765 person, individually or in connection with any affiliated person
 1766 of such person, has acquired 10 ~~5~~ percent or more of the
 1767 outstanding voting securities of a domestic stock insurer or
 1768 controlling company. Upon the failure of the person or

1769 affiliated person to request a hearing within 7 days, or upon a
 1770 determination at a hearing convened pursuant to this subsection
 1771 that the person or affiliated person has acquired voting
 1772 securities of a domestic stock insurer or controlling company in
 1773 violation of this section, the office may order the person and
 1774 affiliated person to divest themselves of any voting securities
 1775 so acquired.

1776 (12) (a) A presumption of control may be rebutted by filing
 1777 a disclaimer of control. Any person may file a disclaimer of
 1778 control with the office. The disclaimer must fully disclose all
 1779 material relationships and bases for affiliation between the
 1780 person and the insurer as well as the basis for disclaiming the
 1781 affiliation. After a disclaimer is filed, the insurer is
 1782 relieved of any duty to register or report under this section,
 1783 which may arise out of the insurer's relationship with the
 1784 person, unless the office disallows the disclaimer. An
 1785 affiliated person of a party acquiring less than 20 percent of
 1786 the outstanding voting securities of an insurer that has filed a
 1787 Schedule 13G with the Securities and Exchange Commission
 1788 pursuant to Rules 13d-1(b) or 13d-1(c) under the Securities
 1789 Exchange Act of 1934, as amended, with respect to the securities
 1790 of the party acquiring voting securities of an insurer shall
 1791 automatically, without further action of the department, be
 1792 deemed to have filed a disclaimer of affiliation and control
 1793 pursuant to this paragraph. ~~For the purpose of this section, the~~
 1794 term "affiliated person" of another person means:

- 1795 1. ~~The spouse of such other person;~~
- 1796 2. ~~The parents of such other person and their lineal~~
- 1797 ~~descendants and the parents of such other person's spouse and~~
- 1798 ~~their lineal descendants;~~
- 1799 3. ~~Any person who directly or indirectly owns or controls,~~
- 1800 ~~or holds with power to vote, 5 percent or more of the~~
- 1801 ~~outstanding voting securities of such other person;~~
- 1802 4. ~~Any person 5 percent or more of the outstanding voting~~
- 1803 ~~securities of which are directly or indirectly owned or~~
- 1804 ~~controlled, or held with power to vote, by such other person;~~
- 1805 5. ~~Any person or group of persons who directly or~~
- 1806 ~~indirectly control, are controlled by, or are under common~~
- 1807 ~~control with such other person;~~
- 1808 6. ~~Any officer, director, partner, copartner, or employee~~
- 1809 ~~of such other person;~~
- 1810 7. ~~If such other person is an investment company, any~~
- 1811 ~~investment adviser of such company or any member of an advisory~~
- 1812 ~~board of such company;~~
- 1813 8. ~~If such other person is an unincorporated investment~~
- 1814 ~~company not having a board of directors, the depositor of such~~
- 1815 ~~company; or~~
- 1816 9. ~~Any person who has entered into an agreement, written~~
- 1817 ~~or unwritten, to act in concert with such other person in~~
- 1818 ~~acquiring or limiting the disposition of securities of a~~
- 1819 ~~domestic stock insurer or controlling company.~~
- 1820 (b) Any controlling person of a domestic insurer who seeks

1821 to divest the person's controlling interest in the domestic
 1822 insurer in any manner shall file with the office, with a copy to
 1823 the insurer, confidential notice, not subject to public
 1824 inspection as provided under s. 624.4212, of the person's
 1825 proposed divestiture at least 30 days before the cessation of
 1826 control. The office shall determine those instances in which the
 1827 party seeking to divest or to acquire a controlling interest in
 1828 an insurer must file for and obtain approval of the transaction.
 1829 The information remains confidential until the conclusion of the
 1830 transaction unless the office, in its discretion, determines
 1831 that confidential treatment interferes with enforcement of this
 1832 section. If the statement required under subsection (1) is
 1833 otherwise filed, this paragraph does not apply. For the purposes
 1834 of this section, the term "controlling company" means any
 1835 corporation, trust, or association owning, directly or
 1836 indirectly, 25 percent or more of the voting securities of one
 1837 or more domestic stock insurance companies.

1838 Section 49. Subsections (6) and (7) of section 634.406,
 1839 Florida Statutes, are amended to read:

1840 634.406 Financial requirements.—

1841 (6) An association that ~~which~~ holds a license under this
 1842 ~~part and which does not hold any other license under this~~
 1843 ~~chapter~~ may allow its premiums for service warranties written
 1844 under this part to exceed the ratio to net assets limitations of
 1845 this section if the association meets all of the following:

1846 (a) Maintains net assets of at least \$750,000.

1847 (b) ~~Uses~~ Utilizes a contractual liability insurance policy
 1848 approved by the office ~~that:~~ which

1849 1. Reimburses the service warranty association for 100
 1850 percent of its claims liability and is issued by an insurer that
 1851 maintains a policyholder surplus of at least \$100 million; or

1852 2. Complies with the requirements of subsection (3) and is
 1853 issued by an insurer that maintains a policyholder surplus of at
 1854 least \$200 million.

1855 (c) The insurer issuing the contractual liability
 1856 insurance policy:

1857 ~~1. Maintains a policyholder surplus of at least \$100~~
 1858 ~~million.~~

1859 ~~1.2.~~ Is rated "A" or higher by A.M. Best Company or an
 1860 equivalent rating by another national rating service acceptable
 1861 to the office.

1862 ~~3. Is in no way affiliated with the warranty association.~~

1863 ~~2.4.~~ In conjunction with the warranty association's filing
 1864 of the quarterly and annual reports, provides, on a form
 1865 prescribed by the commission, a statement certifying the gross
 1866 written premiums in force reported by the warranty association
 1867 and a statement that all of the warranty association's gross
 1868 written premium in force is covered under the contractual
 1869 liability policy, regardless of whether ~~or not~~ it has been
 1870 reported.

1871 ~~(7) A contractual liability policy must insure 100 percent~~
 1872 ~~of an association's claims exposure under all of the~~

1873 ~~association's service warranty contracts, wherever written,~~
 1874 ~~unless all of the following are satisfied:~~

1875 ~~(a) The contractual liability policy contains a clause~~
 1876 ~~that specifically names the service warranty contract holders as~~
 1877 ~~sole beneficiaries of the contractual liability policy and~~
 1878 ~~claims are paid directly to the person making a claim under the~~
 1879 ~~contract;~~

1880 ~~(b) The contractual liability policy meets all other~~
 1881 ~~requirements of this part, including subsection (3) of this~~
 1882 ~~section, which are not inconsistent with this subsection;~~

1883 ~~(c) The association has been in existence for at least 5~~
 1884 ~~years or the association is a wholly owned subsidiary of a~~
 1885 ~~corporation that has been in existence and has been licensed as~~
 1886 ~~a service warranty association in the state for at least 5~~
 1887 ~~years, and:~~

1888 ~~1. Is listed and traded on a recognized stock exchange; is~~
 1889 ~~listed in NASDAQ (National Association of Security Dealers~~
 1890 ~~Automated Quotation system) and publicly traded in the over-the-~~
 1891 ~~counter securities market; is required to file either of Form~~
 1892 ~~10-K, Form 100, or Form 20-C with the United States Securities~~
 1893 ~~and Exchange Commission; or has American Depository Receipts~~
 1894 ~~listed on a recognized stock exchange and publicly traded or is~~
 1895 ~~the wholly owned subsidiary of a corporation that is listed and~~
 1896 ~~traded on a recognized stock exchange; is listed in NASDAQ~~
 1897 ~~(National Association of Security Dealers Automated Quotation~~
 1898 ~~system) and publicly traded in the over-the-counter securities~~

1899 ~~market; is required to file Form 10-K, Form 100, or Form 20-G~~
 1900 ~~with the United States Securities and Exchange Commission; or~~
 1901 ~~has American Depository Receipts listed on a recognized stock~~
 1902 ~~exchange and is publicly traded;~~

1903 ~~2. Maintains outstanding debt obligations, if any, rated~~
 1904 ~~in the top four rating categories by a recognized rating~~
 1905 ~~service;~~

1906 ~~3. Has and maintains at all times a minimum net worth of~~
 1907 ~~not less than \$10 million as evidenced by audited financial~~
 1908 ~~statements prepared by an independent certified public~~
 1909 ~~accountant in accordance with generally accepted accounting~~
 1910 ~~principles and submitted to the office annually; and~~

1911 ~~4. Is authorized to do business in this state; and~~

1912 ~~(d) The insurer issuing the contractual liability policy:~~

1913 ~~1. Maintains and has maintained for the preceding 5 years,~~
 1914 ~~policyholder surplus of at least \$100 million and is rated "A"~~
 1915 ~~or higher by A.M. Best Company or has an equivalent rating by~~
 1916 ~~another rating company acceptable to the office;~~

1917 ~~2. Holds a certificate of authority to do business in this~~
 1918 ~~state and is approved to write this type of coverage; and~~

1919 ~~3. Acknowledges to the office quarterly that it insures~~
 1920 ~~all of the association's claims exposure under contracts~~
 1921 ~~delivered in this state.~~

1922

1923 ~~If all the preceding conditions are satisfied, then the scope of~~
 1924 ~~coverage under a contractual liability policy shall not be~~

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1925 | ~~required to exceed an association's claims exposure under~~
1926 | ~~service warranty contracts delivered in this state.~~
1927 | 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. Santiago (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.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking

2 Subcommittee

3 Representative Santiago offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (8) is added to section 554.1021,

8 Florida Statutes, to read:

9 554.1021 Definitions.—As used in ss. 554.1011-554.115:

10 (8) "Authorized inspection agency" means:

11 (a) A county, city, town, or other governmental

12 subdivision that has adopted and administers, at a minimum,

13 Section I of the A.S.M.E. Boiler and Pressure Vessel Code as a

14 legal requirement and whose inspectors hold valid certificates

15 of competency in accordance with s. 554.113; or

16 (b) An insurance company that is licensed or registered by

17 an appropriate authority of any state of the United States or



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18 province of Canada and whose inspectors hold valid certificates
19 of competency in accordance with s. 554.113.

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

22 554.107 Special inspectors.—

23 (1) Upon application by an authorized inspection agency
24 ~~any company licensed to insure boilers in this state~~, the chief
25 inspector shall issue a certificate of competency as a special
26 inspector to an any inspector employed by the agency if he or
27 ~~she company, provided that such inspector~~ satisfies the
28 competency requirements for inspectors as provided in s.
29 554.113.

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

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

40 554.109 Exemptions.—

41 (1) An Any insurance company that insures ~~insuring~~ a
42 boiler located in a public assembly location in this state shall
43 inspect or contract with an authorized inspection agency to



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44 inspect such boiler ~~so insured~~, and shall annually report to the
45 department the identity of any authorized inspection agency that
46 performs a required boiler inspection on behalf of the company.
47 A any county, city, town, or other governmental subdivision that
48 which has adopted into law the Boiler and Pressure Vessel Code
49 of the American Society of Mechanical Engineers and the National
50 Board Inspection Code for the construction, installation,
51 inspection, maintenance, and repair of boilers, regulating such
52 boilers in public assembly locations, shall inspect such boilers
53 so regulated, ~~provided that~~ Such inspection shall be conducted
54 by a special inspector licensed pursuant to ss. 554.1011-
55 554.115. Upon filing of a report of satisfactory inspection with
56 the department, such boiler is exempt from inspection by the
57 department.

58 Section 4. Paragraph (b) of subsection (1) of section
59 624.4625, Florida Statutes, is amended to read:

60 624.4625 Corporation not for profit self-insurance funds.-

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

68 (b) Requires for qualification that each participating
69 member receive at least 75 percent of its revenues from local,



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70 state, or federal governmental sources or a combination of such
 71 sources, or qualify as a publicly supported organization that
 72 normally receives a substantial part of its support from a
 73 governmental unit or from the general public as evidenced on the
 74 organization's most recently filed Internal Revenue Service Form
 75 990 or 990EZ, Schedule A.

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

79 624.501 Filing, license, appointment, and miscellaneous
 80 fees.—The department, commission, or office, as appropriate,
 81 shall collect in advance, and persons so served shall pay to it
 82 in advance, fees, licenses, and miscellaneous charges as
 83 follows:

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

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

89	Appointment fee	\$42.00
90	State tax	12.00
91	County tax	6.00
92	Total	\$60.00

93 (c) Nonresident agent's original appointment and biennial
 94 renewal or continuation thereof, appointment fee, each insurer
 95 or unaffiliated agent making an appointment \$60.00



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96 (7) Life insurance agents.

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

100	Appointment fee	\$42.00
101	State tax	12.00
102	County tax	6.00
103	Total	\$60.00

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

107 (8) Health insurance agents.

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

111	Appointment fee	\$42.00
112	State tax	12.00
113	County tax	6.00
114	Total	\$60.00

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

118 Section 6. Subsection (11) is amended, and subsection (18)
119 of section 626.015, Florida Statutes, is renumbered as
120 subsection (19), and a new subsection (18) is added to that
121 section to read:



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122 626.015 Definitions.—As used in this part:

123 (11) "Limited customer representative" means a customer
124 representative appointed by a general lines agent or agency to
125 assist that agent or agency in transacting only the business of
126 private passenger motor vehicle insurance from the office of
127 that agent or agency. A limited customer representative is
128 subject to the Florida Insurance Code in the same manner as a
129 customer representative, unless otherwise specified. Effective
130 October 1, 2014, no new limited customer representative licenses
131 may be issued.

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

143 Section 7. Effective January 1, 2015, subsections (2) and
144 (3) are amended, and subsection (4) is added to section
145 626.0428, Florida Statutes, to read:

146 626.0428 Agency personnel powers, duties, and
147 limitations.—

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

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

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

166 (b) Notwithstanding paragraph (a), the licensed agent in
167 charge of an insurance agency may also be the agent in charge of
168 additional branch office locations of the agency if insurance
169 activities requiring licensure as an insurance agent do not
170 occur at any location when an agent is not physically present
171 and unlicensed employees at the location do not engage in
172 insurance activities requiring licensure as an insurance agent
173 or customer representative.



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

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

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

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



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200 by, and providing services to, the agency at all times. If the
201 agent in charge designated with the department ends their
202 affiliation with the agency for any reason and the agency fails
203 to designate another agent in charge within 30 days as provided
204 in paragraph (c) and such failure continues for 90 days, the
205 agency license shall automatically expire on the 91st day from
206 the date the designated agent in charge ended their affiliation
207 with the agency.

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

210 626.112 License and appointment required; agents, customer
211 representatives, adjusters, insurance agencies, service
212 representatives, managing general agents.-

213 (7) (a) An ~~Effective October 1, 2006,~~ no individual, firm,
214 partnership, corporation, association, or ~~any~~ other entity shall
215 not act in its own name or under a trade name, directly or
216 indirectly, as an insurance agency, unless it complies with s.
217 626.172 with respect to possessing an insurance agency license
218 for each place of business at which it engages in an any
219 activity that ~~which~~ may be performed only by a licensed
220 insurance agent. However, an insurance agency that is owned and
221 operated by a single licensed agent conducting business in his
222 or her individual name and not employing or otherwise using the
223 services of or appointing other licensees is exempt from the
224 agency licensing requirements of this subsection.

225 (b) A branch place of business that is established by a



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

247 (c)1. If an agency is required to be licensed but fails to
248 file an application for licensure in accordance with this
249 section, the department shall impose on the agency an
250 administrative penalty in an amount of up to \$10,000.

251 2. ~~If an agency is eligible for registration but fails to~~



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252 ~~file an application for registration or an application for~~
253 ~~licensure in accordance with this section, the department shall~~
254 ~~impose on the agency an administrative penalty in an amount of~~
255 ~~up to \$5,000.~~

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

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

268 2. ~~Employed any individual in a managerial capacity or in~~
269 ~~a capacity dealing with the public who is under an order of~~
270 ~~revocation or suspension issued by the department. An insurance~~
271 ~~agency may request, on forms prescribed by the department,~~
272 ~~verification of any person's license status. If a request is~~
273 ~~mailed within 5 working days after an employee is hired, and the~~
274 ~~employee's license is currently suspended or revoked, the agency~~
275 ~~shall not be required to obtain a license, if the unlicensed~~
276 ~~person's employment is immediately terminated.~~

277 3. ~~Operated the agency or permitted the agency to be~~



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278 ~~operated in violation of s. 626.747.~~

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

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

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

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

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

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

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

302 ~~g. Failed or refused, upon demand, to pay over to any~~
303 ~~insurer he or she represents or has represented any money coming~~

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304 ~~into his or her hands belonging to the insurer.~~

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

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

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

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

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

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

319 ~~5. Knowingly employed any person who within the preceding~~
320 ~~3 years has had his or her relationship with an agency~~
321 ~~terminated in accordance with paragraph (d).~~

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

324 Section 9. Subsections (2), (3), and (4) of section
325 626.172, Florida Statutes, are amended to read:

326 626.172 Application for insurance agency license.—

327 (2) An application for an insurance agency license must
328 shall be signed by an individual required to be listed in
329 paragraph (a) the owner or owners of the agency. ~~If the agency~~



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330 ~~is incorporated, the application shall be signed by the~~
331 ~~president and secretary of the corporation. An insurance agency~~
332 ~~may permit a third party to complete, submit, and sign an~~
333 ~~application on the insurance agency's behalf, but the insurance~~
334 ~~agency is responsible for ensuring that the information on the~~
335 ~~application is true and correct and is accountable for any~~
336 ~~misstatements or misrepresentations. The application for an~~
337 ~~insurance agency license must shall include:~~

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

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

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

351 (d) The physical address location of each branch agency,
352 including its name, e-mail address, and telephone number, and
353 the date that the branch location began transacting insurance
354 ~~office and the name under which each agency office conducts or~~
355 ~~will conduct business.~~

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

359 (f) The fingerprints of each of the following:

360 1. A sole proprietor;

361 2. Each individual required to be listed in paragraph (a)
362 partner;

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

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

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

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

372

373 Fingerprints must be taken by a law enforcement agency or other
374 entity approved by the department and must be accompanied by the
375 fingerprint processing fee specified in s. 624.501. Fingerprints
376 must ~~shall~~ be processed in accordance with s. 624.34. However,
377 fingerprints need not be filed for an ~~any~~ individual who is
378 currently licensed and appointed under this chapter. This
379 paragraph does not apply to corporations whose voting shares are
380 traded on a securities exchange.

381 (g) Such additional information as the department requires



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382 by rule to ascertain the trustworthiness and competence of
383 persons required to be listed on the application and to
384 ascertain that such persons meet the requirements of this code.
385 However, the department may not require that credit or character
386 reports be submitted for persons required to be listed on the
387 application.

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

392 ~~(3) The department shall issue a registration as an~~
393 ~~insurance agency to any agency that files a written application~~
394 ~~with the department and qualifies for registration. The~~
395 ~~application for registration shall require the agency to provide~~
396 ~~the same information required for an agency licensed under~~
397 ~~subsection (2), the agent identification number for each owner~~
398 ~~who is a licensed agent, proof that the agency qualifies for~~
399 ~~registration as provided in s. 626.112(7), and any other~~
400 ~~additional information that the department determines is~~
401 ~~necessary in order to demonstrate that the agency qualifies for~~
402 ~~registration. The application must be signed by the owner or~~
403 ~~owners of the agency. If the agency is incorporated, the~~
404 ~~application must be signed by the president and the secretary of~~
405 ~~the corporation. An agent who owns the agency need not file~~
406 ~~fingerprints with the department if the agent obtained a license~~
407 ~~under this chapter and the license is currently valid.~~

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

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

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

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

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

429 626.311 Scope of license.—

430 (6) An agent who appoints his or her license as an
431 unaffiliated insurance agent may not hold an appointment from an
432 insurer for any license he or she holds; transact, solicit, or
433 service an insurance contract on behalf of an insurer; interfere



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434 with commissions received or to be received by an insurer-
435 appointed insurance agent or an insurance agency contracted with
436 or employing insurer-appointed insurance agents; or receive
437 compensation or any other thing of value from an insurer, an
438 insurer-appointed insurance agent, or an insurance agency
439 contracted with or employing insurer-appointed insurance agents
440 for any transaction or referral occurring after the date of
441 appointment as an unaffiliated insurance agent. An unaffiliated
442 insurance agent may continue to receive commissions on sales
443 that occurred before the date of appointment as an unaffiliated
444 insurance agent if the receipt of such commissions is disclosed
445 when making recommendations or evaluating products for a client
446 that involve products of the entity from which the commissions
447 are received.

448 Section 11. Paragraph (d) of subsection (1) of section
449 626.321, Florida Statutes, is amended to read:

450 626.321 Limited licenses.-

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

455 (d) Motor vehicle rental insurance.-

456 1. License covering only insurance of the risks set forth
457 in this paragraph when offered, sold, or solicited with and
458 incidental to the rental or lease of a motor vehicle and which
459 applies only to the motor vehicle that is the subject of the



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460 lease or rental agreement and the occupants of the motor
461 vehicle:

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

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

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

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

476 2. Insurance under a motor vehicle rental insurance
477 license may be issued only if the lease or rental agreement is
478 for no more than 60 days, the lessee is not provided coverage
479 for more than 60 consecutive days per lease period, and the
480 lessee is given written notice that his or her personal
481 insurance policy providing coverage on an owned motor vehicle
482 may provide coverage of such risks and that the purchase of the
483 insurance is not required in connection with the lease or rental
484 of a motor vehicle. If the lease is extended beyond 60 days, the
485 coverage may be extended one time only for a period not to

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486 exceed an additional 60 days. Insurance may be provided to the
487 lessee as an additional insured on a policy issued to the
488 licensee's employer.

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

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

501 b. The application for licensure must list the name,
502 address, and phone number for each office, branch office, or
503 place of business that is to be covered by the license. The
504 licensee shall notify the department of the name, address, and
505 phone number of any new location that is to be covered by the
506 license before the new office, branch office, or place of
507 business engages in the sale of insurance pursuant to this
508 paragraph. The licensee must notify the department within 30
509 days after closing or terminating an office, branch office, or
510 place of business. Upon receipt of the notice, the department
511 shall delete the office, branch office, or place of business

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512 from the license.

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

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

517 626.382 Continuation, expiration of license; insurance
518 agencies.—The license of an any insurance agency ~~shall be issued~~
519 ~~for a period of 3 years and~~ shall continue in force until
520 canceled, suspended, or revoked, or until it is otherwise
521 terminated or becomes expired by operation of law. A license ~~may~~
522 ~~be renewed by submitting a renewal request to the department on~~
523 ~~a form adopted by department rule.~~

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

526 626.601 Improper conduct; inquiry; fingerprinting.—

527 (1) The department or office may, upon its own motion or
528 upon a written complaint signed by any interested person and
529 filed with the department or office, inquire into any alleged
530 improper conduct of any licensed, approved, or certified
531 licensee, insurance agency, agent, adjuster, service
532 representative, managing general agent, customer representative,
533 title insurance agent, title insurance agency, mediator, neutral
534 evaluator, navigator, continuing education course provider,
535 instructor, school official, or monitor group under this code.
536 The department or office may thereafter initiate an
537 investigation of any such individual or entity licensee if it



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538 has reasonable cause to believe that the individual or entity
539 ~~licensee~~ has violated any provision of the insurance code.
540 During the course of its investigation, the department or office
541 shall contact the individual or entity ~~licensee~~ being
542 investigated unless it determines that contacting such
543 individual or entity ~~person~~ could jeopardize the successful
544 completion of the investigation or cause injury to the public.

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

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

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

557 (5) If the department or office, after investigation, has
558 reason to believe that an individual ~~a licensee~~ may have been
559 found guilty of or pleaded guilty or nolo contendere to a felony
560 or a crime related to the business of insurance in this or any
561 other state or jurisdiction, the department or office may
562 require the individual ~~licensee~~ to file with the department or
563 office a complete set of his or her fingerprints, which shall be



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564 accompanied by the fingerprint processing fee set forth in s.
565 624.501. The fingerprints shall be taken by an authorized law
566 enforcement agency or other department-approved entity.

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

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

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

583 626.8411 Application of Florida Insurance Code provisions
584 to title insurance agents or agencies.-

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

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



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

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

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

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

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

599 626.8805 Certificate of authority to act as
600 administrator.—

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

606 (c) The names, addresses, official positions, and
607 professional qualifications of the individuals employed or
608 retained by the administrator and who are responsible for the
609 conduct of the affairs of the administrator, including all
610 members of the board of directors, board of trustees, executive
611 committee, or other governing board or committee, and the
612 principal officers in the case of a corporation or, the partners
613 or members in the case of a partnership or association, ~~and any~~
614 ~~other person who exercises control or influence over the affairs~~
615 of the administrator.

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

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

622 626.8817 Responsibilities of insurance company with
623 respect to administration of coverage insured.—

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

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

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



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642 626.882 Agreement between administrator and insurer;
643 required provisions; maintenance of records.-

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

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

654 Section 19. Subsections (3), (4), and (5) of section
655 626.883, Florida Statutes, are amended to read:

656 626.883 Administrator as intermediary; collections held in
657 fiduciary capacity; establishment of account; disbursement;
658 payments on behalf of insurer.-

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

667 (4) The administrator may not pay any claim by withdrawals



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668 from a fiduciary account. Withdrawals from such account shall be
669 made as provided in the written agreement required under ss.
670 626.8817 and 626.882 ~~between the administrator and the insurer~~
671 for any of the following:

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

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

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

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

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

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

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

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

688 626.884 Maintenance of records by administrator; access;
689 confidentiality.-

690 (3) The insurer shall retain the right of continuing
691 access to books and records maintained by the administrator
692 sufficient to permit the insurer to fulfill all of its
693 contractual obligations to insured persons, subject to any



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694 restrictions in the written agreement pertaining to ~~between the~~
695 ~~insurer and the administrator~~ on the proprietary rights of the
696 parties in such books and records.

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

699 626.89 Annual financial statement and filing fee; notice
700 of change of ownership.—

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

717 (2) Each authorized administrator shall also file an
718 audited financial statement performed by an independent
719 certified public accountant. The audited financial statement



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720 shall be filed with the office on or before July ~~June~~ 1 for the
721 preceding calendar or fiscal year ending ~~December 31~~. An
722 administrator ~~whose sole stockholder is an association~~
723 ~~representing health care providers which is not an affiliate of~~
724 ~~an insurer, an administrator of a pooled governmental self-~~
725 ~~insurance program, or an administrator that is a university may~~
726 ~~submit the preceding fiscal year's audited financial statement~~
727 ~~within 5 months after the end of its fiscal year.~~ An audited
728 financial statement prepared on a consolidated basis must
729 include a columnar consolidating or combining worksheet that
730 must be filed with the statement and must comply with the
731 following:

- 732 (a) Amounts shown on the consolidated audited financial
733 statement must be shown on the worksheet;
- 734 (b) Amounts for each entity must be stated separately; and
- 735 (c) Explanations of consolidating and eliminating entries
736 must be included.

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

739 626.931 ~~Agent affidavit and Insurer reporting~~
740 ~~requirements.-~~

741 ~~(1) Each surplus lines agent shall on or before the 45th~~
742 ~~day following each calendar quarter file with the Florida~~
743 ~~Surplus Lines Service Office an affidavit, on forms as~~
744 ~~prescribed and furnished by the Florida Surplus Lines Service~~
745 ~~Office, stating that all surplus lines insurance transacted by~~



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746 ~~him or her during such calendar quarter has been submitted to~~
747 ~~the Florida Surplus Lines Service Office as required.~~

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

751 ~~(1)(3)~~ Each foreign insurer accepting premiums shall, on
752 or before the end of the month following each calendar quarter,
753 file with the Florida Surplus Lines Service Office a verified
754 report of all surplus lines insurance transacted by such insurer
755 for insurance risks located in this state during such calendar
756 quarter.

757 ~~(2)(4)~~ Each alien insurer accepting premiums shall, on or
758 before June 30 of each year, file with the Florida Surplus Lines
759 Service Office a verified report of all surplus lines insurance
760 transacted by such insurer for insurance risks located in this
761 state during the preceding calendar year.

762 ~~(3)(5)~~ The department may waive the filing requirements
763 described in subsections ~~(1) (3)~~ and ~~(2) (4)~~.

764 ~~(4)(6)~~ Each insurer's report and supporting information
765 shall be in a computer-readable format as determined by the
766 Florida Surplus Lines Service Office or shall be submitted on
767 forms prescribed by the Florida Surplus Lines Service Office and
768 shall show for each applicable agent:

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



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772 identifying number; and

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

775 Section 23. Paragraph (a) of subsection (2) of section
776 626.932, Florida Statutes, is amended to read:

777 626.932 Surplus lines tax.—

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

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

789 626.935 Suspension, revocation, or refusal of surplus
790 lines agent's license.—

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

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

797 (b) Removal of the accounts and records of his or her



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798 surplus lines business from this state or the licensee's state
799 of residence during the period when such accounts and records
800 are required to be maintained under s. 626.930.

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

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

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

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

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

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

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

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

818 626.936 Failure to file reports or pay tax or service fee;
819 administrative penalty.—

820 (1) A ~~Any~~ licensed surplus lines agent who neglects to
821 file a report ~~or an affidavit~~ in the form and within the time
822 required or provided for in the Surplus Lines Law may be fined
823 up to \$50 per day for each day the neglect continues, beginning



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824 the day after the report ~~or affidavit~~ was due until the date the
825 report ~~or affidavit~~ is received. All sums collected under this
826 section shall be deposited into the Insurance Regulatory Trust
827 Fund.

828 Section 26. Paragraph (b) of subsection (2) of section
829 627.062, Florida Statutes, is amended to read:

830 627.062 Rate standards.—

831 (2) As to all such classes of insurance:

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

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

840 2. Past and prospective expenses.

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

843 4. Investment income reasonably expected by the insurer,
844 consistent with the insurer's investment practices, from
845 investable premiums anticipated in the filing, plus any other
846 expected income from currently invested assets representing the
847 amount expected on unearned premium reserves and loss reserves.
848 The commission may adopt rules using reasonable techniques of
849 actuarial science and economics to specify the manner in which



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850 insurers calculate investment income attributable to classes of
851 insurance written in this state and the manner in which
852 investment income is used to calculate insurance rates. Such
853 manner must contemplate allowances for an underwriting profit
854 factor and full consideration of investment income that ~~which~~
855 produce a reasonable rate of return; however, investment income
856 from invested surplus may not be considered.

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

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

862 7. The adequacy of loss reserves.

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

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

870 10. Conflagration and catastrophe hazards, if applicable.

871 11. Projected hurricane losses, if applicable, which must
872 be estimated using a model or method, or a straight average of
873 model results or output ranges, independently found to be
874 acceptable or reliable by the Florida Commission on Hurricane
875 Loss Projection Methodology, and as further provided in s.

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876 627.0628.

877 12. A reasonable margin for underwriting profit and
878 contingencies.

879 13. The cost of medical services, if applicable.

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

882 Section 27. Paragraph (d) of subsection (3) of section
883 627.0628, Florida Statutes, is amended to read:

884 627.0628 Florida Commission on Hurricane Loss Projection
885 Methodology; public records exemption; public meetings
886 exemption.—

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

888 (d) With respect to a rate filing under s. 627.062, an
889 insurer shall employ and may not modify or adjust actuarial
890 methods, principles, standards, models, or output ranges found
891 by the commission to be accurate or reliable in determining
892 hurricane loss factors for use in a rate filing under s.
893 627.062. An insurer shall employ and may not modify or adjust
894 models found by the commission to be accurate or reliable in
895 determining probable maximum loss levels pursuant to paragraph
896 (b) with respect to a rate filing under s. 627.062 made more
897 than 180 ~~60~~ days after the commission has made such findings.
898 This paragraph does not prohibit an insurer from using a
899 straight average of model results or output ranges or using
900 straight averages for the purposes of a rate filing under s.
901 627.062.

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

904 627.0651 Making and use of rates for motor vehicle
905 insurance.—

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

921 Section 29. Subsections (2), (3), and (4) of section
922 627.072, Florida Statutes, are renumbered as subsections (3),
923 (4), and (5), respectively, and a new subsection (2) is added to
924 that section to read:

925 627.072 Making and use of rates.—

926 (2) A retrospective rating plan may contain a provision
927 that allows for negotiation of a premium between the employer



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928 and the insurer for employers having exposure in more than one
929 state and an estimated annual standard premium in this state of
930 \$175,000 and an estimated annual countrywide standard premium of
931 \$1 million or more for workers' compensation.

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

934 627.281 Appeal from rating organization; workers'
935 compensation and employer's liability insurance filings.-

936 (2) If such appeal is based upon the failure of the rating
937 organization to make a filing on behalf of such member or
938 subscriber which is based on a system of expense provisions
939 which differs, in accordance with the right granted in s.
940 627.072(3) ~~627.072(2)~~, from the system of expense provisions
941 included in a filing made by the rating organization, the office
942 shall, if it grants the appeal, order the rating organization to
943 make the requested filing for use by the appellant. In deciding
944 such appeal, the office shall apply the applicable standards set
945 forth in ss. 627.062 and 627.072.

946 Section 31. Paragraph (h) of subsection (5) of section
947 627.311, Florida Statutes, is amended to read:

948 627.311 Joint underwriters and joint reinsurers; public
949 records and public meetings exemptions.-

950 (5)

951 (h) Any premium or assessments collected by the plan in
952 excess of the amount necessary to fund projected ultimate
953 incurred losses and expenses of the plan and not paid to



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954 insureds of the plan in conjunction with loss prevention or
955 dividend programs shall be retained by the plan for future use.
956 Any state funds received by the plan in excess of the amount
957 necessary to fund deficits in subplan D or any tier shall be
958 returned to the state. Any dividend that cannot be paid to a
959 former insured of the plan because the former insured cannot be
960 reasonably located shall be retained by the plan for future use.

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

963 627.3518 Citizens Property Insurance Corporation
964 policyholder eligibility clearinghouse program.—The purpose of
965 this section is to provide a framework for the corporation to
966 implement a clearinghouse program by January 1, 2014.

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

972 Section 33. Section 627.3519, Florida Statutes, is amended
973 to read:

974 627.3519 Annual report of aggregate net probable maximum
975 losses, financing options, and potential assessments.—No later
976 than February 1 of each year, the Florida Hurricane Catastrophe
977 Fund and Citizens Property Insurance Corporation Financial
978 ~~Services Commission~~ shall provide to the Legislature and the
979 Financial Services Commission a report of their respective the

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

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

997 627.409 Representations in applications; warranties.—

998 (1) Any statement or description made by or on behalf of
999 an insured or annuitant in an application for an insurance
1000 policy or annuity contract, or in negotiations for a policy or
1001 contract, is a representation and ~~is~~ not a warranty. Except as
1002 provided in subsection (3), a A misrepresentation, omission,
1003 concealment of fact, or incorrect statement may prevent recovery
1004 under the contract or policy only if any of the following apply:

1005 (a) The misrepresentation, omission, concealment, or



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1006 statement is fraudulent or is material ~~either~~ to the acceptance
1007 of the risk or to the hazard assumed by the insurer.

1008 (b) If the true facts had been known to the insurer
1009 pursuant to a policy requirement or other requirement, the
1010 insurer in good faith would not have issued the policy or
1011 contract, would not have issued it at the same premium rate,
1012 would not have issued a policy or contract in as large an
1013 amount, or would not have provided coverage with respect to the
1014 hazard resulting in the loss.

1015 (2) A breach or violation by the insured of a any
1016 warranty, condition, or provision of a any wet marine or
1017 transportation insurance policy, contract of insurance,
1018 endorsement, or application ~~therefor~~ does not void the policy or
1019 contract, or constitute a defense to a loss thereon, unless such
1020 breach or violation increased the hazard by any means within the
1021 control of the insured.

1022 (3) For residential property insurance, if a policy or
1023 contract has been in effect for more than 90 days, a claim filed
1024 by the insured cannot be denied based on credit information
1025 available in public records.

1026 Section 35. Paragraph (b) of subsection (2) of section
1027 627.4133, Florida Statutes, is amended to read:

1028 627.4133 Notice of cancellation, nonrenewal, or renewal
1029 premium.—

1030 (2) With respect to any personal lines or commercial
1031 residential property insurance policy, including, but not



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1032 limited to, any homeowner's, mobile home owner's, farmowner's,
1033 condominium association, condominium unit owner's, apartment
1034 building, or other policy covering a residential structure or
1035 its contents:

1036 (b) The insurer shall give the first-named insured written
1037 notice of nonrenewal, cancellation, or termination at least 120
1038 ~~100~~ days before the effective date of the nonrenewal,
1039 cancellation, or termination. ~~However, the insurer shall give at~~
1040 ~~least 100 days' written notice, or written notice by June 1,~~
1041 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
1042 ~~termination that would be effective between June 1 and November~~
1043 ~~30.~~ The notice must include the reason or reasons for the
1044 nonrenewal, cancellation, or termination, except that:

1045 ~~1. The insurer shall give the first-named insured written~~
1046 ~~notice of nonrenewal, cancellation, or termination at least 120~~
1047 ~~days prior to the effective date of the nonrenewal,~~
1048 ~~cancellation, or termination for a first named insured whose~~
1049 ~~residential structure has been insured by that insurer or an~~
1050 ~~affiliated insurer for at least a 5 year period immediately~~
1051 ~~prior to the date of the written notice.~~

1052 1.2. If cancellation is for nonpayment of premium, at
1053 least 10 days' written notice of cancellation accompanied by the
1054 reason therefor must be given. As used in this subparagraph, the
1055 term "nonpayment of premium" means failure of the named insured
1056 to discharge when due her or his obligations for ~~in connection~~
1057 ~~with~~ the payment of premiums on a policy or any installment of

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1058 such premium, whether the premium is payable directly to the
1059 insurer or its agent or indirectly under any premium finance
1060 plan or extension of credit, or failure to maintain membership
1061 in an organization if such membership is a condition precedent
1062 to insurance coverage. The term also means the failure of a
1063 financial institution to honor an insurance applicant's check
1064 after delivery to a licensed agent for payment of a premium,
1065 even if the agent has previously delivered or transferred the
1066 premium to the insurer. If a dishonored check represents the
1067 initial premium payment, the contract and all contractual
1068 obligations are void ab initio unless the nonpayment is cured
1069 within the earlier of 5 days after actual notice by certified
1070 mail is received by the applicant or 15 days after notice is
1071 sent to the applicant by certified mail or registered mail, ~~and~~
1072 If the contract is void, any premium received by the insurer
1073 from a third party must be refunded to that party in full.

1074 2.3. If ~~such~~ cancellation or termination occurs during the
1075 first 90 days the insurance is in force and the insurance is
1076 canceled or terminated for reasons other than nonpayment of
1077 premium, at least 20 days' written notice of cancellation or
1078 termination accompanied by the reason therefor must be given
1079 unless there has been a material misstatement or
1080 misrepresentation or failure to comply with the underwriting
1081 requirements established by the insurer.

1082 3. After the policy has been in effect for 90 days, the
1083 policy may not be canceled by the insurer unless there has been



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1084 a material misstatement, a nonpayment of premium, a failure to
1085 comply with underwriting requirements established by the insurer
1086 within 90 days after the date of effectuation of coverage, a
1087 substantial change in the risk covered by the policy, or the
1088 cancellation is for all insureds under such policies for a given
1089 class of insureds. This paragraph does not apply to individually
1090 rated risks that have a policy term of less than 90 days.

1091 4. After a policy or contract has been in effect for more
1092 than 90 days, the insurer may not cancel or terminate the policy
1093 or contract based on credit information available in public
1094 records.

1095 ~~4. The requirement for providing written notice by June 1~~
1096 ~~of any nonrenewal that would be effective between June 1 and~~
1097 ~~November 30 does not apply to the following situations, but the~~
1098 ~~insurer remains subject to the requirement to provide such~~
1099 ~~notice at least 100 days before the effective date of~~
1100 ~~nonrenewal.~~

1101 ~~a. A policy that is nonrenewed due to a revision in the~~
1102 ~~coverage for sinkhole losses and catastrophic ground cover~~
1103 ~~collapse pursuant to s. 627.706.~~

1104 5.b. A policy that is nonrenewed by Citizens Property
1105 Insurance Corporation, pursuant to s. 627.351(6), for a policy
1106 that has been assumed by an authorized insurer offering
1107 replacement coverage to the policyholder is exempt from the
1108 notice requirements of paragraph (a) and this paragraph. In such
1109 cases, the corporation must give the named insured written



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1110 notice of nonrenewal at least 45 days before the effective date
1111 of the nonrenewal.

1112

1113 ~~After the policy has been in effect for 90 days, the policy may~~
1114 ~~not be canceled by the insurer unless there has been a material~~
1115 ~~misstatement, a nonpayment of premium, a failure to comply with~~
1116 ~~underwriting requirements established by the insurer within 90~~
1117 ~~days after the date of effectuation of coverage, or a~~
1118 ~~substantial change in the risk covered by the policy or if the~~
1119 ~~cancellation is for all insureds under such policies for a given~~
1120 ~~class of insureds. This paragraph does not apply to individually~~
1121 ~~rated risks having a policy term of less than 90 days.~~

1122 6.5. Notwithstanding any other provision of law, an
1123 insurer may cancel or nonrenew a property insurance policy after
1124 at least 45 days' notice if the office finds that the early
1125 cancellation of some or all of the insurer's policies is
1126 necessary to protect the best interests of the public or
1127 policyholders and the office approves the insurer's plan for
1128 early cancellation or nonrenewal of some or all of its policies.
1129 The office may base such finding upon the financial condition of
1130 the insurer, lack of adequate reinsurance coverage for hurricane
1131 risk, or other relevant factors. The office may condition its
1132 finding on the consent of the insurer to be placed under
1133 administrative supervision pursuant to s. 624.81 or to the
1134 appointment of a receiver under chapter 631.

1135 7.6. A policy covering both a home and a motor vehicle may



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1136 be nonrenewed for any reason applicable to ~~either~~ the property
1137 or motor vehicle insurance after providing 90 days' notice.

1138 Section 36. Subsection (1) of section 627.4137, Florida
1139 Statutes, is amended to read:

1140 627.4137 Disclosure of certain information required.—

1141 (1) Each insurer that provides ~~which does~~ or may provide
1142 liability insurance coverage to pay all or a portion of a any
1143 claim that ~~which~~ might be made shall provide, within 30 days
1144 after ~~of~~ the written request of the claimant, a statement, under
1145 oath, of a corporate officer or the insurer's claims manager, or
1146 superintendent, or licensed company adjuster setting forth the
1147 following information with regard to each known policy of
1148 insurance, including excess or umbrella insurance:

1149 (a) The name of the insurer.

1150 (b) The name of each insured.

1151 (c) The limits of the liability coverage.

1152 (d) A statement of any policy or coverage defense that the
1153 ~~which such~~ insurer reasonably believes is available to the such
1154 insurer at the time of filing such statement.

1155 (e) A copy of the policy.

1156

1157 In addition, the insured, or her or his insurance agent, upon
1158 written request of the claimant or the claimant's attorney,
1159 shall disclose the name and coverage of each known insurer to
1160 the claimant and shall forward such request for information as
1161 required by this subsection to all affected insurers. The



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1162 insurer shall then supply the information required in this
1163 subsection to the claimant within 30 days after of receipt of
1164 such request.

1165 Section 37. Subsection (1) of section 627.421, Florida
1166 Statutes, is amended to read:

1167 627.421 Delivery of policy.—

1168 (1) Subject to the insurer's requirement as to payment of
1169 premium, every policy shall be mailed, delivered, or
1170 electronically transmitted to the insured or to the person
1171 entitled thereto not later than 60 days after the effectuation
1172 of coverage. Notwithstanding any other provision of law, an
1173 insurer may allow a policyholder of personal lines insurance to
1174 affirmatively elect delivery of the policy documents, including,
1175 but not limited to, policies, endorsements, notices, or
1176 documents, by electronic means in lieu of delivery by mail.
1177 Electronic transmission of a policy for commercial risks,
1178 including, but not limited to, workers' compensation and
1179 employers' liability, commercial automobile liability,
1180 commercial automobile physical damage, commercial lines
1181 residential property, commercial nonresidential property, farm
1182 owners' insurance, and the types of commercial lines risks set
1183 forth in s. 627.062(3)(d), constitutes ~~shall constitute~~ delivery
1184 to the insured or to the person entitled to delivery, unless the
1185 insured or the person entitled to delivery communicates to the
1186 insurer in writing or electronically that he or she does not
1187 agree to delivery by electronic means. Electronic transmission

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1188 shall include a notice to the insured or to the person entitled
1189 to delivery of a policy of his or her right to receive the
1190 policy via United States mail rather than via electronic
1191 transmission. A paper copy of the policy shall be provided to
1192 the insured or to the person entitled to delivery at his or her
1193 request.

1194 Section 38. Subsection (2) of section 627.43141, Florida
1195 Statutes, is amended to read:

1196 627.43141 Notice of change in policy terms.—

1197 (2) A renewal policy may contain a change in policy terms.
1198 If a renewal policy contains ~~does contain~~ such change, the
1199 insurer must give the named insured written notice of the
1200 change, which may ~~must~~ be enclosed along with the written notice
1201 of renewal premium required by ss. 627.4133 and 627.728 or be
1202 sent in a separate notice that complies with the nonrenewal
1203 mailing time requirement for that particular line of business.
1204 The insurer must also provide a sample copy of the notice to the
1205 insured's insurance agent before or at the same time that notice
1206 is given to the insured. Such notice shall be entitled "Notice
1207 of Change in Policy Terms."

1208 Section 39. Section 627.4553, Florida Statutes, is created
1209 to read:

1210 627.4553 Recommendations to surrender.—If an insurance
1211 agent recommends the surrender of an annuity or life insurance
1212 policy containing a cash value and does not recommend that the
1213 proceeds from the surrender be used to fund or purchase another



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1214 annuity or life insurance policy, before execution of the
1215 surrender, the insurance agent, or the insurance company if no
1216 agent is involved, shall provide, on a form that satisfies the
1217 requirements of the rule adopted by the department, information
1218 relating to the annuity or policy to be surrendered. Such
1219 information shall include but is not limited to the amount of
1220 any surrender charge, the loss of any minimum interest rate
1221 guarantees, the amount of any tax consequences resulting from
1222 the transaction, the amount of any forfeited death benefit, and
1223 the value of any other investment performance guarantees being
1224 forfeited as a result of the transaction. This section also
1225 applies to a person performing insurance agent activities
1226 pursuant to an exemption from licensure under this part.

1227 Section 40. Paragraph (b) of subsection (4) of section
1228 627.7015, Florida Statutes, is amended to read:

1229 627.7015 Alternative procedure for resolution of disputed
1230 property insurance claims.—

1231 (4) The department shall adopt by rule a property
1232 insurance mediation program to be administered by the department
1233 or its designee. The department may also adopt special rules
1234 which are applicable in cases of an emergency within the state.
1235 The rules shall be modeled after practices and procedures set
1236 forth in mediation rules of procedure adopted by the Supreme
1237 Court. The rules shall provide for:

1238 (b) Qualifications, denial of application, suspension,
1239 revocation of approval, and other penalties for ~~of~~ mediators as



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1240 provided in s. 627.745 and in the Florida Rules of Certified and
1241 Court Appointed Mediators, ~~and for such other individuals as are~~
1242 ~~qualified by education, training, or experience as the~~
1243 ~~department determines to be appropriate.~~

1244 Section 41. Section 627.70151, Florida Statutes, is
1245 created to read:

1246 627.70151 Appraisal; conflicts of interest.—An insurer
1247 that offers residential coverage, as defined in s. 627.4025, or
1248 a policyholder that uses an appraisal clause in the property
1249 insurance contract to establish a process of estimating or
1250 evaluating the amount of the loss through the use of an
1251 impartial umpire may challenge the umpire's impartiality and
1252 disqualify the proposed umpire only if:

1253 (1) A familial relationship within the third degree exists
1254 between the umpire and any party or a representative of any
1255 party;

1256 (2) The umpire has previously represented any party or a
1257 representative of any party in a professional capacity in the
1258 same or a substantially related matter;

1259 (3) The umpire has represented another person in a
1260 professional capacity on the same or a substantially related
1261 matter, which includes the claim, same property, or an adjacent
1262 property and that other person's interests are materially
1263 adverse to the interests of any party; or

1264 (4) The umpire has worked as an employer or employee of
1265 any party within the preceding 5 years.

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1266 Section 42. Paragraph (c) of subsection (2) of section
1267 627.706, Florida Statutes, is amended to read:

1268 627.706 Sinkhole insurance; catastrophic ground cover
1269 collapse; definitions.—

1270 (2) As used in ss. 627.706-627.7074, and as used in
1271 connection with any policy providing coverage for a catastrophic
1272 ground cover collapse or for sinkhole losses, the term:

1273 (c) "Neutral evaluator" means a professional engineer or a
1274 professional geologist who has completed a course of study in
1275 alternative dispute resolution designed or approved by the
1276 department for use in the neutral evaluation process, and who is
1277 determined by the department to be fair and impartial, and who
1278 is not otherwise ineligible for certification as provided in s.
1279 627.7074.

1280 Section 43. Subsections (3), (7), and (18) of section
1281 627.7074, Florida Statutes, are amended to read:

1282 627.7074 Alternative procedure for resolution of disputed
1283 sinkhole insurance claims.—

1284 (3) Following the receipt of the report provided under s.
1285 627.7073 or the denial of a claim for a sinkhole loss, the
1286 insurer shall notify the policyholder of his or her right to
1287 participate in the neutral evaluation program under this
1288 section, if there is coverage available under the policy and the
1289 claim was submitted within the timeframe provided in s.
1290 627.706(5). Neutral evaluation supersedes the alternative
1291 dispute resolution process under s. 627.7015 but does not

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1292 invalidate the appraisal clause of the insurance policy. The
1293 insurer shall provide to the policyholder the consumer
1294 information pamphlet prepared by the department pursuant to
1295 subsection (1) electronically or by United States mail.

1296 (7) Upon receipt of a request for neutral evaluation, the
1297 department shall provide the parties a list of certified neutral
1298 evaluators. The department shall allow the parties to submit
1299 requests to disqualify evaluators on the list for cause.

1300 (a) The department shall disqualify neutral evaluators for
1301 cause based only on any of the following grounds:

1302 1. A familial relationship exists between the neutral
1303 evaluator and either party or a representative of either party
1304 within the third degree.

1305 2. The proposed neutral evaluator has, in a professional
1306 capacity, previously represented either party or a
1307 representative of either party, in the same or a substantially
1308 related matter.

1309 3. The proposed neutral evaluator has, in a professional
1310 capacity, represented another person in the same or a
1311 substantially related matter and that person's interests are
1312 materially adverse to the interests of the parties. The term
1313 "substantially related matter" means participation by the
1314 neutral evaluator on the same claim, property, or adjacent
1315 property.

1316 4. The proposed neutral evaluator has, within the
1317 preceding 5 years, worked as an employer or employee of any



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1318 party to the case.

1319 (b) The department shall deny an application, or suspend
1320 or revoke its certification, of a neutral evaluator to serve in
1321 such capacity if the department finds that one or more of the
1322 following grounds exist:

1323 1. Lack of one or more of the qualifications specified in
1324 this section for certification.

1325 2. Material misstatement, misrepresentation, or fraud in
1326 obtaining or attempting to obtain the certification.

1327 3. Demonstrated lack of fitness or trustworthiness to act
1328 as a neutral evaluator.

1329 4. Fraudulent or dishonest practices in the conduct of an
1330 evaluation or in the conduct of financial services business.

1331 5. Violation of any provision of this code or of a lawful
1332 order or rule of the department or aiding, instructing, or
1333 encouraging another party in committing such a violation.

1334 (c)-(b) The parties shall appoint a neutral evaluator from
1335 the department list and promptly inform the department. If the
1336 parties cannot agree to a neutral evaluator within 14 business
1337 days, the department shall appoint a neutral evaluator from the
1338 list of certified neutral evaluators. The department shall allow
1339 each party to disqualify two neutral evaluators without cause.
1340 Upon selection or appointment, the department shall promptly
1341 refer the request to the neutral evaluator.

1342 (d)-(e) Within 14 business days after the referral, the
1343 neutral evaluator shall notify the policyholder and the insurer



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1344 of the date, time, and place of the neutral evaluation
1345 conference. The conference may be held by telephone, if feasible
1346 and desirable. The neutral evaluator shall make reasonable
1347 efforts to hold the conference within 90 days after the receipt
1348 of the request by the department. Failure of the neutral
1349 evaluator to hold the conference within 90 days does not
1350 invalidate either party's right to neutral evaluation or to a
1351 neutral evaluation conference held outside this timeframe.

1352 (18) The department shall adopt rules of procedure for the
1353 neutral evaluation process and adopt rules for certifying,
1354 denying certification of, suspending certification of, and
1355 revoking certification as a neutral evaluator.

1356 Section 44. Subsection (8) of section 627.711, Florida
1357 Statutes, is amended to read:

1358 627.711 Notice of premium discounts for hurricane loss
1359 mitigation; uniform mitigation verification inspection form.—

1360 (8) At its expense, the insurer may require that a uniform
1361 mitigation verification form provided by a policyholder, a
1362 policyholder's agent, or an authorized mitigation inspector or
1363 inspection company be independently verified by an inspector, an
1364 inspection company, or an independent third-party quality
1365 assurance provider which possesses a quality assurance program
1366 before accepting the uniform mitigation verification form as
1367 valid. At its option, the insurer may exempt from additional
1368 independent verification any uniform mitigation verification
1369 form provided by a policyholder, a policyholder's agent, an

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1370 authorized mitigation inspector or an inspection company that
1371 possesses a quality assurance program which meets standards
1372 established by the insurer. A uniform mitigation verification
1373 form provided by a policyholder, a policyholder's agent, or an
1374 authorized mitigation inspector or inspection company to
1375 Citizens Property Insurance Corporation is not subject to such
1376 additional verification and the property is not subject to
1377 reinspection by the corporation, absent material changes to the
1378 structure for the term stated on the form, if the form signed by
1379 a qualified inspector was submitted to, reviewed, and verified
1380 by a quality assurance program approved by the corporation
1381 before submission of the form to the corporation.

1382 Section 45. Paragraph (a) of subsection (5) of section
1383 627.736, Florida Statutes, is amended to read:

1384 627.736 Required personal injury protection benefits;
1385 exclusions; priority; claims.—

1386 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

1387 (a) A physician, hospital, clinic, or other person or
1388 institution lawfully rendering treatment to an injured person
1389 for a bodily injury covered by personal injury protection
1390 insurance may charge the insurer and injured party only a
1391 reasonable amount pursuant to this section for the services and
1392 supplies rendered, and the insurer providing such coverage may
1393 pay for such charges directly to such person or institution
1394 lawfully rendering such treatment if the insured receiving such
1395 treatment or his or her guardian has countersigned the properly



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1396 completed invoice, bill, or claim form approved by the office
1397 upon which such charges are to be paid for as having actually
1398 been rendered, to the best knowledge of the insured or his or
1399 her guardian. However, such a charge may not exceed the amount
1400 the person or institution customarily charges for like services
1401 or supplies. In determining whether a charge for a particular
1402 service, treatment, or otherwise is reasonable, consideration
1403 may be given to evidence of usual and customary charges and
1404 payments accepted by the provider involved in the dispute,
1405 reimbursement levels in the community and various federal and
1406 state medical fee schedules applicable to motor vehicle and
1407 other insurance coverages, and other information relevant to the
1408 reasonableness of the reimbursement for the service, treatment,
1409 or supply.

1410 1. The insurer may limit reimbursement to 80 percent of
1411 the following schedule of maximum charges:

1412 a. For emergency transport and treatment by providers
1413 licensed under chapter 401, 200 percent of Medicare.

1414 b. For emergency services and care provided by a hospital
1415 licensed under chapter 395, 75 percent of the hospital's usual
1416 and customary charges.

1417 c. For emergency services and care as defined by s.
1418 395.002 provided in a facility licensed under chapter 395
1419 rendered by a physician or dentist, and related hospital
1420 inpatient services rendered by a physician or dentist, the usual
1421 and customary charges in the community.

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1422 d. For hospital inpatient services, other than emergency
1423 services and care, 200 percent of the Medicare Part A
1424 prospective payment applicable to the specific hospital
1425 providing the inpatient services.

1426 e. For hospital outpatient services, other than emergency
1427 services and care, 200 percent of the Medicare Part A Ambulatory
1428 Payment Classification for the specific hospital providing the
1429 outpatient services.

1430 f. For all other medical services, supplies, and care, 200
1431 percent of the allowable amount under:

1432 (I) The participating physicians fee schedule of Medicare
1433 Part B, except as provided in sub-sub-subparagraphs (II) and
1434 (III).

1435 (II) Medicare Part B, in the case of services, supplies,
1436 and care provided by ambulatory surgical centers and clinical
1437 laboratories.

1438 (III) The Durable Medical Equipment Prosthetics/Orthotics
1439 and Supplies fee schedule of Medicare Part B, in the case of
1440 durable medical equipment.

1441

1442 However, if such services, supplies, or care is not reimbursable
1443 under Medicare Part B, as provided in this sub-subparagraph, the
1444 insurer may limit reimbursement to 80 percent of the maximum
1445 reimbursable allowance under workers' compensation, as
1446 determined under s. 440.13 and rules adopted thereunder which
1447 are in effect at the time such services, supplies, or care is



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1448 provided. Services, supplies, or care that is not reimbursable
1449 under Medicare or workers' compensation is not required to be
1450 reimbursed by the insurer.

1451 2. For purposes of subparagraph 1., the applicable fee
1452 schedule or payment limitation under Medicare is the fee
1453 schedule or payment limitation in effect on March 1 of the year
1454 in which the services, supplies, or care is rendered and for the
1455 area in which such services, supplies, or care is rendered, and
1456 the applicable fee schedule or payment limitation applies from
1457 March 1 until the last day of February ~~throughout the remainder~~
1458 ~~of the following~~ that year, notwithstanding any subsequent
1459 change made to the fee schedule or payment limitation, except
1460 that it may not be less than the allowable amount under the
1461 applicable schedule of Medicare Part B for 2007 for medical
1462 services, supplies, and care subject to Medicare Part B.

1463 3. Subparagraph 1. does not allow the insurer to apply any
1464 limitation on the number of treatments or other utilization
1465 limits that apply under Medicare or workers' compensation. An
1466 insurer that applies the allowable payment limitations of
1467 subparagraph 1. must reimburse a provider who lawfully provided
1468 care or treatment under the scope of his or her license,
1469 regardless of whether such provider is entitled to reimbursement
1470 under Medicare due to restrictions or limitations on the types
1471 or discipline of health care providers who may be reimbursed for
1472 particular procedures or procedure codes. However, subparagraph
1473 1. does not prohibit an insurer from using the Medicare coding

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1474 policies and payment methodologies of the federal Centers for
1475 Medicare and Medicaid Services, including applicable modifiers,
1476 to determine the appropriate amount of reimbursement for medical
1477 services, supplies, or care if the coding policy or payment
1478 methodology does not constitute a utilization limit.

1479 4. If an insurer limits payment as authorized by
1480 subparagraph 1., the person providing such services, supplies,
1481 or care may not bill or attempt to collect from the insured any
1482 amount in excess of such limits, except for amounts that are not
1483 covered by the insured's personal injury protection coverage due
1484 to the coinsurance amount or maximum policy limits.

1485 5. ~~Effective July 1, 2012,~~ An insurer may limit payment as
1486 authorized by this paragraph only if the insurance policy
1487 includes a notice at the time of issuance or renewal that the
1488 insurer may limit payment pursuant to the schedule of charges
1489 specified in this paragraph. A policy form approved by the
1490 office satisfies this requirement. If a provider submits a
1491 charge for an amount less than the amount allowed under
1492 subparagraph 1., the insurer may pay the amount of the charge
1493 submitted.

1494 Section 46. Subsection (1) and paragraphs (a) and (b) of
1495 subsection (2) of section 627.744, Florida Statutes, are amended
1496 to read:

1497 627.744 Required preinsurance inspection of private
1498 passenger motor vehicles.—

1499 (1) A private passenger motor vehicle insurance policy



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1500 providing physical damage coverage, including collision or
1501 comprehensive coverage, may not be issued in this state unless
1502 the insurer has inspected the motor vehicle in accordance with
1503 this section. Physical damage coverage on a motor vehicle may
1504 not be suspended during the term of the policy due to the
1505 applicant's failure to provide required documents. However,
1506 payment of a claim may be conditioned upon the insurer's receipt
1507 of the required documents, and physical damage loss occurring
1508 after the effective date of coverage is not payable until the
1509 documents are provided to the insurer.

1510 (2) This section does not apply:

1511 (a) To a policy for a policyholder who has been insured
1512 for 2 years or longer, without interruption, under a private
1513 passenger motor vehicle policy that ~~which~~ provides physical
1514 damage coverage for any vehicle, if the agent of the insurer
1515 verifies the previous coverage.

1516 (b) To a new, unused motor vehicle purchased or leased
1517 from a licensed motor vehicle dealer or leasing company, if the
1518 insurer is provided with:

1519 1. A bill of sale, ~~or~~ buyer's order, or lease agreement
1520 that ~~which~~ contains a full description of the motor vehicle,
1521 ~~including all options and accessories; or~~

1522 2. A copy of the title or registration that ~~which~~
1523 establishes transfer of ownership from the dealer or leasing
1524 company to the customer and a copy of the window sticker ~~or the~~
1525 ~~dealer invoice showing the itemized options and equipment and~~



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1526 ~~the total retail price of the vehicle.~~

1527

1528 ~~For the purposes of this paragraph, the physical damage coverage~~
1529 ~~on the motor vehicle may not be suspended during the term of the~~
1530 ~~policy due to the applicant's failure to provide the required~~
1531 ~~documents. However, payment of a claim is conditioned upon the~~
1532 ~~receipt by the insurer of the required documents, and no~~
1533 ~~physical damage loss occurring after the effective date of the~~
1534 ~~coverage is payable until the documents are provided to the~~
1535 ~~insurer.~~

1536 Section 47. Paragraph (b) of subsection (3) of section
1537 627.745, Florida Statutes, is amended, present subsections (4)
1538 and (5) of that section are renumbered as subsections (5) and
1539 (6), respectively, and a new subsection (4) is added to that
1540 section, to read:

1541 627.745 Mediation of claims.—

1542 (3)

1543 (b) To qualify for approval as a mediator, an individual a
1544 person must meet one of the following qualifications:

1545 1. Possess an active certification as a Florida Supreme
1546 Court certified circuit court mediator. A circuit court mediator
1547 whose certification is in a lapsed, suspended, sanctioned, or
1548 decertified status is not eligible to participate in the program
1549 ~~a masters or doctorate degree in psychology, counseling,~~
1550 ~~business, accounting, or economics, be a member of The Florida~~
1551 ~~Bar, be licensed as a certified public accountant, or~~



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1552 ~~demonstrate that the applicant for approval has been actively~~
1553 ~~engaged as a qualified mediator for at least 4 years prior to~~
1554 ~~July 1, 1990.~~

1555 2. Be an approved department mediator as of July 1, 2014,
1556 and have conducted at least one mediation on behalf of the
1557 department within 4 years immediately preceding that the date
1558 the application for approval is filed with the department, have
1559 completed a minimum of a 40 hour training program approved by
1560 the department and successfully passed a final examination
1561 included in the training program and approved by the department.
1562 The training program shall include and address all of the
1563 following:

- 1564 a. Mediation theory.
1565 b. Mediation process and techniques.
1566 c. Standards of conduct for mediators.
1567 d. Conflict management and intervention skills.
1568 e. Insurance nomenclature.

1569 (4) The department shall deny an application, or suspend
1570 or revoke its approval of a mediator to serve in such capacity,
1571 if the department finds that any of the following grounds exist:

1572 (a) Lack of one or more of the qualifications for approval
1573 specified in this section.

1574 (b) Material misstatement, misrepresentation, or fraud in
1575 obtaining, or attempting to obtain, the approval.

1576 (c) Demonstrated lack of fitness or trustworthiness to act
1577 as a mediator.



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1578 (d) Fraudulent or dishonest practices in the conduct of
1579 mediation or in the conduct of business in the financial
1580 services industry.

1581 (e) Violation of any provision of this code or of a lawful
1582 order or rule of the department, violation of the Florida Rules
1583 of Certified and Court Appointed Mediators, or aiding,
1584 instructing, or encouraging another party in committing such a
1585 violation.

1586

1587 The department may adopt rules to administer this subsection.

1588 Section 48. Subsection (8) of section 627.782, Florida
1589 Statutes, is amended to read:

1590 627.782 Adoption of rates.—

1591 (8) Each title insurance agency and insurer licensed to do
1592 business in this state and each insurer's direct or retail
1593 business in this state shall maintain and submit information,
1594 including revenue, loss, and expense data, as the office
1595 determines necessary to assist in the analysis of title
1596 insurance premium rates, title search costs, and the condition
1597 of the title insurance industry in this state. This information
1598 must be transmitted to the office annually by May ~~March~~ 31 of
1599 the year after the reporting year. The commission shall adopt
1600 rules regarding the collection and analysis of the data from the
1601 title insurance industry.

1602 Section 49. Subsection (4) of section 627.841, Florida
1603 Statutes, is amended to read:

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1604 627.841 Delinquency, collection, cancellation, and payment
1605 ~~check~~ return charge ~~charges~~; attorney ~~attorney's~~ fees.-

1606 (4) In the event that a payment is made to a premium
1607 finance company by debit, credit, electronic funds transfer,
1608 check, or draft and such payment ~~the instrument~~ is returned,
1609 declined, or cannot be processed due to ~~because of~~ insufficient
1610 funds ~~to pay it~~, the premium finance company may, if the premium
1611 finance agreement so provides, impose a return payment charge of
1612 \$15.

1613 Section 50. Subsections (1), (3), (10), and (12) of
1614 section 628.461, Florida Statutes, are amended to read:

1615 628.461 Acquisition of controlling stock.-

1616 (1) A person may not, individually or in conjunction with
1617 any affiliated person of such person, acquire directly or
1618 indirectly, conclude a tender offer or exchange offer for, enter
1619 into any agreement to exchange securities for, or otherwise
1620 finally acquire 10 ~~5~~ percent or more of the outstanding voting
1621 securities of a domestic stock insurer or of a controlling
1622 company, unless:

1623 (a) The person or affiliated person has filed with the
1624 office and sent to the insurer and controlling company a letter
1625 of notification regarding the transaction or proposed
1626 transaction within ~~no later than~~ 5 days after any form of tender
1627 offer or exchange offer is proposed, or within ~~no later than~~ 5
1628 days after the acquisition of the securities if no tender offer
1629 or exchange offer is involved. The notification must be provided



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1630 on forms prescribed by the commission containing information
1631 determined necessary to understand the transaction and identify
1632 all purchasers and owners involved;

1633 (b) The person or affiliated person has filed with the
1634 office a statement as specified in subsection (3). The statement
1635 must be completed and filed within 30 days after:

- 1636 1. Any definitive acquisition agreement is entered;
1637 2. Any form of tender offer or exchange offer is proposed;

1638 or

1639 3. The acquisition of the securities, if no definitive
1640 acquisition agreement, tender offer, or exchange offer is
1641 involved; and

1642 (c) The office has approved the tender or exchange offer,
1643 or acquisition if no tender offer or exchange offer is involved,
1644 and approval is in effect.

1645

1646 ~~In lieu of a filing as required under this subsection, a party~~
1647 ~~acquiring less than 10 percent of the outstanding voting~~
1648 ~~securities of an insurer may file a disclaimer of affiliation~~
1649 ~~and control. The disclaimer shall fully disclose all material~~
1650 ~~relationships and basis for affiliation between the person and~~
1651 ~~the insurer as well as the basis for disclaiming the affiliation~~
1652 ~~and control. After a disclaimer has been filed, the insurer~~
1653 ~~shall be relieved of any duty to register or report under this~~
1654 ~~section which may arise out of the insurer's relationship with~~
1655 ~~the person unless and until the office disallows the disclaimer.~~

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1656 ~~The office shall disallow a disclaimer only after furnishing all~~
1657 ~~parties in interest with notice and opportunity to be heard and~~
1658 ~~after making specific findings of fact to support the~~
1659 ~~disallowance. A filing as required under this subsection must be~~
1660 ~~made as to any acquisition that equals or exceeds 10 percent of~~
1661 ~~the outstanding voting securities.~~

1662 (3) The statement to be filed with the office under
1663 subsection (1) and furnished to the insurer and controlling
1664 company shall contain the following information and any
1665 additional information as the office deems necessary to
1666 determine the character, experience, ability, and other
1667 qualifications of the person or affiliated person of such person
1668 for the protection of the policyholders and shareholders of the
1669 insurer and the public:

1670 (a) The identity of, and the background information
1671 specified in subsection (4) on, each natural person by whom, or
1672 on whose behalf, the acquisition is to be made; and, if the
1673 acquisition is to be made by, or on behalf of, a corporation,
1674 association, or trust, as to the corporation, association, or
1675 trust and as to any person who controls either directly or
1676 indirectly the corporation, association, or trust, the identity
1677 of, and the background information specified in subsection (4)
1678 on, each director, officer, trustee, or other natural person
1679 performing duties similar to those of a director, officer, or
1680 trustee for the corporation, association, or trust;

1681 (b) The source and amount of the funds or other



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1682 consideration used, or to be used, in making the acquisition;

1683 (c) Any plans or proposals which such persons may have
1684 made to liquidate such insurer, to sell any of its assets or
1685 merge or consolidate it with any person, or to make any other
1686 major change in its business or corporate structure or
1687 management; and any plans or proposals which such persons may
1688 have made to liquidate any controlling company of such insurer,
1689 to sell any of its assets or merge or consolidate it with any
1690 person, or to make any other major change in its business or
1691 corporate structure or management;

1692 (d) The number of shares or other securities which the
1693 person or affiliated person of such person proposes to acquire,
1694 the terms of the proposed acquisition, and the manner in which
1695 the securities are to be acquired; and

1696 (e) Information as to any contract, arrangement, or
1697 understanding with any party with respect to any of the
1698 securities of the insurer or controlling company, including, but
1699 not limited to, information relating to the transfer of any of
1700 the securities, option arrangements, puts or calls, or the
1701 giving or withholding of proxies, which information names the
1702 party with whom the contract, arrangement, or understanding has
1703 been entered into and gives the details thereof;

1704 (f) Effective January 1, 2015, an agreement by the person
1705 required to file the statement that the person will provide the
1706 annual report specified in s. 628.801(2) if control exists; and

1707 (g) Effective January 1, 2015, an acknowledgement by the



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1708 person required to file the statement that the person and all
1709 subsidiaries within the person's control in the insurance
1710 holding company system will provide, as necessary, information
1711 to the office upon request to evaluate enterprise risk to the
1712 insurer.

1713 (10) Upon notification to the office by the domestic stock
1714 insurer or a controlling company that any person or any
1715 affiliated person of such person has acquired 10 5 percent or
1716 more of the outstanding voting securities of the domestic stock
1717 insurer or controlling company without complying with ~~the~~
1718 ~~provisions of~~ this section, the office shall order that the
1719 person and any affiliated person of such person cease
1720 acquisition of any further securities of the domestic stock
1721 insurer or controlling company; however, the person or any
1722 affiliated person of such person may request a proceeding, which
1723 proceeding shall be convened within 7 days after the rendering
1724 of the order for the sole purpose of determining whether the
1725 person, individually or in connection with any affiliated person
1726 of such person, has acquired 10 5 percent or more of the
1727 outstanding voting securities of a domestic stock insurer or
1728 controlling company. Upon the failure of the person or
1729 affiliated person to request a hearing within 7 days, or upon a
1730 determination at a hearing convened pursuant to this subsection
1731 that the person or affiliated person has acquired voting
1732 securities of a domestic stock insurer or controlling company in
1733 violation of this section, the office may order the person and

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1734 affiliated person to divest themselves of any voting securities
1735 so acquired.

1736 (12) (a) A presumption of control may be rebutted by filing
1737 a disclaimer of control. Any person may file a disclaimer of
1738 control with the office. The disclaimer must fully disclose all
1739 material relationships and bases for affiliation between the
1740 person and the insurer as well as the basis for disclaiming the
1741 affiliation. The disclaimer of control shall be filed on a form
1742 prescribed by the office or a person or acquiring party may file
1743 a disclaimer of control by filing with the office a copy of a
1744 Schedule 13G on file with the Securities and Exchange Commission
1745 pursuant to Rules 13d-1(b) or 13d-1(c) under the Securities
1746 Exchange Act of 1934 as amended. After a disclaimer is filed,
1747 the insurer is relieved of any duty to register or report under
1748 this section, which may arise out of the insurer's relationship
1749 with the person, unless the office disallows the disclaimer. For
1750 the purpose of this section, the term "affiliated person" of
1751 another person means:

- 1752 1. ~~The spouse of such other person;~~
- 1753 2. ~~The parents of such other person and their lineal~~
1754 ~~descendants and the parents of such other person's spouse and~~
1755 ~~their lineal descendants;~~
- 1756 3. ~~Any person who directly or indirectly owns or controls,~~
1757 ~~or holds with power to vote, 5 percent or more of the~~
1758 ~~outstanding voting securities of such other person;~~
- 1759 4. ~~Any person 5 percent or more of the outstanding voting~~

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1760 ~~securities of which are directly or indirectly owned or~~
1761 ~~controlled, or held with power to vote, by such other person;~~

1762 ~~5. Any person or group of persons who directly or~~
1763 ~~indirectly control, are controlled by, or are under common~~
1764 ~~control with such other person;~~

1765 ~~6. Any officer, director, partner, copartner, or employee~~
1766 ~~of such other person;~~

1767 ~~7. If such other person is an investment company, any~~
1768 ~~investment adviser of such company or any member of an advisory~~
1769 ~~board of such company;~~

1770 ~~8. If such other person is an unincorporated investment~~
1771 ~~company not having a board of directors, the depositor of such~~
1772 ~~company; or~~

1773 ~~9. Any person who has entered into an agreement, written~~
1774 ~~or unwritten, to act in concert with such other person in~~
1775 ~~acquiring or limiting the disposition of securities of a~~
1776 ~~domestic stock insurer or controlling company.~~

1777 (b) Any controlling person of a domestic insurer who seeks
1778 to divest the person's controlling interest in the domestic
1779 insurer in any manner shall file with the office, with a copy to
1780 the insurer, confidential notice, not subject to public
1781 inspection as provided under s. 624.4212, of the person's
1782 proposed divestiture at least 30 days before the cessation of
1783 control. The office shall determine those instances in which the
1784 party seeking to divest or to acquire a controlling interest in
1785 an insurer must file for and obtain approval of the transaction.



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1786 The information remains confidential until the conclusion of the
1787 transaction unless the office, in its discretion, determines
1788 that confidential treatment interferes with enforcement of this
1789 section. If the statement required under subsection (1) is
1790 otherwise filed, this paragraph does not apply. For the purposes
1791 of this section, the term "controlling company" means any
1792 corporation, trust, or association owning, directly or
1793 indirectly, 25 percent or more of the voting securities of one
1794 or more domestic stock insurance companies.

1795 Section 51. Subsections (6) and (7) of section 634.406,
1796 Florida Statutes, are amended to read:

1797 634.406 Financial requirements.-

1798 (6) An association that ~~which~~ holds a license under this
1799 ~~part and which does not hold any other license under this~~
1800 ~~chapter~~ may allow its premiums for service warranties written
1801 under this part to exceed the ratio to net assets limitations of
1802 this section if the association meets all of the following:

1803 (a) Maintains net assets of at least \$750,000.

1804 (b) Uses ~~Utilizes~~ a contractual liability insurance policy
1805 approved by the office that: ~~which~~

1806 1. Reimburses the service warranty association for 100
1807 percent of its claims liability and is issued by an insurer that
1808 maintains a policyholder surplus of at least \$100 million; or

1809 2. Complies with the requirements of subsection (3) and is
1810 issued by an insurer that maintains a policyholder surplus of at
1811 least \$200 million.



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1812 (c) The insurer issuing the contractual liability
1813 insurance policy:

1814 ~~1. Maintains a policyholder surplus of at least \$100~~
1815 ~~million.~~

1816 ~~1.2.~~ Is rated "A" or higher by A.M. Best Company or an
1817 equivalent rating by another national rating service acceptable
1818 to the office.

1819 ~~3. Is in no way affiliated with the warranty association.~~

1820 ~~2.4.~~ In conjunction with the warranty association's filing
1821 of the quarterly and annual reports, provides, on a form
1822 prescribed by the commission, a statement certifying the gross
1823 written premiums in force reported by the warranty association
1824 and a statement that all of the warranty association's gross
1825 written premium in force is covered under the contractual
1826 liability policy, regardless of whether ~~or not~~ it has been
1827 reported.

1828 ~~(7) A contractual liability policy must insure 100 percent~~
1829 ~~of an association's claims exposure under all of the~~
1830 ~~association's service warranty contracts, wherever written,~~
1831 ~~unless all of the following are satisfied:~~

1832 ~~(a) The contractual liability policy contains a clause~~
1833 ~~that specifically names the service warranty contract holders as~~
1834 ~~sole beneficiaries of the contractual liability policy and~~
1835 ~~claims are paid directly to the person making a claim under the~~
1836 ~~contract.~~

1837 ~~(b) The contractual liability policy meets all other~~



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1838 ~~requirements of this part, including subsection (3) of this~~
1839 ~~section, which are not inconsistent with this subsection;~~

1840 ~~(c) The association has been in existence for at least 5~~
1841 ~~years or the association is a wholly owned subsidiary of a~~
1842 ~~corporation that has been in existence and has been licensed as~~
1843 ~~a service warranty association in the state for at least 5~~
1844 ~~years, and:~~

1845 ~~1. Is listed and traded on a recognized stock exchange; is~~
1846 ~~listed in NASDAQ (National Association of Security Dealers~~
1847 ~~Automated Quotation system) and publicly traded in the over the~~
1848 ~~counter securities market; is required to file either of Form~~
1849 ~~10-K, Form 100, or Form 20-C with the United States Securities~~
1850 ~~and Exchange Commission; or has American Depository Receipts~~
1851 ~~listed on a recognized stock exchange and publicly traded or is~~
1852 ~~the wholly owned subsidiary of a corporation that is listed and~~
1853 ~~traded on a recognized stock exchange; is listed in NASDAQ~~
1854 ~~(National Association of Security Dealers Automated Quotation~~
1855 ~~system) and publicly traded in the over the counter securities~~
1856 ~~market; is required to file Form 10-K, Form 100, or Form 20-C~~
1857 ~~with the United States Securities and Exchange Commission; or~~
1858 ~~has American Depository Receipts listed on a recognized stock~~
1859 ~~exchange and is publicly traded;~~

1860 ~~2. Maintains outstanding debt obligations, if any, rated~~
1861 ~~in the top four rating categories by a recognized rating~~
1862 ~~service;~~

1863 ~~3. Has and maintains at all times a minimum net worth of~~



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1864 ~~not less than \$10 million as evidenced by audited financial~~
1865 ~~statements prepared by an independent certified public~~
1866 ~~accountant in accordance with generally accepted accounting~~
1867 ~~principles and submitted to the office annually; and~~

1868 ~~4. Is authorized to do business in this state; and~~

1869 ~~(d) The insurer issuing the contractual liability policy:~~

1870 ~~1. Maintains and has maintained for the preceding 5 years,~~
1871 ~~policyholder surplus of at least \$100 million and is rated "A"~~
1872 ~~or higher by A.M. Best Company or has an equivalent rating by~~
1873 ~~another rating company acceptable to the office;~~

1874 ~~2. Holds a certificate of authority to do business in this~~
1875 ~~state and is approved to write this type of coverage; and~~

1876 ~~3. Acknowledges to the office quarterly that it insures~~
1877 ~~all of the association's claims exposure under contracts~~
1878 ~~delivered in this state.~~

1879

1880 ~~If all the preceding conditions are satisfied, then the scope of~~
1881 ~~coverage under a contractual liability policy shall not be~~
1882 ~~required to exceed an association's claims exposure under~~
1883 ~~service warranty contracts delivered in this state.~~

1884 Section 52. Except as otherwise provided in this act, this
1885 act shall take effect July 1, 2014.

1886

1887

1888

1889

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



Amendment No. 1

1890 Remove everything before the enacting clause and insert:
1891 A bill to be entitled
1892 An act relating to insurance; amending s. 554.1021, F.S.;
1893 defining the term "authorized inspection agency"; amending s.
1894 554.107, F.S.; requiring the chief inspector of the state boiler
1895 inspection program to issue a certificate of competency as a
1896 special inspector to certain individuals; specifying the
1897 duration of such certificate; amending s. 554.109, F.S.;
1898 authorizing specified insurers to contract with an authorized
1899 inspection agency for boiler inspections; requiring such
1900 insurers to annually report the identity of contracted
1901 authorized inspection agencies to the Department of Financial
1902 Services; amending s. 624.4625, F.S.; revising requirements for
1903 corporation not for profit self-insurance funds; amending s.
1904 624.501, F.S.; revising original appointment and renewal fees
1905 related to certain insurance representatives; amending s.
1906 626.015, F.S.; providing new limited customer representative
1907 licenses from being issued after a specified date; defining the
1908 term "unaffiliated insurance agent"; amending s. 626.0428, F.S.;
1909 revising prohibitions relating to binding insurance and
1910 soliciting insurance; requiring a branch place of business to
1911 have an agent in charge; authorizing an agent to be in charge of
1912 more than one branch office under certain circumstances;
1913 providing requirements relating to the designation of an agent
1914 in charge; providing that the agent in charge is accountable for
1915 misconduct and violations committed by the licensee and any

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1916 person under his or her supervision; prohibiting an insurance
1917 agency from conducting insurance business at a location without
1918 a designated agent in charge; amending s. 626.112, F.S. ;
1919 providing licensure exemptions that allow specified individuals
1920 or entities to conduct insurance business at specified locations
1921 under certain circumstances; revising licensure requirements and
1922 penalties with respect to registered insurance agencies;
1923 providing that the registration of an approved registered
1924 insurance agency automatically converts to an insurance agency
1925 license on a specified date; amending s. 626.172, F.S. ; revising
1926 requirements relating to applications for insurance agency
1927 licenses; conforming provisions to changes made by the act;
1928 amending s. 626.311, F.S. ; limiting the types of business that
1929 may be transacted by certain agents; amending s. 626.321, F.S. ;
1930 providing that a limited license to offer motor vehicle rental
1931 insurance issued to a business that rents or leases motor
1932 vehicles encompasses the employees and authorized
1933 representatives of such business; amending s. 626.382, F.S. ;
1934 providing that an insurance agency license continues in force
1935 until canceled, suspended, revoked, or terminated or expired;
1936 amending s. 626.601, F.S. ; revising terminology relating to
1937 investigations conducted by the Department of Financial Services
1938 and the Office of Insurance Regulation with respect to
1939 individuals and entities involved in the insurance industry;
1940 revising a confidentiality provision; repealing s. 626.747,
1941 F.S. , relating to branch agencies, agents in charge, and the

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1942 payment of additional county tax under certain circumstances;
1943 amending s. 626.8411, F.S.; conforming a cross-reference;
1944 amending s. 626.8805, F.S.; revising insurance administrator
1945 application requirements; amending s. 626.8817, F.S.;
1946 authorizing an insurer's designee to provide certain coverage
1947 information to an insurance administrator; authorizing an
1948 insurer to subcontract the review of an insurance administrator;
1949 amending s. 626.882, F.S.; prohibiting a person from acting as
1950 an insurance administrator without a specific written agreement;
1951 amending s. 626.883, F.S.; requiring an insurance administrator
1952 to furnish fiduciary account records to an insurer; requiring
1953 administrator withdrawals from a fiduciary account to be made
1954 according to a specific written agreement; providing that an
1955 insurer's designee may authorize payment of claims; amending s.
1956 626.884, F.S.; revising an insurer's right of access to certain
1957 administrator records; amending s. 626.89, F.S.; revising the
1958 deadline for filing certain financial statements; amending s.
1959 626.931, F.S.; deleting provisions requiring a surplus lines
1960 agent to file a quarterly affidavit with the Florida Surplus
1961 Lines Service Office; amending s. 626.932, F.S.; revising the
1962 due date of surplus lines tax; amending ss. 626.935 and 626.936,
1963 F.S.; conforming provisions to changes made by the act; amending
1964 s. 627.062, F.S.; requiring the Office of Insurance Regulation
1965 to use certain models or methods or a straight average of model
1966 results or output ranges to estimate hurricane losses when
1967 determining whether the rates in a rate filing are excessive,

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1968 inadequate, or unfairly discriminatory, amending s. 627.0628,
1969 F.S.; increasing the length of time during which an insurer must
1970 adhere to certain findings made by the Commission of Hurricane
1971 Loss Projection Methodology with respect to certain methods,
1972 principles, standards, models, or output ranges used in a rate
1973 filing; providing that the requirement to adhere to such
1974 findings does not limit an insurer from using a straight average
1975 of results of certain models or output ranges under specified
1976 circumstances; amending s. 627.0651, F.S.; revising provisions
1977 for making and use of rates for motor vehicle insurance;
1978 amending s. 627.072, F.S.; authorizing retrospective rating
1979 plans relating to workers' compensation and employer's liability
1980 insurance to allow negotiations between certain employers and
1981 insurers with respect to rating factors used to calculate
1982 premiums; amending ss. 627.281 and 627.3518, F.S.; conforming
1983 cross-references; amending s. 627.311, F.S.; providing that
1984 certain dividends shall be retained by the joint underwriting
1985 plan for future use; amending s. 627.3519, F.S.; requiring the
1986 Florida Hurricane Catastrophe Fund and Citizens Property
1987 Insurance Corporation to provide an annual report to the
1988 Legislature and the Financial Services Commission of their
1989 respective aggregate net probable maximum losses, financing
1990 options, and potential assessments; amending s. 627.409, F.S.;
1991 providing that a claim for residential property insurance cannot
1992 be denied based on certain credit information; amending s.
1993 627.4133, F.S.; increasing the amount of prior notice required



Amendment No. 1

1994 with respect to the nonrenewal, cancellation, or termination of
1995 certain insurance policies; deleting certain provisions that
1996 require extended periods of prior notice with respect to the
1997 nonrenewal, cancellation, or termination of certain insurance
1998 policies; prohibiting the cancellation of certain policies that
1999 have been in effect for a specified amount of time except under
2000 certain circumstances; providing that a policy or contract
2001 cannot be cancelled based on certain credit information;
2002 amending s. 627.4137, F.S.; adding licensed company adjusters to
2003 the list of persons who may respond to a claimant's written
2004 request for information relating to liability insurance
2005 coverage; amending s. 627.421, F.S.; authorizing a policyholder
2006 of personal lines insurance to affirmatively elect delivery of
2007 policy documents by electronic means; amending s. 627.43141,
2008 F.S.; authorizing a notice of change in policy terms to be sent
2009 in a separate mailing to an insured under certain circumstances;
2010 requiring an insurer to provide such notice to insured's
2011 insurance agent; creating s. 627.4553, F.S.; providing
2012 requirements for the recommendation to surrender an annuity or
2013 life insurance policy; amending s. 627.7015, F.S.; revising the
2014 rulemaking authority of the department with respect to
2015 qualifications and specified types of penalties covered under
2016 the property insurance mediation program; creating s. 627.70151,
2017 F.S.; providing criteria for an insurer or policyholder to
2018 challenge the impartiality of a loss appraisal umpire for
2019 purposes of disqualifying such umpire; amending s. 627.706,

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2020 F.S.; revising the definition of the term "neutral evaluator";
2021 amending s. 627.7074, F.S.; requiring the department to adopt
2022 rules relating to certification of neutral evaluators; revising
2023 notification requirements for participation in the neutral
2024 evaluation program; providing grounds for the department to deny
2025 an application, or suspend, or revoke certification, of a
2026 neutral evaluator; requiring rulemaking relating to
2027 certification of neutral evaluators; amending s. 627.711, F.S.;
2028 revising verification requirements for uniform mitigation
2029 verification forms; amending s. 627.736, F.S.; revising the time
2030 period for applicability of certain Medicare fee schedules or
2031 payment limitations; amending s. 627.744, F.S.; revising
2032 preinsurance inspection requirements for private passenger motor
2033 vehicles; amending s. 627.745, F.S.; revising qualifications for
2034 approval as a mediator by the department; providing grounds for
2035 the department to deny an application, or suspend or revoke
2036 approval of a mediator; authorizing the department to adopt
2037 rules; amending s. 627.782, F.S.; revising the date by which
2038 title insurance agencies and certain insurers must annually
2039 submit specified information to the Office of Insurance
2040 Regulation; amending s. 627.841, F.S.; providing that an
2041 insurance premium finance company may impose a charge for
2042 payments returned, declined, or unable to be processed due to
2043 insufficient funds; amending s. 628.461, F.S.; revising filing
2044 requirements relating to the acquisition of controlling stock;
2045 revising the amount of outstanding voting securities of a

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2046 domestic stock insurer or a controlling company that a person is
2047 prohibited from acquiring unless certain requirements have been
2048 met; prohibiting persons acquiring a certain percentage of
2049 voting securities from acquiring certain securities; providing
2050 that a presumption of control may be rebutted by filing a
2051 disclaimer of control; deleting a definition; amending s.
2052 634.406, F.S.; revising criteria authorizing premiums of certain
2053 service warranty associations to exceed their specified net
2054 assets limitations; revising requirements relating to
2055 contractual liability policies that insure warranty
2056 associations; providing an effective date.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Santiago offered the following:

4
5 **Amendment to Amendment (736039) by Representative Santiago**
6 **(with title amendment)**

7 Remove lines 972-994 of the amendment and insert:

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

10
11
12
13 -----
14 **T I T L E A M E N D M E N T**

15 Remove lines 1985-1990 of the amendment and insert:
16 plan for future use; repealing s. 627.3519, F.S.; relating to an
17 annual report on the aggregate net probable maximum losses of



COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. HB 565 (2014)

Amendment No. a1

18 | the Florida Hurricane Catastrophe Fund and Citizens Property
19 | Insurance Corporation; amending s. 627.409, F.S. ;
20 |

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

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/wwwd/ (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 OFR⁹ 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 requirements¹²), 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

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

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 Scierter 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

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 in 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

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

30 560.114 Disciplinary actions; penalties.—

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

37 (e) Failure to maintain, preserve, keep available for
 38 examination, and produce all books, accounts, files, or other
 39 documents required by this chapter or related rules or orders,
 40 by 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410,
 41 1010.415, 1020.315, 1020.410, 1021.311, 1021.313, 1022.210,
 42 1022.320, 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27,~~
 43 ~~103.28, 103.29, 103.33, 103.37, 103.41, and 103.125,~~ or by an
 44 ~~any~~ agreement entered into with the office.

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

46 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.312,
 47 1010.340, 1010.410, 1010.415, 1020.315, 1020.410, 1021.311,
 48 1021.313, 1022.210, 1022.320, 1022.380, and 1022.410 ~~103.20,~~
 49 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, 103.41,~~
 50 ~~and 103.125,~~ and United States Treasury Interpretive Release
 51 2004-1.

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

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

63 (a) The money services business fails to provide to the
 64 office, upon written request, any of the records required by s.
 65 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule
 66 adopted under those sections. The suspension may be rescinded if
 67 the licensee submits the requested records to the office.

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

70 (c) Criminal charges are filed against a natural person
 71 required to be listed on the license application pursuant to s.
 72 560.141(1)(a)3. or such person is arrested for a crime listed in
 73 paragraph (1)(o), paragraph (1)(p), or paragraph (1)(q).

74
 75 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~
 76 ~~specified in this subsection constitutes immediate and serious~~
 77 ~~danger to the public health, safety, and welfare.~~

78 Section 3. Section 560.1235, Florida Statutes, is amended

79 to read:

80 560.1235 Anti-money laundering requirements.—

81 (1) A licensee and authorized vendor must comply with all
 82 state and federal laws and rules relating to the detection and
 83 prevention of money laundering, including, as applicable, s.
 84 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,
 85 1010.313, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410,
 86 1021.311, 1021.313, 1022.320, 1022.380, and 1022.410 ~~103.20,~~
 87 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and~~
 88 ~~103.41.~~

89 (2) A licensee and authorized vendor must maintain an
 90 anti-money laundering program in accordance with 31 C.F.R. s.
 91 1022.210 ~~103.125~~. The program must be reviewed and updated as
 92 necessary to ensure that the program continues to be effective
 93 in detecting and deterring money laundering activities.

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

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

98 560.125 Unlicensed activity; penalties.—

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

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

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

109 560.1401 Licensing standards.—To qualify for licensure as
 110 a money services business under this chapter, an applicant must:

111 (3) Be registered as a money services business with the
 112 Financial Crimes Enforcement Network as required by 31 C.F.R. s.
 113 1022.380 ~~103.41~~, if applicable.

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

116 Section 6. Paragraph (d) of subsection (1) of section
 117 560.141, Florida Statutes, is amended to read:

118 560.141 License application.—

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

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

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

125 560.309 Conduct of business.—

126 (5) A licensee must report all suspicious activity to the
 127 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.
 128 1022.320 ~~103.20~~. In lieu of filing such reports, the commission
 129 may prescribe by rule that the licensee may file such reports
 130 with an appropriate regulator.

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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:



Amendment No. 1

18 560.114 Disciplinary actions; penalties.—

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

25 (e) Failure to maintain, preserve, keep available for
26 examination, and produce all books, accounts, files, or other
27 documents required by this chapter or related rules or orders,
28 by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340,
29 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410
30 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37,~~
31 ~~103.41, and 103.125~~, or by an any agreement entered into with
32 the office.

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

34 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.311,
35 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320,
36 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28,~~
37 ~~103.29, 103.33, 103.37, 103.41, and 103.125~~, and United States
38 Treasury Interpretive Release 2004-1.

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



Amendment No. 1

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

50 (a) The money services business fails to provide to the
51 office, upon written request, any of the records required by s.
52 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule
53 adopted under those sections. The suspension may be rescinded if
54 the licensee submits the requested records to the office.

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

57 (c) A natural person required to be listed on the license
58 application for a money service business pursuant to s.
59 560.141(1)(a)3. is criminally charged with, or arrested for, a
60 crime described in paragraph (1)(o), paragraph (1)(p), or
61 paragraph(1)(q).

62
63 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~
64 ~~specified in this subsection constitutes immediate and serious~~
65 ~~danger to the public health, safety, and welfare.~~

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

68 560.1235 Anti-money laundering requirements.—



Amendment No. 1

69 (1) A licensee and authorized vendor must comply with all
70 state and federal laws and rules relating to the detection and
71 prevention of money laundering, including, as applicable, s.
72 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,
73 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and
74 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33,~~
75 ~~103.37, and 103.41.~~

76 (2) A licensee and authorized vendor must maintain an
77 anti-money laundering program in accordance with 31 C.F.R. s.
78 1022.210 ~~103.125~~. The program must be reviewed and updated as
79 necessary to ensure that the program continues to be effective
80 in detecting and deterring money laundering activities.

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

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

85 560.125 Unlicensed activity; penalties.—

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



Amendment No. 1

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

96 560.1401 Licensing standards.—To qualify for licensure as
97 a money services business under this chapter, an applicant must:

98 (3) Be registered as a money services business with the
99 Financial Crimes Enforcement Network as required by 31 C.F.R. s.
100 1022.380 ~~103.41~~, if applicable.

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

103 Section 6. Paragraph (d) of subsection (1) of section
104 560.141, Florida Statutes, is amended to read:

105 560.141 License application.—

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

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

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

112 560.309 Conduct of business.—

113 (5) A licensee must report all suspicious activity to the
114 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.
115 1022.320 ~~103.20~~. In lieu of filing such reports, the commission
116 may prescribe by rule that the licensee may file such reports
117 with an appropriate regulator.

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

119



Amendment No. 1

120
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T I T L E A M E N D M E N T

Remove lines 2-5 and insert:

An act relating to money services businesses; amending s.
560.111, F.S.; providing that failing to provide certain
information relating to a check cashing transaction is a felony;
reenacting and amending s.

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 <i>JB</i>	Cooper <i>CC</i>
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.:

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, including¹⁰:
 - Real Estate Settlement and Procedures Act (RESPA)

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.nationwidelicencingsystem.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 28¹⁶ 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

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.nationwidelicencingsystem.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.

¹⁷ Sections 494.00321 and 494.0067, F.S.

¹⁸ Section 494.001(6), F.S.

¹⁹ NMLS Company Form, at <http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Company%20Form> (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.nationwidelicencingsystem.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

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.nationwidelicencingsystem.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

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.

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 1977³⁸ 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.

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](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Land%20Sales%20Practices) (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 2013⁴³:

	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).

27 | prescribing the time by which a mortgage broker must
 28 | file a report of condition; amending s. 494.0042,
 29 | F.S.; conforming a cross-reference; repealing s.
 30 | 494.00421, F.S., relating to required disclosures to
 31 | borrowers in mortgage broker agreements by mortgage
 32 | brokers receiving loan origination fees; amending s.
 33 | 494.00611, F.S.; revising a cross-reference; amending
 34 | s. 494.00612, F.S.; providing for change in license
 35 | status if a licensed mortgage lender fails to provide
 36 | a proper application for license renewal for the
 37 | following year by specified dates; amending s.
 38 | 494.0066, F.S.; providing guidelines for renewal of a
 39 | mortgage lender branch office license; providing for
 40 | change in license status if a licensed branch office
 41 | fails to provide a proper application for license
 42 | renewal for the following year by specified dates;
 43 | amending s. 494.0067, F.S.; deleting requirements that
 44 | a mortgage lender provide an applicant for a mortgage
 45 | loan a good faith estimate of costs and written
 46 | disclosures related to adjustable rate mortgages;
 47 | deleting requirement that mortgage lender provide
 48 | notice of material changes in terms of a mortgage loan
 49 | to a borrower in mortgage loan transactions; revising
 50 | period during which mortgage lenders may service loans
 51 | without meeting certain requirements; authorizing the
 52 | commission to adopt rules prescribing the time by

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53 which a mortgage lender must file a report of
 54 condition; repealing s. 494.0068, F.S., relating to
 55 required disclosures to borrowers by mortgage lenders
 56 before the borrower accepts certain fees; amending s.
 57 494.007, F.S.; deleting the requirement that a
 58 mortgage lender disclose a certain fee and whether the
 59 fee is refundable; amending s. 494.0073, F.S.;
 60 conforming a cross-reference; repealing part IV of
 61 chapter 494, F.S., relating to the Florida Fair
 62 Lending Act; repealing s. 494.008, F.S., relating to
 63 conditions for mortgage loans of specified amounts
 64 secured by vacant land; providing an effective date.

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

68 Section 1. Subsections (12) through (36) of section
 69 494.001, Florida Statutes, are renumbered as subsections (13)
 70 through (37), respectively, a new subsection (12) is added, and
 71 present subsection (15) of that section is amended, to read:

72 494.001 Definitions.—As used in ss. 494.001-494.0077, the
 73 term:

74 (12) "Indirect owner" means, with respect to direct owners
 75 and other indirect owners in a multilayered organization:

76 (a) For an owner that is a corporation, each of its
 77 shareholders that beneficially owns, has the right to vote, or
 78 has the power to sell or direct the sale of, 25 percent or more

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79 of voting security of the corporation.

80 (b) For an owner that is a partnership, each general
 81 partner and each limited or special partner that has the right
 82 to receive upon dissolution, or has contributed, 25 percent or
 83 more of the partnership's capital.

84 (c) For an owner that is a trust, the trust and each
 85 trustee.

86 (d) For an owner that is a limited liability company:

87 1. Each member that has the right to receive upon
 88 dissolution, or that has contributed, 25 percent or more of the
 89 limited liability company's capital; and

90 2. If managed by elected managers or appointed managers,
 91 each elected or appointed manager.

92 (e) For an indirect owner, each parent owner of 25 percent
 93 or more of its subsidiary.

94 (16)(15) "Loan origination fee" means the total
 95 compensation from any source received by a mortgage broker
 96 acting as a loan originator. ~~Any payment for processing mortgage~~
 97 ~~loan applications must be included in the fee and must be paid~~
 98 ~~to the mortgage broker.~~

99 Section 2. Subsection (4) is added to section 494.0012,
 100 Florida Statutes, to read:

101 494.0012 Investigations; complaints; examinations.-

102 (4) To reduce the burden on persons subject to this
 103 chapter, the office may conduct a joint or concurrent
 104 examination with a state or federal regulatory agency and may

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105 furnish a copy of all examinations to an appropriate regulator
 106 if the regulator agrees to abide by the confidentiality
 107 provisions in chapter 119 and this chapter. The office may also
 108 accept an examination from an appropriate regulator.

109 Section 3. Paragraph (y) is added to subsection (1) of
 110 section 494.00255, Florida Statutes, to read:

111 494.00255 Administrative penalties and fines; license
 112 violations.—

113 (1) Each of the following acts constitutes a ground for
 114 which the disciplinary actions specified in subsection (2) may
 115 be taken against a person licensed or required to be licensed
 116 under part II or part III of this chapter:

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

120 Section 4. Section 494.0028, Florida Statutes, is
 121 repealed.

122 Section 5. Subsection (3) is added to section 494.00313,
 123 Florida Statutes, to read:

124 494.00313 Loan originator license renewal.—

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

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

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

138 494.00322 Mortgage broker license renewal.—

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

150 Section 7. Subsection (3) of section 494.0036, Florida
 151 Statutes, is amended, and subsections (4) and (5) are added to
 152 that section, to read:

153 494.0036 Mortgage broker branch office license.—

154 (3) A branch office license must be renewed annually at
 155 the time of renewing the mortgage broker license under s.
 156 494.00322. A nonrefundable branch renewal fee of \$225 per branch

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157 office must be submitted at the time of renewal. To renew a
 158 branch office license, a mortgage broker must:

159 (a) Submit a completed license renewal form as prescribed
 160 by commission rule.

161 (b) Submit a nonrefundable renewal fee.

162 (c) Submit any additional information or documentation
 163 requested by the office and required by rule concerning the
 164 licensee. Additional information may include documents that may
 165 provide the office with the appropriate information to determine
 166 eligibility for license renewal.

167 (4) The office may not renew a branch office license
 168 unless the branch office continues to meet the minimum
 169 requirements for initial licensure under this section and
 170 adopted rule.

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

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183 Section 8. Section 494.0038, Florida Statutes, is amended
 184 to read:

185 494.0038 ~~Loan origination and Mortgage broker fees and~~
 186 ~~disclosures.-~~

187 ~~(1) A loan origination fee may not be paid except pursuant~~
 188 ~~to a written mortgage broker agreement between the mortgage~~
 189 ~~broker and the borrower which is signed and dated by the~~
 190 ~~principal loan originator or branch manager, and the borrower.~~
 191 ~~The unique registry identifier of each loan originator~~
 192 ~~responsible for providing loan originator services must be~~
 193 ~~printed on the mortgage broker agreement.~~

194 ~~(a) The written mortgage broker agreement must describe~~
 195 ~~the services to be provided by the mortgage broker and specify~~
 196 ~~the amount and terms of the loan origination fee that the~~
 197 ~~mortgage broker is to receive.~~

198 ~~1. Except for application and third-party fees, all fees~~
 199 ~~received by a mortgage broker from a borrower must be identified~~
 200 ~~as a loan origination fee.~~

201 ~~2. All fees on the mortgage broker agreement must be~~
 202 ~~disclosed in dollar amounts.~~

203 ~~3. All loan origination fees must be paid to a mortgage~~
 204 ~~broker.~~

205 ~~(b) The agreement must be executed within 3 business days~~
 206 ~~after a mortgage loan application is accepted if the borrower is~~
 207 ~~present when the mortgage loan application is accepted. If the~~
 208 ~~borrower is not present, the licensee shall forward the~~

209 ~~agreement to the borrower within 3 business days after the~~
 210 ~~licensee's acceptance of the application and the licensee bears~~
 211 ~~the burden of proving that the borrower received and approved~~
 212 ~~the agreement.~~

213 ~~(2) If the mortgage broker is to receive any payment of~~
 214 ~~any kind from the mortgage lender, the maximum total dollar~~
 215 ~~amount of the payment must be disclosed to the borrower in the~~
 216 ~~written mortgage broker agreement as described in paragraph~~
 217 ~~(1)(a). The commission may prescribe by rule an acceptable form~~
 218 ~~for disclosure of brokerage fees received from the lender. The~~
 219 ~~agreement must state the nature of the relationship with the~~
 220 ~~lender, describe how compensation is paid by the lender, and~~
 221 ~~describe how the mortgage interest rate affects the compensation~~
 222 ~~paid to the mortgage broker.~~

223 ~~(a) The exact amount of any payment of any kind by the~~
 224 ~~lender to the mortgage broker must be disclosed in writing to~~
 225 ~~the borrower within 3 business days after the mortgage broker is~~
 226 ~~made aware of the exact amount of the payment from the lender~~
 227 ~~but not less than 3 business days before the execution of the~~
 228 ~~closing or settlement statement. The licensee bears the burden~~
 229 ~~of proving such notification was provided to the borrower.~~
 230 ~~Notification is waived if the exact amount of the payment is~~
 231 ~~accurately disclosed in the written mortgage broker agreement.~~

232 ~~(b) The commission may prescribe by rule the form of~~
 233 ~~disclosure of brokerage fees.~~

234 ~~(3) At the time a written mortgage broker agreement is~~

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235 ~~signed by the borrower or forwarded to the borrower for~~
 236 ~~signature, or at the time the mortgage broker business accepts~~
 237 ~~an application fee, credit report fee, property appraisal fee,~~
 238 ~~or any other third party fee, but at least 3 business days~~
 239 ~~before execution of the closing or settlement statement, the~~
 240 ~~mortgage broker shall disclose in writing to any applicant for a~~
 241 ~~mortgage loan the following information:~~

242 ~~(a) That the mortgage broker may not make mortgage loans~~
 243 ~~or commitments. The mortgage broker may make a commitment and~~
 244 ~~may furnish a lock in of the rate and program on behalf of the~~
 245 ~~lender if the mortgage broker has obtained a written commitment~~
 246 ~~or lock in for the loan from the lender on behalf of the~~
 247 ~~borrower for the loan. The commitment must be in the same form~~
 248 ~~and substance as issued by the lender.~~

249 ~~(b) That the mortgage broker cannot guarantee acceptance~~
 250 ~~into any particular loan program or promise any specific loan~~
 251 ~~terms or conditions.~~

252 ~~(c) A good faith estimate that discloses settlement~~
 253 ~~charges and loan terms.~~

254 ~~1. Any amount collected in excess of the actual cost shall~~
 255 ~~be returned within 60 days after rejection, withdrawal, or~~
 256 ~~closing.~~

257 ~~2. At the time a good faith estimate is provided to the~~
 258 ~~borrower, the loan originator must identify in writing an~~
 259 ~~itemized list that provides the recipient of all payments~~
 260 ~~charged the borrower, which, except for all fees to be received~~

261 ~~by the mortgage broker, may be disclosed in generic terms, such~~
 262 ~~as, but not limited to, paid to lender, appraiser, officials,~~
 263 ~~title company, or any other third party service provider. This~~
 264 ~~requirement does not supplant or is not a substitute for the~~
 265 ~~written mortgage broker agreement described in subsection (1).~~
 266 ~~The disclosure required under this subparagraph must be signed~~
 267 ~~and dated by the borrower.~~

268 ~~(4) The disclosures required by this subsection must be~~
 269 ~~furnished in writing at the time an adjustable rate mortgage~~
 270 ~~loan is offered to the borrower and whenever the terms of the~~
 271 ~~adjustable rate mortgage loan offered materially change prior to~~
 272 ~~closing. The mortgage broker shall furnish the disclosures~~
 273 ~~relating to adjustable rate mortgages in a format prescribed by~~
 274 ~~ss. 226.18 and 226.19 of Regulation Z of the Board of Governors~~
 275 ~~of the Federal Reserve System, as amended; its commentary, as~~
 276 ~~amended; and the federal Truth in Lending Act, 15 U.S.C. ss.~~
 277 ~~1601 et seq., as amended; together with the Consumer Handbook on~~
 278 ~~Adjustable Rate Mortgages, as amended; published by the Federal~~
 279 ~~Reserve Board and the Federal Home Loan Bank Board. The licensee~~
 280 ~~bears the burden of proving such disclosures were provided to~~
 281 ~~the borrower.~~

282 ~~(5) If the mortgage broker agreement includes a~~
 283 ~~nonrefundable application fee, the following requirements are~~
 284 ~~applicable:~~

285 ~~(a) The amount of the application fee, which must be~~
 286 ~~clearly denominated as such, must be clearly disclosed.~~

287 ~~(b) The specific services that will be performed in~~
 288 ~~consideration for the application fee must be disclosed.~~

289 ~~(c) The application fee must be reasonably related to the~~
 290 ~~services to be performed and may not be based upon a percentage~~
 291 ~~of the principal amount of the loan or the amount financed.~~

292 ~~(6) A mortgage broker may not accept any fee in connection~~
 293 ~~with a mortgage loan other than an application fee, credit~~
 294 ~~report fee, property appraisal fee, or other third-party fee~~
 295 ~~before obtaining a written commitment from a qualified lender.~~

296 (1)~~(7)~~ Any third-party fee entrusted to a mortgage broker
 297 must immediately, upon receipt, be placed into a segregated
 298 account with a financial institution located in the state the
 299 accounts of which are insured by the Federal Government. Such
 300 funds shall be held in trust for the payor and shall be kept in
 301 the account until disbursement. Such funds may be placed in one
 302 account if adequate accounting measures are taken to identify
 303 the source of the funds.

304 (2)~~(8)~~ A mortgage broker may not pay a commission to any
 305 person not licensed pursuant to this chapter.

306 (3)~~(9)~~ This section does not prohibit a mortgage broker
 307 from offering products and services, in addition to those
 308 offered in conjunction with the loan origination process, for a
 309 fee or commission.

310 Section 9. Subsections (2) and (3) of section 494.004,
 311 Florida Statutes, are amended to read:

312 494.004 Requirements of licensees.—

313 ~~(2) In every mortgage loan transaction, each licensee~~
 314 ~~under this part must notify a borrower of any material changes~~
 315 ~~in the terms of a mortgage loan previously offered to the~~
 316 ~~borrower within 3 business days after being made aware of such~~
 317 ~~changes by the mortgage lender but at least 3 business days~~
 318 ~~before the signing of the settlement or closing statement. The~~
 319 ~~licensee bears the burden of proving such notification was~~
 320 ~~provided and accepted by the borrower. A borrower may waive the~~
 321 ~~right to receive notice of a material change if the borrower~~
 322 ~~determines that the extension of credit is needed to meet a bona~~
 323 ~~fide personal financial emergency and the right to receive~~
 324 ~~notice would delay the closing of the mortgage loan. The~~
 325 ~~imminent sale of the borrower's home at foreclosure during the~~
 326 ~~3 day period before the signing of the settlement or closing~~
 327 ~~statement is an example of a bona fide personal financial~~
 328 ~~emergency. In order to waive the borrower's right to receive~~
 329 ~~notice, the borrower must provide the licensee with a dated~~
 330 ~~written statement that describes the personal financial~~
 331 ~~emergency, waives the right to receive the notice, bears the~~
 332 ~~borrower's signature, and is not on a printed form prepared by~~
 333 ~~the licensee for the purpose of such a waiver.~~

334 (2)(3) Each mortgage broker shall submit to the registry
 335 reports of condition, which must be in such form and shall
 336 contain such information as the registry may require. The
 337 commission may adopt rules prescribing the time by which a
 338 mortgage broker must file a report of condition. For purposes of

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339 this section, the report of condition is synonymous with the
 340 registry's Mortgage Call Report.

341 Section 10. Subsection (3) of section 494.0042, Florida
 342 Statutes, is amended to read:

343 494.0042 Loan origination fees.—

344 (3) At the time of accepting a mortgage loan application,
 345 a mortgage broker may receive from the borrower a nonrefundable
 346 application fee. If the mortgage loan is funded, the
 347 nonrefundable application fee shall be credited against the
 348 amount owed as a result of the loan being funded. A person may
 349 not receive any form of compensation for acting as a loan
 350 originator other than a nonrefundable application fee, a fee
 351 based on the mortgage amount being funded, ~~or a fee which~~
 352 ~~complies with s. 494.00421.~~

353 Section 11. Section 494.00421, Florida Statutes, is
 354 repealed.

355 Section 12. Paragraph (b) of subsection (2) of section
 356 494.00611, Florida Statutes, is amended to read:

357 494.00611 Mortgage lender license.—

358 (2) In order to apply for a mortgage lender license, an
 359 applicant must:

360 (b) Designate a qualified principal loan originator who
 361 meets the requirements of s. 494.00665 ~~494.0035~~ on the
 362 application form.

363 Section 13. Subsection (3) is added to section 494.00612,
 364 Florida Statutes, to read:

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365 494.00612 Mortgage lender license renewal.-
 366 (3) If an entity licensed under this chapter fails to file
 367 a proper application for license renewal for the following year,
 368 including the proper application fee, on or before December 31
 369 and files an application after December 31 but before the last
 370 day of February, the entity's license status shall be changed to
 371 "failed to renew." A reinstatement fee of \$475 shall be charged
 372 outside of the registry. The license may not be reinstated until
 373 the required information is completed and fees are paid. If the
 374 licensee fails to complete the required information and pay all
 375 necessary fees by the last day of February, the license status
 376 shall be changed to "terminated/expired."

377 Section 14. Subsection (3) of section 494.0066, Florida
 378 Statutes, is amended, and subsections (4) and (5) are added to
 379 that section, to read:

380 494.0066 Branch offices.-

381 (3) A branch office license must be renewed at the time of
 382 renewing the mortgage lender license. A nonrefundable fee of
 383 \$225 per branch office must be submitted at the time of renewal.
 384 To renew a branch office license, a mortgage lender must:

385 (a) Submit a completed license renewal form as prescribed
 386 by commission rule.

387 (b) Submit a nonrefundable renewal fee.

388 (c) Submit any additional information or documentation
 389 requested by the office and required by rule concerning the
 390 licensee. Additional information may include documents that may

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391 provide the office with the appropriate information to determine
 392 eligibility for license renewal.

393 (4) The office may not renew a branch office license
 394 unless the branch office continues to meet the minimum
 395 requirements for initial licensure under this section and
 396 adopted rule.

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

409 Section 15. Subsections (8) through (13) of section
 410 494.0067, Florida Statutes, are amended to read:

411 494.0067 Requirements of mortgage lenders.-

412 ~~(8) Each mortgage lender shall provide an applicant for a~~
 413 ~~mortgage loan a good faith estimate of the costs the applicant~~
 414 ~~can reasonably expect to pay in obtaining a mortgage loan. The~~
 415 ~~good faith estimate of costs must be mailed or delivered to the~~
 416 ~~applicant within 3 business days after the licensee receives a~~

417 ~~written loan application from the applicant. The estimate of~~
 418 ~~costs may be provided to the applicant by a person other than~~
 419 ~~the licensee making the loan. The good faith estimate must~~
 420 ~~identify the recipient of all payments charged to the borrower~~
 421 ~~and, except for all fees to be received by the mortgage broker~~
 422 ~~and the mortgage lender, may be disclosed in generic terms, such~~
 423 ~~as, but not limited to, paid to appraiser, officials, title~~
 424 ~~company, or any other third-party service provider. The licensee~~
 425 ~~bears the burden of proving such disclosures were provided to~~
 426 ~~the borrower. The commission may adopt rules that set forth the~~
 427 ~~disclosure requirements of this section.~~

428 ~~(9) The disclosures in this subsection must be furnished~~
 429 ~~in writing at the time an adjustable rate mortgage loan is~~
 430 ~~offered to the borrower and whenever the terms of the adjustable~~
 431 ~~rate mortgage loan offered have a material change prior to~~
 432 ~~closing. The lender shall furnish the disclosures relating to~~
 433 ~~adjustable rate mortgages in a format prescribed by ss. 226.18~~
 434 ~~and 226.19 of Regulation Z of the Board of Governors of the~~
 435 ~~Federal Reserve System, as amended; its commentary, as amended;~~
 436 ~~and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et~~
 437 ~~seq., as amended; together with the Consumer Handbook on~~
 438 ~~Adjustable Rate Mortgages, as amended; published by the Federal~~
 439 ~~Reserve Board and the Federal Home Loan Bank Board. The licensee~~
 440 ~~bears the burden of proving such disclosures were provided to~~
 441 ~~the borrower.~~

442 ~~(10) In every mortgage loan transaction, each mortgage~~

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443 ~~lender shall notify a borrower of any material changes in the~~
 444 ~~terms of a mortgage loan previously offered to the borrower~~
 445 ~~within 3 business days after being made aware of such changes by~~
 446 ~~the lender but at least 3 business days before signing the~~
 447 ~~settlement or closing statement. The licensee bears the burden~~
 448 ~~of proving such notification was provided and accepted by the~~
 449 ~~borrower. A borrower may waive the right to receive notice of a~~
 450 ~~material change if the borrower determines that the extension of~~
 451 ~~credit is needed to meet a bona fide personal financial~~
 452 ~~emergency and the right to receive notice would delay the~~
 453 ~~closing of the mortgage loan. The imminent sale of the~~
 454 ~~borrower's home at foreclosure during the 3 day period before~~
 455 ~~the signing of the settlement or closing statement constitutes~~
 456 ~~an example of a bona fide personal financial emergency. In order~~
 457 ~~to waive the borrower's right to receive notice, the borrower~~
 458 ~~must provide the licensee with a dated written statement that~~
 459 ~~describes the personal financial emergency, waives the right to~~
 460 ~~receive the notice, bears the borrower's signature, and is not~~
 461 ~~on a printed form prepared by the licensee for the purpose of~~
 462 ~~such a waiver.~~

463 (8)~~(11)~~ A mortgage lender may close loans in its own name
 464 but may not service the loan for more than 6 4 months unless the
 465 lender has a servicing endorsement. Only a mortgage lender who
 466 continuously maintains a net worth of at least \$250,000 may
 467 obtain a servicing endorsement.

468 (9)~~(12)~~ A mortgage lender must report to the office the

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469 failure to meet the applicable net worth requirements of s.
 470 494.00611 within 2 days after the mortgage lender's knowledge of
 471 such failure or after the mortgage lender should have known of
 472 such failure.

473 ~~(10)(13)~~ Each mortgage lender shall submit to the registry
 474 reports of condition which are in a form and which contain such
 475 information as the registry may require. The commission may
 476 adopt rules prescribing the time by which a mortgage lender must
 477 file a report of condition. For purposes of this section, the
 478 report of condition is synonymous with the registry's Mortgage
 479 Call Report.

480 Section 16. Section 494.0068, Florida Statutes, is
 481 repealed.

482 Section 17. Paragraphs (c), (d), and (e) of subsection (1)
 483 of section 494.007, Florida Statutes, are amended to read:

484 494.007 Commitment process.—

485 (1) If a commitment is issued, the mortgage lender shall
 486 disclose in writing:

487 (c) If the interest rate or other terms are subject to
 488 change before expiration of the commitment:

489 1. The basis, index, or method, if any, which will be used
 490 to determine the rate at closing. Such basis, index, or method
 491 shall be established and disclosed with direct reference to the
 492 movement of an interest rate index or of a national or regional
 493 index that is available to and verifiable by the borrower and
 494 beyond the control of the lender; or

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495 2. The following statement, in at least 10-point bold
 496 type: "The interest rate will be the rate established by the
 497 lender in its discretion as its prevailing rate . . . days
 498 before closing."; and

499 ~~(d) The amount of the commitment fee, if any, and whether~~
 500 ~~and under what circumstances the commitment fee is refundable;~~
 501 ~~and~~

502 (d)(e) The time, if any, within which the commitment must
 503 be accepted by the borrower.

504 Section 18. Section 494.0073, Florida Statutes, is amended
 505 to read:

506 494.0073 Mortgage lender when acting as a mortgage
 507 broker.—The provisions of this part do not prohibit a mortgage
 508 lender from acting as a mortgage broker. However, in mortgage
 509 transactions in which a mortgage lender acts as a mortgage
 510 broker, the provisions of ss. 494.0038, ~~494.004(2)~~, 494.0042,
 511 and 494.0043(1), (2), and (3) apply.

512 Section 19. Part IV of chapter 494, Florida Statutes,
 513 consisting of ss. 494.0078, 494.0079, 494.00791, 494.00792,
 514 494.00793, 494.00794, 494.00795, 494.00796, and 494.00797, is
 515 repealed.

516 Section 20. Section 494.008, Florida Statutes, is
 517 repealed.

518 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.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Workman offered the following:

4

5 **Amendment**

6 Remove lines 109-119 and insert:

7 Section 1. Paragraph (y) of subsection (1) of section
 8 494.00255, Florida Statutes, is amended, and (m) of subsection
 9 (1) of that section is reenacted, to read:

10 494.00255 Administrative penalties and fines; license
 11 violations.-

12 (1) Each of the following acts constitutes a ground for
 13 which the disciplinary actions specified in subsection (2) may
 14 be taken against a person licensed or required to be licensed
 15 under part II or part III of this chapter:

16 (m) In any mortgage transaction, violating any provision
 17 of the federal Real Estate Settlement Procedures Act, as



Amendment No. 1

18 amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in
19 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any
20 regulations adopted under such acts.

21 (y) Pursuant to an investigation by the Mortgage Testing
22 and Education Board acting on behalf of the registry, being
23 found in violation of Nationwide Mortgage Licensing System and
24 Registry Rules of Conduct.

25



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

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Workman offered the following:

Amendment (with title amendment)

6 Remove lines 125-408 and insert:

7 (3) If a licensed loan originator fails to meet the
8 requirements of this section for annual license renewal on or
9 before December 31 but meets such requirements before March 1,
10 the licensed loan originator's license status shall be changed
11 to "failed to renew" pending review and renewal by the office. A
12 nonrefundable reinstatement fee of \$150 shall be charged in
13 addition to registry fees. The license status shall not be
14 changed until the requirements of this section are met and all
15 fees are paid. If the licensee fails to complete the required
16 information and pay all required fees by March 1, such license



Amendment No. 2

17 is expired and such licensed loan originator must apply for a
18 new loan originator license under s. 494.00312.

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

21 494.00322 Mortgage broker license renewal.—

22 (3) If a licensed mortgage broker fails to meet the
23 requirements of this section for annual license renewal on or
24 before December 31 but meets such requirements before March 1,
25 the mortgage broker's license status shall be changed to "failed
26 to renew" pending review and renewal by the office. A
27 nonrefundable reinstatement fee of \$250 shall be charged in
28 addition to registry fees. The license status shall not be
29 changed until the requirements of this section are met and all
30 fees are paid. If the licensee fails to complete the required
31 information and pay all required fees by March 1, such license
32 is expired and such mortgage broker must apply for a new
33 mortgage broker license under s. 494.00321.

34 Section 7. Subsection (3) of section 494.0036, Florida
35 Statutes, is amended, and subsections (4) and (5) are added to
36 that section, to read:

37 494.0036 Mortgage broker branch office license.—

38 (3) A branch office license must be renewed annually at
39 the time of renewing the mortgage broker license under s.
40 494.00322. A nonrefundable branch renewal fee of \$225 per branch
41 office must be submitted at the time of renewal. To renew a
42 branch office license, a mortgage broker must:



Amendment No. 2

43 (a) Submit a completed license renewal form as prescribed
44 by commission rule.

45 (b) Submit a nonrefundable renewal fee.

46 (c) Submit any additional information or documentation
47 requested by the office and required by rule concerning the
48 licensee. Additional information may include documents that may
49 provide the office with the appropriate information to determine
50 eligibility for license renewal.

51 (4) The office may not renew a branch office license
52 unless the branch office continues to meet the minimum
53 requirements for initial licensure under this section and
54 adopted rule.

55 (5) If a licensed branch office fails to meet the
56 requirements of this section for annual license renewal on or
57 before December 31 but meets such requirements before March 1,
58 the branch office's license status shall be changed to "failed
59 to renew" pending review and renewal by the office. A
60 nonrefundable reinstatement fee of \$225 shall be charged in
61 addition to registry fees. The license status shall not be
62 changed until the requirements of this section are met and all
63 fees are paid. If the licensee fails to complete the required
64 information and pay all required fees by March 1, such license
65 is expired and such branch office must apply for a new mortgage
66 broker branch office license under subsection (2).

67 Section 8. Section 494.0038, Florida Statutes, is amended
68 to read:



Amendment No. 2

69 494.0038 ~~Loan origination and Mortgage broker fees and~~
70 ~~disclosures.-~~

71 ~~(1) A loan origination fee may not be paid except pursuant~~
72 ~~to a written mortgage broker agreement between the mortgage~~
73 ~~broker and the borrower which is signed and dated by the~~
74 ~~principal loan originator or branch manager, and the borrower.~~
75 ~~The unique registry identifier of each loan originator~~
76 ~~responsible for providing loan originator services must be~~
77 ~~printed on the mortgage broker agreement.~~

78 ~~(a) The written mortgage broker agreement must describe~~
79 ~~the services to be provided by the mortgage broker and specify~~
80 ~~the amount and terms of the loan origination fee that the~~
81 ~~mortgage broker is to receive.~~

82 ~~1. Except for application and third party fees, all fees~~
83 ~~received by a mortgage broker from a borrower must be identified~~
84 ~~as a loan origination fee.~~

85 ~~2. All fees on the mortgage broker agreement must be~~
86 ~~disclosed in dollar amounts.~~

87 ~~3. All loan origination fees must be paid to a mortgage~~
88 ~~broker.~~

89 ~~(b) The agreement must be executed within 3 business days~~
90 ~~after a mortgage loan application is accepted if the borrower is~~
91 ~~present when the mortgage loan application is accepted. If the~~
92 ~~borrower is not present, the licensee shall forward the~~
93 ~~agreement to the borrower within 3 business days after the~~
94 ~~licensee's acceptance of the application and the licensee bears~~



Amendment No. 2

95 ~~the burden of proving that the borrower received and approved~~
96 ~~the agreement.~~

97 ~~(2) If the mortgage broker is to receive any payment of~~
98 ~~any kind from the mortgage lender, the maximum total dollar~~
99 ~~amount of the payment must be disclosed to the borrower in the~~
100 ~~written mortgage broker agreement as described in paragraph~~
101 ~~(1) (a). The commission may prescribe by rule an acceptable form~~
102 ~~for disclosure of brokerage fees received from the lender. The~~
103 ~~agreement must state the nature of the relationship with the~~
104 ~~lender, describe how compensation is paid by the lender, and~~
105 ~~describe how the mortgage interest rate affects the compensation~~
106 ~~paid to the mortgage broker.~~

107 ~~(a) The exact amount of any payment of any kind by the~~
108 ~~lender to the mortgage broker must be disclosed in writing to~~
109 ~~the borrower within 3 business days after the mortgage broker is~~
110 ~~made aware of the exact amount of the payment from the lender~~
111 ~~but not less than 3 business days before the execution of the~~
112 ~~closing or settlement statement. The licensee bears the burden~~
113 ~~of proving such notification was provided to the borrower.~~
114 ~~Notification is waived if the exact amount of the payment is~~
115 ~~accurately disclosed in the written mortgage broker agreement.~~

116 ~~(b) The commission may prescribe by rule the form of~~
117 ~~disclosure of brokerage fees.~~

118 ~~(3) At the time a written mortgage broker agreement is~~
119 ~~signed by the borrower or forwarded to the borrower for~~
120 ~~signature, or at the time the mortgage broker business accepts~~



Amendment No. 2

121 ~~an application fee, credit report fee, property appraisal fee,~~
122 ~~or any other third party fee, but at least 3 business days~~
123 ~~before execution of the closing or settlement statement, the~~
124 ~~mortgage broker shall disclose in writing to any applicant for a~~
125 ~~mortgage loan the following information:~~

126 ~~(a) That the mortgage broker may not make mortgage loans~~
127 ~~or commitments. The mortgage broker may make a commitment and~~
128 ~~may furnish a lock in of the rate and program on behalf of the~~
129 ~~lender if the mortgage broker has obtained a written commitment~~
130 ~~or lock in for the loan from the lender on behalf of the~~
131 ~~borrower for the loan. The commitment must be in the same form~~
132 ~~and substance as issued by the lender.~~

133 ~~(b) That the mortgage broker cannot guarantee acceptance~~
134 ~~into any particular loan program or promise any specific loan~~
135 ~~terms or conditions.~~

136 ~~(c) A good faith estimate that discloses settlement~~
137 ~~charges and loan terms.~~

138 ~~1. Any amount collected in excess of the actual cost shall~~
139 ~~be returned within 60 days after rejection, withdrawal, or~~
140 ~~closing.~~

141 ~~2. At the time a good faith estimate is provided to the~~
142 ~~borrower, the loan originator must identify in writing an~~
143 ~~itemized list that provides the recipient of all payments~~
144 ~~charged the borrower, which, except for all fees to be received~~
145 ~~by the mortgage broker, may be disclosed in generic terms, such~~
146 ~~as, but not limited to, paid to lender, appraiser, officials,~~



Amendment No. 2

147 ~~title company, or any other third party service provider. This~~
148 ~~requirement does not supplant or is not a substitute for the~~
149 ~~written mortgage broker agreement described in subsection (1).~~
150 ~~The disclosure required under this subparagraph must be signed~~
151 ~~and dated by the borrower.~~

152 ~~(4) The disclosures required by this subsection must be~~
153 ~~furnished in writing at the time an adjustable rate mortgage~~
154 ~~loan is offered to the borrower and whenever the terms of the~~
155 ~~adjustable rate mortgage loan offered materially change prior to~~
156 ~~closing. The mortgage broker shall furnish the disclosures~~
157 ~~relating to adjustable rate mortgages in a format prescribed by~~
158 ~~ss. 226.18 and 226.19 of Regulation Z of the Board of Governors~~
159 ~~of the Federal Reserve System, as amended; its commentary, as~~
160 ~~amended; and the federal Truth in Lending Act, 15 U.S.C. ss.~~
161 ~~1601 et seq., as amended; together with the Consumer Handbook on~~
162 ~~Adjustable Rate Mortgages, as amended; published by the Federal~~
163 ~~Reserve Board and the Federal Home Loan Bank Board. The licensee~~
164 ~~bears the burden of proving such disclosures were provided to~~
165 ~~the borrower.~~

166 ~~(5) If the mortgage broker agreement includes a~~
167 ~~nonrefundable application fee, the following requirements are~~
168 ~~applicable:~~

169 ~~(a) The amount of the application fee, which must be~~
170 ~~clearly denominated as such, must be clearly disclosed.~~

171 ~~(b) The specific services that will be performed in~~
172 ~~consideration for the application fee must be disclosed.~~



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173 ~~(c) The application fee must be reasonably related to the~~
174 ~~services to be performed and may not be based upon a percentage~~
175 ~~of the principal amount of the loan or the amount financed.~~

176 ~~(6) A mortgage broker may not accept any fee in connection~~
177 ~~with a mortgage loan other than an application fee, credit~~
178 ~~report fee, property appraisal fee, or other third party fee~~
179 ~~before obtaining a written commitment from a qualified lender.~~

180 ~~(1)(7)~~ Any third-party fee entrusted to a mortgage broker
181 must immediately, upon receipt, be placed into a segregated
182 account with a financial institution located in the state the
183 accounts of which are insured by the Federal Government. Such
184 funds shall be held in trust for the payor and shall be kept in
185 the account until disbursement. Such funds may be placed in one
186 account if adequate accounting measures are taken to identify
187 the source of the funds.

188 ~~(2)(8)~~ A mortgage broker may not pay a commission to any
189 person not licensed pursuant to this chapter.

190 ~~(3)(9)~~ This section does not prohibit a mortgage broker
191 from offering products and services, in addition to those
192 offered in conjunction with the loan origination process, for a
193 fee or commission.

194 Section 9. Subsections (2) and (3) of section 494.004,
195 Florida Statutes, are amended to read:

196 494.004 Requirements of licensees.—

197 ~~(2) In every mortgage loan transaction, each licensee~~
198 ~~under this part must notify a borrower of any material changes~~



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199 ~~in the terms of a mortgage loan previously offered to the~~
200 ~~borrower within 3 business days after being made aware of such~~
201 ~~changes by the mortgage lender but at least 3 business days~~
202 ~~before the signing of the settlement or closing statement. The~~
203 ~~licensee bears the burden of proving such notification was~~
204 ~~provided and accepted by the borrower. A borrower may waive the~~
205 ~~right to receive notice of a material change if the borrower~~
206 ~~determines that the extension of credit is needed to meet a bona~~
207 ~~fide personal financial emergency and the right to receive~~
208 ~~notice would delay the closing of the mortgage loan. The~~
209 ~~imminent sale of the borrower's home at foreclosure during the~~
210 ~~3-day period before the signing of the settlement or closing~~
211 ~~statement is an example of a bona fide personal financial~~
212 ~~emergency. In order to waive the borrower's right to receive~~
213 ~~notice, the borrower must provide the licensee with a dated~~
214 ~~written statement that describes the personal financial~~
215 ~~emergency, waives the right to receive the notice, bears the~~
216 ~~borrower's signature, and is not on a printed form prepared by~~
217 ~~the licensee for the purpose of such a waiver.~~

218 (2)(3) Each mortgage broker shall submit to the registry
219 reports of condition, which must be in such form and shall
220 contain such information as the registry may require. The
221 commission may adopt rules prescribing the time by which a
222 mortgage broker must file a report of condition. For purposes of
223 this section, the report of condition is synonymous with the
224 registry's Mortgage Call Report.



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225 Section 10. Subsection (3) of section 494.0042, Florida
226 Statutes, is amended to read:

227 494.0042 Loan origination fees.—

228 (3) At the time of accepting a mortgage loan application,
229 a mortgage broker may receive from the borrower a nonrefundable
230 application fee. If the mortgage loan is funded, the
231 nonrefundable application fee shall be credited against the
232 amount owed as a result of the loan being funded. A person may
233 not receive any form of compensation for acting as a loan
234 originator other than a nonrefundable application fee, a fee
235 based on the mortgage amount being funded, ~~or a fee which~~
236 ~~complies with s. 494.00421.~~

237 Section 11. Section 494.00421, Florida Statutes, is
238 repealed.

239 Section 12. Paragraph (b) of subsection (2) of section
240 494.00611, Florida Statutes, is amended to read:

241 494.00611 Mortgage lender license.—

242 (2) In order to apply for a mortgage lender license, an
243 applicant must:

244 (b) Designate a qualified principal loan originator who
245 meets the requirements of s. 494.00665 ~~494.0035~~ on the
246 application form.

247 Section 13. Subsection (3) is added to section 494.00612,
248 Florida Statutes, to read:

249 494.00612 Mortgage lender license renewal.—



Amendment No. 2

250 (3) If a licensed mortgage lender fails to meet the
251 requirements of this section for annual license renewal on or
252 before December 31 but meets such requirements before March 1,
253 the mortgage lender's license status shall be changed to "failed
254 to renew" pending review and renewal by the office. A
255 nonrefundable reinstatement fee of \$475 shall be charged in
256 addition to registry fees. The license status shall not be
257 changed until the requirements of this section are met and all
258 fees are paid. If the licensee fails to complete the required
259 information and pay all required fees by March 1, such license
260 is expired and such licensed mortgage lender must apply for a
261 new mortgage lender license under s. 494.00611.

262 Section 14. Subsection (3) of section 494.0066, Florida
263 Statutes, is amended, and subsections (4) and (5) are added to
264 that section, to read:

265 494.0066 Branch offices.—

266 (3) A branch office license must be renewed at the time of
267 renewing the mortgage lender license. A nonrefundable fee of
268 \$225 per branch office must be submitted at the time of renewal.
269 To renew a branch office license, a mortgage lender must:

270 (a) Submit a completed license renewal form as prescribed
271 by commission rule.

272 (b) Submit a nonrefundable renewal fee.

273 (c) Submit any additional information or documentation
274 requested by the office and required by rule concerning the
275 licensee. Additional information may include documents that may



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276 provide the office with the appropriate information to determine
277 eligibility for license renewal.

278 (4) The office may not renew a branch office license
279 unless the branch office continues to meet the minimum
280 requirements for initial licensure under this section and
281 adopted rule.

282 (5) If a licensed branch office fails to meet the
283 requirements of this section for annual license renewal on or
284 before December 31 but meets such requirements before March 1,
285 the branch office's license status shall be changed to "failed
286 to renew" pending review and renewal by the office. A
287 nonrefundable reinstatement fee of \$225 shall be charged in
288 addition to registry fees. The license status shall not be
289 changed until the requirements of this section are met and all
290 fees are paid. If the licensee fails to complete the required
291 information and pay all required fees by March 1, such license
292 is expired and such branch office must apply for a new mortgage
293 lender branch office license under subsection (2).

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

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Remove lines 12-42 and insert:

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F.S.; providing for change in license status if a

299

licensed loan originator or mortgage broker fails to

300

meet certain requirements for annual license renewal

301

by specified dates; amending s. 494.0036, F.S.;



Amendment No. 2

302 providing guidelines for renewal of a mortgage broker
303 branch office license; providing for change in license
304 status if a licensed branch office fails to meet
305 certain requirements for annual license renewal by
306 specified dates; amending s. 494.0038, F.S.; deleting
307 certain requirements regarding loan origination and
308 disclosure; amending s. 494.004, F.S.; deleting a
309 requirement that a licensee provide certain notice to
310 a borrower in mortgage loan transactions; authorizing
311 the Financial Services Commission to adopt rules
312 prescribing the time by which a mortgage broker must
313 file a report of condition; amending s. 494.0042,
314 F.S.; conforming a cross-reference; repealing s.
315 494.00421, F.S., relating to required disclosures to
316 borrowers in mortgage broker agreements by mortgage
317 brokers receiving loan origination fees; amending s.
318 494.00611, F.S.; revising a cross-reference; amending
319 s. 494.00612, F.S.; providing for change in license
320 status if a licensed mortgage lender fails to meet
321 certain requirements for annual license renewal by
322 specified dates; amending s. 494.0066, F.S.; providing
323 guidelines for renewal of a mortgage lender branch
324 office license; providing for change in license status
325 if a licensed branch office fails to meet certain
326 requirements for annual license renewal by specified
327 dates;