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# **Insurance & Banking Subcommittee**

**Wednesday, February 19, 2014**

**1:00 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

Wednesday, February 19, 2014  
404 HOB  
1:00 pm – 3:00 pm

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
  - a. HB 633 Division of Insurance Agents & Agency Services by Ingram
  - b. HB 673 Financial Institutions by Broxson
  - c. HB 675 Pub. Rec./Office of Financial Regulation by Broxson
- IV. Presentation by the Insurance Information Institute on the State of the Florida Property Insurance Market: Past, Present and Future

Lynne McChristian, Florida Representative, Insurance Information Institute

- V. Adjournment

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

**Start Date and Time:** Wednesday, February 19, 2014 01:00 pm  
**End Date and Time:** Wednesday, February 19, 2014 03:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 633 Division of Insurance Agents & Agency Services by Ingram  
HB 673 Financial Institutions by Broxson  
HB 675 Pub. Rec./Office of Financial Regulation by Broxson

Presentation by the Insurance Information Institute on the State of the Florida Property Insurance Market:  
Past, Present and Future.

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, February 18, 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., Tuesday, February 18, 2014.

**NOTICE FINALIZED on 02/12/2014 16:10 by McCloskey.Michele**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 633 Division of Insurance Agents & Agency Services

**SPONSOR(S):** Ingram

**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly <i>RJR</i>	Cooper <i>dl</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

House Bill 633 amends the insurance agency licensure law. Among other changes, the bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions.
- Allows third parties to sign agency applications.
- Specifies circumstances under which branch agencies do not have to be licensed.
- Repeals provision allowing insurance agencies to obtain a registration in lieu of a license; converts all agency registrations to licenses; eliminates the three year expiration period for agency licenses.
- Repeals current law governing branch agencies, creates s. 626.0428(4), F.S., to define agent in charge and specifies responsibilities.
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with DFS within 90 days after the agent in charge on record has left the agency.
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license.
- Requires DFS to immediately suspend the license or appointment of licensees charged with crimes that would preclude them from applying for licensure from DFS.
- Bars applicants for licensure with sealed criminal history records from denying or failing to acknowledge arrests for crimes that would preclude them from applying for licensure with DFS.
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses.
- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer on a DFS form.
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by DFS; requires DFS to deny an application to be a mediator or neutral evaluator (sinkhole claims) or revoke or suspend a mediator or neutral evaluator in certain circumstances.
- Authorizes DFS to investigate improper conduct of mediators, neutral evaluators, and navigators. In all cases, permits DFS to share investigative information with any regulatory agency.
- Amends requirements for licensure as a nonresident surplus lines agent.
- Bars issuance of any new limited customer service representative license after September 30, 2014.
- Authorizes additional methods for service of process in certain administrative actions.
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

The Florida Department of Law Enforcement reports that it will incur \$35,745 in programming costs relating to the provisions concerning sealed criminal records. DFS informs that the exemption from licensing application fees for members of the military will have minimal fiscal impact.

The bill is effective July 1, 2014, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0633.IBS.DOCX

DATE: 2/17/2014

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Insurance Agency Licensure**

The bill makes significant changes to the insurance agency licensure law to streamline the licensing process and to better align the regulation of insurance agencies in Florida with other states. The Department of Financial Services (DFS) is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.<sup>1</sup> According to DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency. Furthermore, because insurance agents are vetted by the agent license process, DFS believes also licensing the agency serves no purpose. The bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her or his own name and does not employ or use other insurance licensees.

Under current law, only specified persons owning or managing an insurance agency may sign an agency license application. The bill allows a third party to complete, submit, and sign agency license applications. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or representations. The bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf; the physical location of the branch location, including its name, e-mail address, and telephone number; the date that the branch office began transacting insurance; and the fingerprints of any owners of agency bank accounts.

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

The bill provides that a branch place of business established by a licensed agency is considered a branch agency. A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with DFS a licensed agent in charge of the branch location; and (2) has submitted to DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

The bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. The bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

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<sup>1</sup> See s. 626.112(7), F.S.  
STORAGE NAME: h0633.IBS.DOCX  
DATE: 2/17/2014

## **Agent in Charge**

Each person operating an insurance agency and each location of a multiple location agency must designate a licensed and appointed agent in charge for each location.<sup>2</sup> Under current law, the term agent in charge is not defined and the scope of such agent's responsibilities is not clearly delineated. Effective January 1, 2015, the bill deletes s. 626.747, F.S., relating to branch agencies, and amends s. 626.0428, F.S., to add a new subsection (4), which defines agent in charge and specifies the scope of their responsibilities.

An agent in charge is defined as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency.<sup>3</sup> Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the location(s) when an agent is not physically present and (2) unlicensed employees at the location(s) do not engage in insurance activities that require licensure as an insurance agent or customer representative.

Under the bill, each insurance agency and branch office is required to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with DFS at the DFS website. A change of the designated agent in charge must be reported to DFS within 30 days, and becomes effective upon notification to DFS. An insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by, and providing services to, the agency at all times. When the agent in charge ends her/his affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended their affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended their affiliation with the agency.

The bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or her personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

## **Title Insurance and Branch Agencies**

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>4</sup>

With respect to title insurance agents and agencies, the bill limits application of s. 626.0428(4), F.S., which is created by the bill and discussed earlier, to provisions that essentially mirror those currently found in s. 626.747, F.S., which is repealed by the bill. Staff is not aware of the reasons for the limited application of s. 626.0428(4), F.S., to title insurance agents and agencies.

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<sup>2</sup> See ss. 627.172 and 636.747, F.S.

<sup>3</sup> Regardless of whether the agent in charge handles a specific transaction or deals with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

<sup>4</sup> Section 627.786, F.S.

## **Appointment of Agents by Insurers**

When certain entities<sup>5</sup> enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer service representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is \$25,000 or less.

The bill deletes the above-mentioned exception for insurers within no more than \$250,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

## **Unaffiliated Insurance Agent**

The bill creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. The bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This agent acts as an independent consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. The bill prohibits an unaffiliated insurance agent from being affiliated with an insurer, insurer-appointed insurance agent, or insurance agency contracted with or employing insurer-appointed insurance agents. However, these agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent, as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received. The bill requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

## **Temporary Suspension of License or Appointment for Specified Felonies**

Under current law, persons who commit a first degree felony; a capital felony; a felony involving money laundering, fraud or embezzlement; or a felony directly related to a financial services business are permanently barred from applying for a license from DFS (e.g., an insurance agent license).<sup>6</sup> The bill requires DFS to immediately temporarily suspend a license or appointment when a licensee is charged with any of the above-enumerated felonies. Such suspension will continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, any such crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of their license or appointment. Further, the bill prohibits persons with sealed criminal history records from denying or failing to acknowledge arrests for these felonies.

## **Licensure Filing Fees and Members of the Military**

The bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee prescribed by law. The bill lists documents applicants can submit with the application to establish eligibility for the exemption.

## **Information Required With the Surrender of 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

<sup>5</sup> Sole proprietorships, partnerships, corporations, and associations.

<sup>6</sup> For other crimes, the law provides waiting periods for licensure.



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.

### **Licensure Examination to Solicit or Sell Variable Products**

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable "annuity" contracts. The bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts in general.

### **Insurance Mediation Programs**

Current law provides for alternative dispute programs, administered by DFS for various types of insurance. DFS runs mediation programs for property insurance and automobile insurance claims and a neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>7</sup> DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole claims. The bill amends the definition of "neutral evaluator" to include only those individuals eligible for certification by DFS.

To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute.<sup>8</sup> 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.<sup>9</sup> However, in order to ensure there was a training program available for those who wanted to be DFS mediators, for the past seven or eight years DFS approved the mediator training program offered by courts.

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

According to DFS, 224 of the 379 current DFS mediators are certified as Florida Circuit Court Mediators,<sup>10</sup> so these mediators would still qualify to be a DFS mediator under the new qualifications provided in the bill. The remaining 155 mediators are grandfathered in by the bill and would still qualify to be DFS mediators even though they are not certified as a Florida Circuit Court Mediator. DFS estimates that changing the DFS mediator qualifications to allow Florida Circuit Court Mediators will expand the pool of mediators qualified to mediate for DFS to over 3,500 mediators.

The bill also requires DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in specified circumstances. These circumstances primarily involve the mediator or neutral evaluator committing fraud, violating laws or DFS orders, violating a rule

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<sup>7</sup> See s. 627.7015, F.S., for property insurance claim mediation program; s. 627.7074, F.S., for sinkhole claim mediation program; and s. 627.745, F.S., for automobile insurance claim mediation program.

<sup>8</sup> Section 627.745, F.S.

<sup>9</sup> DFS does not provide the training program in house.

<sup>10</sup> Information obtained from 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 into and investigate improper conduct of mediators, neutral evaluators, or navigators.<sup>11</sup> DFS does not have this authority in current law, but does have authority to inquire into and investigate improper conduct of other persons licensed by DFS, such as insurance agents and insurance adjusters. The bill allows DFS to share investigative information with any regulatory agency. Current law only allows the information to be shared with a law enforcement agency.

Regarding the property insurance mediation program, the bill requires that DFS rules additionally provide for the denial of applications, suspension, revocation and other penalties for mediators. DFS is also authorized to adopt rules for certifying, denying certification of, and revoking certification of neutral evaluators.

### **Nonresident Surplus Lines Agents**

Surplus lines insurers are only permitted to write coverage that is not available in the private market. They are not required to be licensed by the Office of Insurance Regulation (OIR), but must have a Letter of Eligibility.<sup>12</sup>

Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. The bill amends licensing requirements for nonresident surplus lines agents, exempting these applicants from the experience or coursework and examination requirements that must be satisfied by applicants for a resident surplus lines agent license. DFS informs that the change is consistent with how other states address the licensing of nonresident surplus lines agents and is designed to create reciprocity with other states. DFS relates an example in which another state required a Florida agent to take its nonresident surplus lines examination because Florida requires nonresident agents to take the Florida examination.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

### **Miscellaneous**

- Renames the Division of Insurance Agents and Agency Services as the Division of Insurance Agent and Agency Services.

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<sup>11</sup> Navigators are established under the federal Patient Protection and Affordable Care Act (PPACA). Under PPACA, individuals and small businesses can purchase private health insurance through state-based marketplaces called Affordable Insurance Exchanges (Exchanges). Exchanges must certify Qualified Health Plans (QHPs) offered by the insurers through the Exchange. The U.S. Department of Health and Human Services establishes and operates Exchanges within states that do not elect to establish an Exchange, including Florida. The PPACA directs Exchanges to award grants to navigators, who conduct public education activities concerning QHPs, distribute fair and impartial information concerning enrollment in QHPs, and provide referrals to any applicable officer of consumer or health insurance ombudsman for any enrollee with a grievance, complaint or question about their health care coverage. Navigators do not make eligibility determinations, do not select QHPs for consumers, or enroll applicants into QHPs, but help applicants through the eligibility and enrollment process. In Florida, individuals acting or offering to act as navigators are required to be registered with the DFS. The express purpose of registration is to identify qualified individuals to assist the insurance-buying public in selecting a QHP through an Exchange by providing fair, accurate, and impartial information regarding QHPs and the availability of premium tax credits and cost-sharing reductions for such plans, and to protect the public from unauthorized activities or conduct.

<sup>12</sup> For additional information, see "Surplus Lines Insurance," a presentation made by OIR to the Insurance & Banking Subcommittee on September 25, 2013. Available at: [http://www.florid.com/search/search.aspx#surplus lines insurance](http://www.florid.com/search/search.aspx#surplus%20lines%20insurance) (Last accessed: February 13, 2014).

- Provides that no new limited customer service representative licenses may be issued after September 30, 2014.<sup>13</sup>
- Amends criteria for issuance of a temporary license as a customer service representative. Specifies in part that such temporary license may be issued only after DFS has determined that the applicant has not committed a crime that would disqualify her or him from applying for a license under s. 626.207, F.S.
- Provides for additional methods of service of process by the OIR or DFS for certain administrative actions (cease and desist orders, removal of affiliated parties, and administrative fines), specifically, hand delivery by DFS investigators; e-mail sent to the most recent address provided to DFS by the applicant or licensee; and publication in accordance with s. 120.60, F.S.
- Prohibits DFS and OIR investigators from removing *original* records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.
- Requires insurers that write bail bonds to submit a sample power of attorney to OIR for approval. Currently, these forms are submitted to and approved by DFS.
- Prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S. (bail bond agents), until the license is reinstated or a new license is issued.
- Deletes language that requires applicants who seek to take a licensure examination in Spanish to pay all costs related to preparing, administering, grading, and evaluating the Spanish language examination.
- Requires each agency location to prominently display the agency license to make it clearly visible to persons entering the location.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 20.121, F.S., relating to the Department of Financial Services.
- Section 2.** Amends s. 624.310, F.S., relating to certain administrative proceedings.
- Section 3.** Amends s. 624.318, F.S., relating to DFS examinations and investigations.
- Section 4.** Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.
- Section 5.** Amends s. 626.015, F.S., relating to insurance representatives.
- Section 6.** Amends s. 626.0428, F.S., relating to agency personnel powers, duties, and limitations.
- Section 7.** Amends s. 626.112, F.S., relating to license and appointment requirements.
- Section 8.** Amends s. 626.171, F.S., relating to certain applications for licensure.
- Section 9.** Amends s. 626.172, F.S., relating to application for insurance agency license.
- Section 10.** Amends s. 626.207, F.S., relating to disqualification of applicants and licensees.
- Section 11.** Amends s. 626.241, F.S., relating to scope of examination.
- Section 12.** Amends s. 626.261, F.S., relating to conduct of licensure examinations.
- Section 13.** Amends s. 626.311, F.S., relating to scope of license.
- Section 14.** Amends s. 626.382, F.S., relating to continuation and expiration of agency licenses.
- Section 15.** Amends s. 626.601, F.S., relating to DFS investigations of licensees and others.
- Section 16.** Amends s. 626.611, F.S., relating to refusal, suspension or revocation of certain licenses.
- Section 17.** Amends s. 626.733, F.S., relating to agency firms and corporations.
- Section 18.** Amends s. 626.641, F.S., relating to duration of suspension or revocation of license.
- Section 19.** Amends s. 626.7355, F.S., relating to temporary license as customer service representative.
- Section 20.** Repeals s. 626.747, F.S., relating to branch agencies.
- Section 21.** Amends s. 626.7845, F.S., relating to unlicensed transaction of life insurance.
- Section 22.** Amends s. 626.8411, F.S., relating to title insurance agents or agencies.
- Section 23.** Amends s. 626.861, F.S., relating to adjustment of claims.
- Section 24.** Amends s. 626.862, F.S., relating to adjustments of claims by agents.
- Section 25.** Amends s. 626.9272, F.S., relating to licensing of nonresident surplus lines agents.

<sup>13</sup> As of January 2014, 68 people held the limited customer service representative license and only 40 of these licenses were active. Over the past three years, DFS has issued two limited customer service representative licenses.

- Section 26.** Creates s. 627.4553, F.S., relating to recommendations to surrender an annuity or life insurance policy.
- Section 27.** Amends s. 627.7015, F.S., relating to alternative dispute resolution for property insurance claims.
- Section 28.** Amends s. 627.706, F.S., relating to sinkhole insurance.
- Section 29.** Amends s. 627.7074, F.S., relating to alternative dispute resolution for sinkhole claims.
- Section 30.** Amends s. 627.745, F.S., relating to mediation of claims.
- Section 31.** Amends s. 627.952, F.S., relating to risk retention and purchasing group agents.
- Section 32.** Amends s. 648.43, F.S., relating to powers of attorney used by bail bond agents.
- Section 33.** Amends s. 638.49, F.S., relating to duration and suspension of bail bond agent license.
- Section 34.** Provides an effective date of July 1, 2014, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Department of Law Enforcement informs that it will incur \$35,745 in reprogramming costs to implement the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Members of the United States Armed Forces, their spouses, and veterans who are retired for up to 24 months and apply for specified licenses with DFS will be exempt from paying licensing fees.

### D. FISCAL COMMENTS:

According to DFS, providing the above exemption from licensing fees will have a minimal fiscal impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants DFS the authority to: adopt a form by rule for agents to use to provide information to consumers when surrender of an annuity or life insurance policy is recommended; adopt rules for certifying, denying certification of, suspending certification of, and revoking certification of neutral evaluators; and adopt rules for denying the application of, or suspending or revoking approval of, mediators in the property insurance mediation program.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Lines 123-127, relating to service of process for certain administrative actions, authorize hand-delivery by DFS investigators; service by e-mail; service by publication. It is unclear whether DFS will be required to attempt personal service by DFS investigators before it may serve process via another method, or whether DFS will have the option of selecting the method to utilize. Also, if service is made via e-mail, without any additional assurance that the e-mail has been successfully delivered (such as delivery receipt requested), such service could potentially be challenged as being legally insufficient.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
2           An act relating to the Division of Insurance Agents  
3           and Agency Services; amending s. 20.121, F.S.;  
4           revising the name of the division; amending s.  
5           624.310, F.S.; revising service delivery methods;  
6           amending s. 624.318, F.S.; prohibiting the removal of  
7           specified original documents under certain conditions;  
8           amending s. 624.501, F.S.; revising original  
9           appointment and renewal fees related to certain  
10          insurance representatives; amending s. 626.015, F.S.;  
11          prohibiting new limited customer representative  
12          licenses from being issued after a specified date;  
13          defining the term "unaffiliated insurance agent";  
14          amending s. 626.0428, F.S.; requiring a branch place  
15          of business to have an agent in charge; authorizing an  
16          agent to be in charge of more than one branch office  
17          under certain circumstances; providing requirements  
18          relating to the designation of an agent in charge;  
19          providing that the agent in charge is accountable for  
20          misconduct and violations committed by the licensee  
21          and any person under his or her supervision;  
22          prohibiting an insurance agency from conducting  
23          insurance business at a location without a designated  
24          agent in charge; providing for expiration of an agency  
25          license under specified circumstances; amending s.  
26          626.112, F.S.; providing licensure exemptions that

27 allow specified individuals or entities to conduct  
 28 insurance business at specified locations under  
 29 certain circumstances; revising licensure requirements  
 30 and penalties with respect to registered insurance  
 31 agencies; providing that the registration of an  
 32 approved registered insurance agency automatically  
 33 converts to an insurance agency license on a specified  
 34 date; amending s. 626.171, F.S.; providing an  
 35 exemption from certain licensure application fees;  
 36 amending s. 626.172, F.S.; revising requirements  
 37 relating to applications for insurance agency  
 38 licenses; amending s. 626.207, F.S.; prohibiting  
 39 certain persons who are the subject of a sealed  
 40 criminal history record from denying or failing to  
 41 acknowledge arrests for certain offenses; amending s.  
 42 626.241, F.S.; revising the scope of the examination  
 43 for a limited agent; amending s. 626.261, F.S.;  
 44 deleting a provision requiring certain costs to be  
 45 paid by applicants who request licensure examinations  
 46 in Spanish; amending s. 626.311, F.S.; limiting the  
 47 types of business that may be transacted by certain  
 48 agents; amending s. 626.382, F.S.; providing that an  
 49 insurance agency license continues in force until  
 50 canceled, suspended, revoked, terminated, or expired;  
 51 amending s. 626.601, F.S.; revising terminology  
 52 relating to investigations conducted by the Department

53 of Financial Services and the Office of Insurance  
 54 Regulation with respect to individuals and entities  
 55 involved in the insurance industry; amending s.  
 56 626.611, F.S.; requiring the department to suspend  
 57 certain licenses and appointments; amending s.  
 58 626.641, F.S.; conforming a cross-reference; amending  
 59 s. 626.733, F.S.; revising applicability of certain  
 60 appointment provisions; amending s. 626.7355, F.S.;  
 61 revising qualifications for a temporary customer  
 62 representative's license; repealing s. 626.747, F.S.,  
 63 relating to branch agencies, agents in charge, and the  
 64 payment of additional county tax under certain  
 65 circumstances on a specified date; amending s.  
 66 626.7845, F.S.; revising a prohibition against  
 67 unlicensed transaction of life insurance; amending ss.  
 68 626.8411, 626.861, and 626.862, F.S.; conforming  
 69 cross-references; amending s. 626.9272, F.S.; revising  
 70 requirements for the licensure of nonresident surplus  
 71 lines agents; creating s. 627.4553, F.S.; requiring an  
 72 insurance agent who recommends the surrender of  
 73 certain annuity or life insurance to provide certain  
 74 information to the department; amending s. 627.7015,  
 75 F.S.; revising the rulemaking authority of the  
 76 department with respect to qualifications and  
 77 specified types of penalties covered under the  
 78 property insurance mediation program; amending s.



79 627.706, F.S.; revising the definition of the term  
 80 "neutral evaluator"; amending s. 627.7074, F.S.;  
 81 providing grounds for the department to deny an  
 82 application, or suspend or revoke approval of  
 83 certification, of a neutral evaluator; requiring the  
 84 department to adopt rules; amending s. 627.745, F.S.;  
 85 revising qualifications for approval as a mediator by  
 86 the department; providing grounds for the department  
 87 to deny an application, or suspend or revoke approval,  
 88 of a mediator; requiring the department to adopt  
 89 rules; amending s. 627.952, F.S.; providing that  
 90 certain persons who are not residents of this state  
 91 must be licensed and appointed as nonresident surplus  
 92 lines agents in this state in order to engage in  
 93 specified activities with respect to servicing  
 94 insurance contracts, certificates, or agreements for  
 95 purchasing or risk retention groups; deleting a  
 96 fidelity bond requirement applicable to certain  
 97 nonresident agents who are licensed as surplus lines  
 98 agents in another state; amending s. 648.43, F.S.;  
 99 revising requirements for the submission of a power of  
 100 attorney; amending s. 648.49, F.S.; revising  
 101 provisions relating to the duration of suspension or  
 102 revocation of a license; providing effective dates.

103  
 104 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (g) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions:

(g) The Division of Insurance Agent ~~Agents~~ and Agency Services.

Section 2. Subsection (6) of section 624.310, Florida Statutes, is amended to read:

624.310 Enforcement; cease and desist orders; removal of certain persons; fines.—

(6) ADMINISTRATIVE PROCEDURES.—All administrative proceedings under subsections (3), (4), and (5) shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the department or office under this code shall be made by certified mail, return receipt requested, delivered to the addressee only; by personal delivery, including hand delivery by department investigators; by e-mail, sent to the most recent e-mail address provided to the department by the applicant or licensee in accordance with s. 626.171 or s. 626.551; by publication in accordance with s. 120.60; or in accordance with chapter 48. The service provided for in this subsection ~~herein~~ shall be effective from the date of delivery.

Section 3. Subsection (5) of section 624.318, Florida

131 Statutes, is amended to read:

132 624.318 Conduct of examination or investigation; access to  
 133 records; correction of accounts; appraisals.-

134 (5) ~~Neither~~ The department, the office, or an ~~nor any~~  
 135 examiner may not ~~shall~~ remove any original record, account,  
 136 document, file, or other property of the person being examined  
 137 from the offices of such person except with the written consent  
 138 of such person given in advance of such removal or pursuant to  
 139 an order of court duly obtained.

140 Section 4. Paragraphs (a) and (c) of subsection (6) and  
 141 subsections (7) and (8) of section 624.501, Florida Statutes,  
 142 are amended to read:

143 624.501 Filing, license, appointment, and miscellaneous  
 144 fees.-The department, commission, or office, as appropriate,  
 145 shall collect in advance, and persons so served shall pay to it  
 146 in advance, fees, licenses, and miscellaneous charges as  
 147 follows:

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

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

153	Appointment fee.....	\$42.00
154	State tax.....	12.00
155	County tax.....	6.00
156	Total.....	\$60.00

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

160 (7) Life insurance agents.

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

164 Appointment fee.....\$42.00

165 State tax.....12.00

166 County tax.....6.00

167 Total.....\$60.00

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

171 (8) Health insurance agents.

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

175 Appointment fee.....\$42.00

176 State tax.....12.00

177 County tax.....6.00

178 Total.....\$60.00

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

182 Section 5. Subsection (11) of section 626.015, Florida

183 Statutes, is amended, subsection (18) of that section is  
 184 renumbered as subsection (19), and a new subsection (18) is  
 185 added to that section, to read:

186 626.015 Definitions.—As used in this part:

187 (11) "Limited customer representative" means a customer  
 188 representative appointed by a general lines agent or agency to  
 189 assist that agent or agency in transacting only the business of  
 190 private passenger motor vehicle insurance from the office of  
 191 that agent or agency. A limited customer representative is  
 192 subject to the Florida Insurance Code in the same manner as a  
 193 customer representative, unless otherwise specified. Effective  
 194 October 1, 2014, no new limited customer representative licenses  
 195 may be issued.

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

207 Section 6. Effective January 1, 2015, subsection (4) is  
 208 added to section 626.0428, Florida Statutes, to read:

209           626.0428 Agency personnel powers, duties, and  
 210 limitations.-

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

216           (b) Notwithstanding paragraph (a), the licensed agent in  
 217 charge of an insurance agency may also be the agent in charge of  
 218 additional branch office locations of the agency if insurance  
 219 activities requiring licensure as an insurance agent do not  
 220 occur at any location when an agent is not physically present  
 221 and unlicensed employees at the location do not engage in  
 222 insurance activities requiring licensure as an insurance agent  
 223 or customer representative.

224           (c) An insurance agency and each branch place of business  
 225 of an insurance agency shall designate an agent in charge and  
 226 file the name and license number of the agent in charge and the  
 227 physical address of the insurance agency location with the  
 228 department at the department's designated website. The  
 229 designation of the agent in charge may be changed at the option  
 230 of the agency. A change of the designated agent in charge is  
 231 effective upon notification to the department, which shall be  
 232 provided within 30 days after such change.

233           (d) For the purposes of this subsection, an "agent in  
 234 charge" is the licensed and appointed agent who is responsible

235 for the supervision of all individuals within an insurance  
 236 agency location, regardless of whether the agent in charge  
 237 handles a specific transaction or deals with the general public  
 238 in the solicitation or negotiation of insurance contracts or the  
 239 collection or accounting of moneys.

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

248 (f) An insurance agency location may not conduct the  
 249 business of insurance unless an agent in charge is designated  
 250 by, and providing services to, the agency at all times. If the  
 251 agent in charge designated with the department ends his or her  
 252 affiliation with the agency for any reason and the agency fails  
 253 to designate another agent in charge within the 30 days provided  
 254 for in paragraph (c) and such failure continues for 90 days, the  
 255 agency license shall automatically expire on the 91st day from  
 256 the date the designated agent in charge ended his or her  
 257 affiliation with the agency.

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

260 626.112 License and appointment required; agents, customer

261 representatives, adjusters, insurance agencies, service  
 262 representatives, managing general agents.-

263 (7)(a) An ~~Effective October 1, 2006,~~ no individual, firm,  
 264 partnership, corporation, association, or ~~any~~ other entity shall  
 265 not act in its own name or under a trade name, directly or  
 266 indirectly, as an insurance agency, unless it complies with s.  
 267 626.172 with respect to possessing an insurance agency license  
 268 for each place of business at which it engages in an ~~any~~  
 269 activity that ~~which~~ may be performed only by a licensed  
 270 insurance agent. However, an insurance agency that is owned and  
 271 operated by a single licensed agent conducting business in his  
 272 or her individual name and not employing or otherwise using the  
 273 services of or appointing other licensees shall be exempt from  
 274 the agency licensing requirements of this subsection.

275 (b) A branch place of business that is established by a  
 276 licensed agency is considered a branch agency and is not  
 277 required to be licensed so long as it transacts business under  
 278 the same name and federal tax identification number as the  
 279 licensed agency and has designated with the department a  
 280 licensed agent in charge of the branch location as required by  
 281 s. 626.0428 and the address and telephone number of the branch  
 282 location have been submitted to the department for inclusion in  
 283 the licensing record of the licensed agency within 30 days after  
 284 insurance transactions begin at the branch location ~~Each agency~~  
 285 ~~engaged in business in this state before January 1, 2003, which~~  
 286 ~~is wholly owned by insurance agents currently licensed and~~



287 ~~appointed under this chapter, each incorporated agency whose~~  
 288 ~~voting shares are traded on a securities exchange, each agency~~  
 289 ~~designated and subject to supervision and inspection as a branch~~  
 290 ~~office under the rules of the National Association of Securities~~  
 291 ~~Dealers, and each agency whose primary function is offering~~  
 292 ~~insurance as a service or member benefit to members of a~~  
 293 ~~nonprofit corporation may file an application for registration~~  
 294 ~~in lieu of licensure in accordance with s. 626.172(3). Each~~  
 295 ~~agency engaged in business before October 1, 2006, shall file an~~  
 296 ~~application for licensure or registration on or before October~~  
 297 ~~1, 2006.~~

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

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

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

313 ~~or controls the agency, any person has:~~

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

319 ~~2. Employed any individual in a managerial capacity or in~~  
 320 ~~a capacity dealing with the public who is under an order of~~  
 321 ~~revocation or suspension issued by the department. An insurance~~  
 322 ~~agency may request, on forms prescribed by the department,~~  
 323 ~~verification of any person's license status. If a request is~~  
 324 ~~mailed within 5 working days after an employee is hired, and the~~  
 325 ~~employee's license is currently suspended or revoked, the agency~~  
 326 ~~shall not be required to obtain a license, if the unlicensed~~  
 327 ~~person's employment is immediately terminated.~~

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

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

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

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

342           ~~e. Unlawfully rebated, attempted to unlawfully rebate, or~~  
 343 ~~unlawfully divided or offered to divide commissions with~~  
 344 ~~another.~~

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

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

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

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

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

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

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

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

365 ~~1. Demonstrated lack of fitness or trustworthiness to~~  
 366 ~~engage in the business of insurance arising out of activities~~  
 367 ~~related to insurance or the insurance agency.~~

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

370 ~~5. Knowingly employed any person who within the preceding~~  
 371 ~~3 years has had his or her relationship with an agency~~  
 372 ~~terminated in accordance with paragraph (d).~~

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

375 Section 8. Subsection (6) of section 626.171, Florida  
 376 Statutes, is renumbered as subsection (7), and a new subsection  
 377 (6) is added to that section to read:

378 626.171 Application for license as an agent, customer  
 379 representative, adjuster, service representative, managing  
 380 general agent, or reinsurance intermediary.-

381 (6) Members of the United States Armed Forces and their  
 382 spouses, and veterans of the United States Armed Forces who have  
 383 retired within 24 months before application for licensure, are  
 384 exempt from the application filing fee prescribed in s. 624.501.  
 385 Qualified individuals must provide a copy of a military  
 386 identification card, military dependent identification card,  
 387 military service record, military personnel file, veteran  
 388 record, discharge paper, or separation document, or separation  
 389 document that indicates such members of the United States Armed  
 390 Forces are currently in good standing or were honorably

391 discharged.

392 Section 9. Subsections (2), (3), and (4) of section  
393 626.172, Florida Statutes, are amended to read:

394 626.172 Application for insurance agency license.-

395 (2) An application for an insurance agency license must  
396 ~~shall~~ be signed by the owner or owners of the agency. If the  
397 agency is incorporated, the application must ~~shall~~ be signed by  
398 the president and secretary of the corporation. An insurance  
399 agency may permit a third party to complete, submit, and sign an  
400 application on the insurance agency's behalf; however, the  
401 insurance agency is responsible for ensuring that the  
402 information on the application is true and correct and is  
403 accountable for any misstatements or misrepresentations. The  
404 application for an insurance agency license must ~~shall~~ include:

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

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

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

414 (d) The physical address location of each branch agency,  
415 including its name, e-mail address, and telephone number, and  
416 the date that the branch location began transacting insurance

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417 ~~office and the name under which each agency office conducts or~~  
 418 ~~will conduct business.~~

419       (e) The name of the ~~each~~ agent ~~to be~~ in full-time charge  
 420 of the an agency office, including branch locations, and his or  
 421 her corresponding location ~~specification of which office.~~

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

423       1. A sole proprietor;

424       2. Each partner;

425       3. Each owner of an unincorporated agency;

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

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

431       6. Any other person who directs or participates in the  
 432 management or control of the agency, whether through the  
 433 ownership of voting securities, by contract, by ownership of any  
 434 agency bank accounts, or otherwise.

435

436 Fingerprints must be taken by a law enforcement agency or other  
 437 entity approved by the department and must be accompanied by the  
 438 fingerprint processing fee specified in s. 624.501. Fingerprints  
 439 must ~~shall~~ be processed in accordance with s. 624.34. However,  
 440 fingerprints need not be filed for an ~~any~~ individual who is  
 441 currently licensed and appointed under this chapter. This  
 442 paragraph does not apply to corporations whose voting shares are

443 | traded on a securities exchange.

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

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

455 |       ~~(3) The department shall issue a registration as an~~  
 456 | ~~insurance agency to any agency that files a written application~~  
 457 | ~~with the department and qualifies for registration. The~~  
 458 | ~~application for registration shall require the agency to provide~~  
 459 | ~~the same information required for an agency licensed under~~  
 460 | ~~subsection (2), the agent identification number for each owner~~  
 461 | ~~who is a licensed agent, proof that the agency qualifies for~~  
 462 | ~~registration as provided in s. 626.112(7), and any other~~  
 463 | ~~additional information that the department determines is~~  
 464 | ~~necessary in order to demonstrate that the agency qualifies for~~  
 465 | ~~registration. The application must be signed by the owner or~~  
 466 | ~~owners of the agency. If the agency is incorporated, the~~  
 467 | ~~application must be signed by the president and the secretary of~~  
 468 | ~~the corporation. An agent who owns the agency need not file~~

469 ~~fingerprints with the department if the agent obtained a license~~  
 470 ~~under this chapter and the license is currently valid.~~

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

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

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

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

489 Section 10. Subsection (7) of section 626.207, Florida  
 490 Statutes, is amended, and subsection (10) is added to that  
 491 section, to read:

492 626.207 Disqualification of applicants and licensees;  
 493 penalties against licensees; rulemaking authority.-

494 (7) After the disqualifying period has been met, the



495 | burden is on the applicant to demonstrate that the applicant has  
 496 | been rehabilitated, does not pose a risk to the insurance-buying  
 497 | public, is fit and trustworthy to engage in the business of  
 498 | insurance pursuant to s. 626.611(1)(g) ~~626.611(7)~~, and is  
 499 | otherwise qualified for licensure.

500 |       (10) The subject of a criminal history record sealed under  
 501 | s. 943.059 may not lawfully deny or fail to acknowledge arrests  
 502 | for offenses specified in subsection (3).

503 |       Section 11. Subsection (5) of section 626.241, Florida  
 504 | Statutes, is amended to read:

505 |       626.241 Scope of examination.—

506 |       (5) Examinations given applicants for a limited agent  
 507 | ~~license as agent or as customer representative~~ shall be limited  
 508 | in scope to the kind of business to be transacted under such  
 509 | license.

510 |       Section 12. Subsection (5) of section 626.261, Florida  
 511 | Statutes, is amended to read:

512 |       626.261 Conduct of examination.—

513 |       (5) The department may provide licensure examinations in  
 514 | Spanish. ~~Applicants requesting examination or reexamination in~~  
 515 | ~~Spanish must bear the full cost of the department's development,~~  
 516 | ~~preparation, administration, grading, and evaluation of the~~  
 517 | ~~Spanish-language examination.~~ When determining whether it is in  
 518 | the public interest to allow the examination to be translated  
 519 | into and administered in Spanish, the department shall consider  
 520 | the percentage of the population who speak Spanish.

521 Section 13. Subsection (6) of section 626.311, Florida  
 522 Statutes, is renumbered as subsection (7), and a new subsection  
 523 (6) is added to that section to read:

524 626.311 Scope of license.—

525 (6) An agent who appoints his or her license as an  
 526 unaffiliated insurance agent may not hold an appointment from an  
 527 insurer for any license he or she holds; transact, solicit, or  
 528 service an insurance contract on behalf of an insurer; interfere  
 529 with commissions received or to be received by an insurer-  
 530 appointed insurance agent or an insurance agency contracted with  
 531 or employing insurer-appointed insurance agents; or receive  
 532 compensation or any other thing of value from an insurer, an  
 533 insurer-appointed insurance agent, or an insurance agency  
 534 contracted with or employing insurer-appointed insurance agents  
 535 for any transaction or referral occurring after the date of  
 536 appointment as an unaffiliated insurance agent. An unaffiliated  
 537 insurance agent may continue to receive commissions on sales  
 538 that occurred before the date of appointment as an unaffiliated  
 539 insurance agent if the receipt of such commissions is disclosed  
 540 when making recommendations or evaluating products for a client  
 541 that involve products of the entity from which the commissions  
 542 are received.

543 Section 14. Effective January 1, 2015, section 626.382,  
 544 Florida Statutes, is amended to read:

545 626.382 Continuation, expiration of license; insurance  
 546 agencies.—The license of an ~~any~~ insurance agency ~~shall be issued~~

547 ~~for a period of 3 years and shall continue in force until~~  
 548 ~~canceled, suspended, or revoked, or until it is otherwise~~  
 549 ~~terminated or expires by operation of law. A license may be~~  
 550 ~~renewed by submitting a renewal request to the department on a~~  
 551 ~~form adopted by department rule.~~

552 Section 15. Section 626.601, Florida Statutes, is amended  
 553 to read:

554 626.601 Improper conduct; inquiry; fingerprinting.—

555 (1) The department or office may, upon its own motion or  
 556 upon a written complaint signed by any interested person and  
 557 filed with the department or office, inquire into any alleged  
 558 improper conduct of any licensed, approved, or certified  
 559 licensee, insurance agency, agent, adjuster, service  
 560 representative, managing general agent, customer representative,  
 561 title insurance agent, title insurance agency, mediator, neutral  
 562 evaluator, navigator, continuing education course provider,  
 563 instructor, school official, or monitor group under this code.  
 564 The department or office may thereafter initiate an  
 565 investigation of any such individual or entity licensee if it  
 566 has reasonable cause to believe that the individual or entity  
 567 licensee has violated any provision of the insurance code.  
 568 During the course of its investigation, the department or office  
 569 shall contact the individual or entity licensee being  
 570 investigated unless it determines that contacting such  
 571 individual or entity person could jeopardize the successful  
 572 completion of the investigation or cause injury to the public.

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

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

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

586 (5) If the department or office, after investigation, has  
 587 reason to believe that an individual ~~a licensee~~ may have been  
 588 found guilty of or pleaded guilty or nolo contendere to a felony  
 589 or a crime related to the business of insurance in this or any  
 590 other state or jurisdiction, the department or office may  
 591 require the individual ~~licensee~~ to file with the department or  
 592 office a complete set of his or her fingerprints, which shall be  
 593 accompanied by the fingerprint processing fee set forth in s.  
 594 624.501. The fingerprints shall be taken by an authorized law  
 595 enforcement agency or other department-approved entity.

596 (6) The complaint and any information obtained pursuant to  
 597 the investigation by the department or office are confidential  
 598 and are exempt from ~~the provisions of~~ s. 119.07, unless the

599 department or office files a formal administrative complaint,  
 600 emergency order, or consent order against the individual or  
 601 entity licensee. ~~Nothing in~~ This subsection does not ~~shall be~~  
 602 ~~construed to~~ prevent the department or office from disclosing  
 603 the complaint or such information as it deems necessary to  
 604 conduct the investigation, to update the complainant as to the  
 605 status and outcome of the complaint, or to share such  
 606 information with any law enforcement agency or other regulatory  
 607 body.

608 Section 16. Section 626.611, Florida Statutes, is amended  
 609 to read:

610 626.611 Grounds for compulsory refusal, suspension, or  
 611 revocation of agent's, title agency's, adjuster's, customer  
 612 representative's, service representative's, or managing general  
 613 agent's license or appointment.-

614 (1) The department shall deny an application for, suspend,  
 615 revoke, or refuse to renew or continue the license or  
 616 appointment of any applicant, agent, title agency, adjuster,  
 617 customer representative, service representative, or managing  
 618 general agent, and it shall suspend or revoke the eligibility to  
 619 hold a license or appointment of any such person, if it finds  
 620 that as to the applicant, licensee, or appointee any one or more  
 621 of the following applicable grounds exist:

622 (a)~~(1)~~ Lack of one or more of the qualifications for the  
 623 license or appointment as specified in this code.

624 (b)~~(2)~~ Material misstatement, misrepresentation, or fraud

625 | in obtaining the license or appointment or in attempting to  
 626 | obtain the license or appointment.

627 |     ~~(c)(3)~~ Failure to pass to the satisfaction of the  
 628 | department any examination required under this code.

629 |     ~~(d)(4)~~ If the license or appointment is willfully used, or  
 630 | to be used, to circumvent any of the requirements or  
 631 | prohibitions of this code.

632 |     ~~(e)(5)~~ Willful misrepresentation of any insurance policy  
 633 | or annuity contract or willful deception with regard to any such  
 634 | policy or contract, done either in person or by any form of  
 635 | dissemination of information or advertising.

636 |     ~~(f)(6)~~ If, as an adjuster, or agent licensed and appointed  
 637 | to adjust claims under this code, he or she has materially  
 638 | misrepresented to an insured or other interested party the terms  
 639 | and coverage of an insurance contract with intent and for the  
 640 | purpose of effecting settlement of claim for loss or damage or  
 641 | benefit under such contract on less favorable terms than those  
 642 | provided in and contemplated by the contract.

643 |     ~~(g)(7)~~ Demonstrated lack of fitness or trustworthiness to  
 644 | engage in the business of insurance.

645 |     ~~(h)(8)~~ Demonstrated lack of reasonably adequate knowledge  
 646 | and technical competence to engage in the transactions  
 647 | authorized by the license or appointment.

648 |     ~~(i)(9)~~ Fraudulent or dishonest practices in the conduct of  
 649 | business under the license or appointment.

650 |     ~~(j)(10)~~ Misappropriation, conversion, or unlawful

651 withholding of moneys belonging to insurers or insureds or  
 652 beneficiaries or to others and received in conduct of business  
 653 under the license or appointment.

654 (k)~~(11)~~ Unlawfully rebating, attempting to unlawfully  
 655 rebate, or unlawfully dividing or offering to divide his or her  
 656 commission with another.

657 (l)~~(12)~~ Having obtained or attempted to obtain, or having  
 658 used or using, a license or appointment as agent or customer  
 659 representative for the purpose of soliciting or handling  
 660 "controlled business" as defined in s. 626.730 with respect to  
 661 general lines agents, s. 626.784 with respect to life agents,  
 662 and s. 626.830 with respect to health agents.

663 (m)~~(13)~~ Willful failure to comply with, or willful  
 664 violation of, any proper order or rule of the department or  
 665 willful violation of any provision of this code.

666 (n)~~(14)~~ Having been found guilty of or having pleaded  
 667 guilty or nolo contendere to a felony or a crime punishable by  
 668 imprisonment of 1 year or more under the law of the United  
 669 States of America or of any state thereof or under the law of  
 670 any other country which involves moral turpitude, without regard  
 671 to whether a judgment of conviction has been entered by the  
 672 court having jurisdiction of such cases.

673 (o)~~(15)~~ Fraudulent or dishonest practice in submitting or  
 674 aiding or abetting any person in the submission of an  
 675 application for workers' compensation coverage under chapter 440  
 676 containing false or misleading information as to employee

677 payroll or classification for the purpose of avoiding or  
 678 reducing the amount of premium due for such coverage.

679 (p)~~(16)~~ Sale of an unregistered security that was required  
 680 to be registered, pursuant to chapter 517.

681 (q)~~(17)~~ In transactions related to viatical settlement  
 682 contracts as defined in s. 626.9911:

683 1.~~(a)~~ Commission of a fraudulent or dishonest act.

684 2.~~(b)~~ No longer meeting the requirements for initial  
 685 licensure.

686 3.~~(c)~~ Having received a fee, commission, or other valuable  
 687 consideration for his or her services with respect to viatical  
 688 settlements that involved unlicensed viatical settlement  
 689 providers or persons who offered or attempted to negotiate on  
 690 behalf of another person a viatical settlement contract as  
 691 defined in s. 626.9911 and who were not licensed life agents.

692 4.~~(d)~~ Dealing in bad faith with viators.

693 (2) The department shall, upon receipt of information or  
 694 an indictment, immediately temporarily suspend a license or  
 695 appointment issued under this chapter when the licensee is  
 696 charged with a felony enumerated in s. 626.207(3). Such  
 697 suspension shall continue if the licensee is found guilty of, or  
 698 pleads guilty or nolo contendere to, the crime, regardless of  
 699 whether a judgment or conviction is entered, during a pending  
 700 appeal. A person may not transact insurance business after  
 701 suspension of his or her license or appointment.

702 Section 17. Section 626.733, Florida Statutes, is amended



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703 to read:

704           626.733 Agency firms and corporations; special  
 705 requirements.—If a sole proprietorship, partnership,  
 706 corporation, or association holds an agency contract, all  
 707 members thereof who solicit, negotiate, or effect insurance  
 708 contracts, and all officers and stockholders of the corporation  
 709 who solicit, negotiate, or effect insurance contracts, must ~~are~~  
 710 ~~required to~~ qualify and be licensed individually as agents or  
 711 customer representatives, + and all of such agents must be  
 712 individually appointed as to each property and casualty insurer  
 713 entering into an agency contract with such agency. Each ~~such~~  
 714 appointing insurer ~~as soon as known to it~~ shall comply with this  
 715 section and shall determine and require that each agent so  
 716 associated ~~in or so connected~~ with such agency is likewise  
 717 appointed as to the same such insurer and for the same type and  
 718 class of license. However, an ~~no~~ insurer is not required to  
 719 comply with the appointment provisions of this section for an  
 720 agent within an agency who does not solicit, negotiate, or  
 721 effect insurance contracts for that insurer ~~if such insurer~~  
 722 ~~satisfactorily demonstrates to the department that the insurer~~  
 723 ~~has issued an aggregate net written premium, in an agency, in an~~  
 724 ~~amount of \$25,000 or less.~~

725           Section 18. Subsection (2) of section 626.641, Florida  
 726 Statutes, is amended to read:

727           626.641 Duration of suspension or revocation.—  
 728           (2) No person or appointee under any license or

729 appointment revoked by the department, nor any person whose  
 730 eligibility to hold same has been revoked by the department,  
 731 shall have the right to apply for another license or appointment  
 732 under this code within 2 years from the effective date of such  
 733 revocation or, if judicial review of such revocation is sought,  
 734 within 2 years from the date of final court order or decree  
 735 affirming the revocation. An applicant for another license or  
 736 appointment pursuant to this subsection must apply and qualify  
 737 for licensure in the same manner as a first-time applicant, and  
 738 the application may be denied on the same grounds that apply to  
 739 first-time applicants for licensure pursuant to ss. 626.207,  
 740 626.611, and 626.621. In addition, the department shall not  
 741 grant a new license or appointment or reinstate eligibility to  
 742 hold such license or appointment if it finds that the  
 743 circumstance or circumstances for which the eligibility was  
 744 revoked or for which the previous license or appointment was  
 745 revoked still exist or are likely to recur; if an individual's  
 746 license as agent or customer representative or eligibility to  
 747 hold same has been revoked upon the ground specified in s.  
 748 626.611(1)(1) ~~626.611(12)~~, the department shall refuse to grant  
 749 or issue any new license or appointment so applied for.

750 Section 19. Paragraphs (a) and (g) of subsection (1) of  
 751 section 626.7355, Florida Statutes, are amended to read:

752 626.7355 Temporary license as customer representative  
 753 pending examination.-

754 (1) The department shall issue a temporary customer

755 representative's license with respect to a person who has  
 756 applied for such license upon finding that the person:

757 (a) Has filed an application for a customer  
 758 representative's license ~~or a limited customer representative's~~  
 759 ~~license~~ and has paid any fees required under s. 624.501(5) in  
 760 connection with such application for a customer representative's  
 761 license ~~or limited customer representative's license.~~

762 (g) Is not disqualified from licensure by the department  
 763 under s. 626.207. Within the last 5 years, has not been  
 764 ~~convicted, found guilty or pleaded nolo contendere to a felony~~  
 765 ~~or a crime punishable by imprisonment of 1 year or more under~~  
 766 ~~the law of any municipality, county, state, territory, or~~  
 767 ~~country, whether or not a judgment of conviction has been~~  
 768 ~~entered.~~

769 Section 20. Effective January 1, 2015, section 626.747,  
 770 Florida Statutes, is repealed.

771 Section 21. Subsection (1) of section 626.7845, Florida  
 772 Statutes, is amended to read:

773 626.7845 Prohibition against unlicensed transaction of  
 774 life insurance.—

775 (1) An individual may not solicit or sell variable life  
 776 insurance, variable annuity contracts, or any other  
 777 indeterminate value or variable contract as defined in s.  
 778 627.8015, unless the individual has successfully completed a  
 779 licensure examination relating to variable ~~annuity~~ contracts  
 780 authorized and approved by the department.

781 Section 22. Effective January 1, 2015, subsection (1) of  
782 section 626.8411, Florida Statutes, is amended to read:

783 626.8411 Application of Florida Insurance Code provisions  
784 to title insurance agents or agencies.—

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

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

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

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

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

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

797 Section 23. Subsection (2) of section 626.861, Florida  
798 Statutes, is amended to read:

799 626.861 Insurer's officers, insurer's employees,  
800 reciprocal insurer's representatives; adjustments by.—

801 (2) If any such officer, employee, attorney, or agent in  
802 connection with the adjustment of any such claim, loss, or  
803 damage engages in any of the misconduct described in or  
804 contemplated by s. 626.611(1)(f) ~~626.611(6)~~, the office may  
805 suspend or revoke the insurer's certificate of authority.

806 Section 24. Section 626.862, Florida Statutes, is amended

807 to read:

808           626.862 Agents; adjustments by.—A licensed and appointed  
809 insurance agent may, without being licensed as an adjuster,  
810 adjust losses for the insurer represented by him or her as agent  
811 if so authorized by the insurer. The license and appointment of  
812 the agent may be suspended or revoked for violation of or  
813 misconduct prohibited by s. 626.611(1)(f) ~~626.611(6)~~.

814           Section 25. Subsection (2) of section 626.9272, Florida  
815 Statutes, is amended to read:

816           626.9272 Licensing of nonresident surplus lines agents.—

817           (2) The department may not issue a license unless the  
818 applicant satisfies the same licensing requirements under s.  
819 626.927 as required of a resident surplus lines agent, excluding  
820 the required experience or coursework and examination. The  
821 department may refuse to issue such license or appointment when  
822 it has reason to believe that any of the grounds exist for  
823 denial, suspension, or revocation of a license as set forth in  
824 ss. 626.611 and 626.621.

825           Section 26. Section 627.4553, Florida Statutes, is created  
826 to read:

827           627.4553 Recommendations to surrender.—If an insurance  
828 agent recommends the surrender of an annuity or life insurance  
829 policy containing a cash value and does not recommend that the  
830 proceeds from the surrender be used to fund or purchase another  
831 annuity or life insurance policy, before execution of the  
832 surrender, the insurance agent, or insurance company if no agent

833 is involved, shall provide, on a form adopted by rule by the  
 834 department, information relating to the annuity or policy to be  
 835 surrendered. Such information shall include the amount of any  
 836 surrender charge, the loss of any minimum interest rate  
 837 guarantees, the amount of any tax consequences resulting from  
 838 the transaction, the amount of any forfeited death benefit, and  
 839 the value of any other investment performance guarantees being  
 840 forfeited as a result of the transaction. This section also  
 841 applies to a person performing insurance agent activities  
 842 pursuant to an exemption from licensure under this part.

843 Section 27. Paragraph (b) of subsection (4) of section  
 844 627.7015, Florida Statutes, is amended to read:

845 627.7015 Alternative procedure for resolution of disputed  
 846 property insurance claims.-

847 (4) The department shall adopt by rule a property  
 848 insurance mediation program to be administered by the department  
 849 or its designee. The department may also adopt special rules  
 850 which are applicable in cases of an emergency within the state.  
 851 The rules shall be modeled after practices and procedures set  
 852 forth in mediation rules of procedure adopted by the Supreme  
 853 Court. The rules shall provide for:

854 (b) Qualifications, denial of application, suspension,  
 855 revocation of approval, and other penalties for ~~of~~ mediators as  
 856 provided in s. 627.745 and in the Florida Rules of Certified and  
 857 Court Appointed Mediators, ~~and for such other individuals as are~~  
 858 ~~qualified by education, training, or experience as the~~

859 ~~department determines to be appropriate.~~

860 Section 28. Paragraph (c) of subsection (2) of section  
861 627.706, Florida Statutes, is amended to read:

862 627.706 Sinkhole insurance; catastrophic ground cover  
863 collapse; definitions.—

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

867 (c) "Neutral evaluator" means a professional engineer or a  
868 professional geologist who has completed a course of study in  
869 alternative dispute resolution designed or approved by the  
870 department for use in the neutral evaluation process, ~~and~~ who is  
871 determined by the department to be fair and impartial, and who  
872 is not otherwise ineligible for certification as provided in s.  
873 627.7074.

874 Section 29. Subsections (7) and (18) of section 627.7074,  
875 Florida Statutes, are amended to read:

876 627.7074 Alternative procedure for resolution of disputed  
877 sinkhole insurance claims.—

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

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

884 1. A familial relationship exists between the neutral

885 evaluator and either party or a representative of either party  
 886 within the third degree.

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

891         3. The proposed neutral evaluator has, in a professional  
 892 capacity, represented another person in the same or a  
 893 substantially related matter and that person's interests are  
 894 materially adverse to the interests of the parties. The term  
 895 "substantially related matter" means participation by the  
 896 neutral evaluator on the same claim, property, or adjacent  
 897 property.

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

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

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

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

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



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

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

916           ~~(c)~~ ~~(b)~~ The parties shall appoint a neutral evaluator from  
 917 the department list and promptly inform the department. If the  
 918 parties cannot agree to a neutral evaluator within 14 business  
 919 days, the department shall appoint a neutral evaluator from the  
 920 list of certified neutral evaluators. The department shall allow  
 921 each party to disqualify two neutral evaluators without cause.  
 922 Upon selection or appointment, the department shall promptly  
 923 refer the request to the neutral evaluator.

924           ~~(d)~~ ~~(e)~~ Within 14 business days after the referral, the  
 925 neutral evaluator shall notify the policyholder and the insurer  
 926 of the date, time, and place of the neutral evaluation  
 927 conference. The conference may be held by telephone, if feasible  
 928 and desirable. The neutral evaluator shall make reasonable  
 929 efforts to hold the conference within 90 days after the receipt  
 930 of the request by the department. Failure of the neutral  
 931 evaluator to hold the conference within 90 days does not  
 932 invalidate either party's right to neutral evaluation or to a  
 933 neutral evaluation conference held outside this timeframe.

934           (18) The department shall adopt rules of procedure for the  
 935 neutral evaluation process and adopt rules for certifying,  
 936 denying certification of, suspending certification of, and

937 revoking certification as a neutral evaluator.

938 Section 30. Subsection (3) of section 627.745, Florida  
 939 Statutes, is amended, present subsections (4) and (5) of that  
 940 section are renumbered as subsections (5) and (6), respectively,  
 941 and a new subsection (4) is added to that section, to read:

942 627.745 Mediation of claims.—

943 (3)(a) The department shall approve mediators to conduct  
 944 mediations pursuant to this section. All mediators must file an  
 945 application under oath for approval as a mediator.

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

948 1. Possess an active certification as a Florida Supreme  
 949 Court certified circuit court mediator. A Florida Supreme Court  
 950 certified circuit court mediator in a lapsed, suspended,  
 951 sanctioned, or decertified status is not eligible to participate  
 952 in the mediation program ~~a masters or doctorate degree in~~  
 953 ~~psychology, counseling, business, accounting, or economics, be a~~  
 954 ~~member of The Florida Bar, be licensed as a certified public~~  
 955 ~~accountant, or demonstrate that the applicant for approval has~~  
 956 ~~been actively engaged as a qualified mediator for at least 4~~  
 957 ~~years prior to July 1, 1990.~~

958 2. Be an approved department mediator as of July 1, 2014,  
 959 and have conducted at least one mediation on behalf of the  
 960 department within 4 years immediately preceding that ~~the~~ date  
 961 ~~the application for approval is filed with the department, have~~  
 962 ~~completed a minimum of a 40-hour training program approved by~~

963 ~~the department and successfully passed a final examination~~  
 964 ~~included in the training program and approved by the department.~~  
 965 ~~The training program shall include and address all of the~~  
 966 ~~following:~~

- 967 ~~a. Mediation theory.~~
- 968 ~~b. Mediation process and techniques.~~
- 969 ~~c. Standards of conduct for mediators.~~
- 970 ~~d. Conflict management and intervention skills.~~
- 971 ~~e. Insurance nomenclature.~~

972 (4) The department shall deny an application, or suspend  
 973 or revoke its approval, of a mediator to serve in such capacity  
 974 if the department finds that one or more of the following  
 975 grounds exist:

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

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

980 (c) Demonstrated lack of fitness or trustworthiness to act  
 981 as a mediator.

982 (d) Fraudulent or dishonest practices in the conduct of  
 983 mediation or in the conduct of business in the financial  
 984 services industry.

985 (e) Violation of any provision of this code or of a lawful  
 986 order or rule of the department, violation of the Florida Rules  
 987 of Certified and Court Appointed Mediators, or aiding,  
 988 instructing, or encouraging another party in committing such a

989 violation.

990

991 The department shall adopt rules for the approval or denial of  
 992 mediator applications and the suspension and revocation of  
 993 approval of mediators.

994 Section 31. Paragraph (b) of subsection (1) of section  
 995 627.952, Florida Statutes, is amended to read:

996 627.952 Risk retention and purchasing group agents.—

997 (1) Any person offering, soliciting, selling, purchasing,  
 998 administering, or otherwise servicing insurance contracts,  
 999 certificates, or agreements for any purchasing group or risk  
 1000 retention group to any resident of this state, either directly  
 1001 or indirectly, by the use of mail, advertising, or other means  
 1002 of communication, shall obtain a license and appointment to act  
 1003 as a resident general lines agent, if a resident of this state,  
 1004 or a nonresident general lines agent if not a resident. Any such  
 1005 person shall be subject to all requirements of the Florida  
 1006 Insurance Code.

1007 (b) Any person required to be licensed and appointed under  
 1008 this subsection, in order to place business through Florida  
 1009 eligible surplus lines carriers, must, if a resident of this  
 1010 state, be licensed and appointed as a surplus lines agent. If  
 1011 not a resident of this state, such person must be licensed and  
 1012 appointed as a surplus lines agent in her or his state of  
 1013 residence and be licensed and appointed as a nonresident surplus  
 1014 lines agent in this state ~~file and maintain a fidelity bond in~~

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1015 ~~favor of the people of the State of Florida executed by a surety~~  
 1016 ~~company admitted in this state and payable to the State of~~  
 1017 ~~Florida; however, such nonresident is limited to the provision~~  
 1018 ~~of insurance for purchasing groups. The bond must be continuous~~  
 1019 ~~in form and in the amount of not less than \$50,000, aggregate~~  
 1020 ~~liability. The bond must remain in force and effect until the~~  
 1021 ~~surety is released from liability by the department or until the~~  
 1022 ~~bond is canceled by the surety. The surety may cancel the bond~~  
 1023 ~~and be released from further liability upon 30 days' prior~~  
 1024 ~~written notice to the department. The cancellation does not~~  
 1025 ~~affect any liability incurred or accrued before the termination~~  
 1026 ~~of the 30 day period. Upon receipt of a notice of cancellation,~~  
 1027 ~~the department shall immediately notify the agent.~~

1028 Section 32. Subsection (1) of section 648.43, Florida  
 1029 Statutes, is amended to read:

1030 648.43 Power of attorney; to be approved by department;  
 1031 filing of copies; notification of transfer bond.—

1032 (1) Every insurer engaged in the writing of bail bonds  
 1033 through bail bond agents in this state shall submit to ~~and have~~  
 1034 ~~approved by the office for prior approval~~ department a sample  
 1035 power of attorney, which shall ~~will~~ be the only form of power of  
 1036 attorney the insurer issues ~~will issue~~ to bail bond agents in  
 1037 this state.

1038 Section 33. Subsection (3) of section 648.49, Florida  
 1039 Statutes, is amended to read:

1040 648.49 Duration of suspension or revocation.—

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2014

1041           (3) During the period of suspension~~,~~ or ~~after~~ revocation  
 1042 of the license and until the license is reinstated or a new  
 1043 license is issued, the former licensee may not engage in or  
 1044 attempt to profess to engage in any transaction or business for  
 1045 which a license or appointment is required under this chapter. A  
 1046 ~~Any~~ person who violates this subsection commits a felony of the  
 1047 third degree, punishable as provided in s. 775.082, s. 775.083,  
 1048 or s. 775.084.

1049           Section 34. Except as otherwise expressly provided in this  
 1050 act, this act shall take effect July 1, 2014.

## INSURANCE & BANKING SUBCOMMITTEE

HB 633 by Rep. Ingram  
Division of Insurance Agents and Agency Services

### AMENDMENT SUMMARY February 19, 2014

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Amendment 1 (**strike-all amendment**) by Rep. Ingram. The strike-all amendment makes technical changes, retains the provisions of the underlying bill, and makes the following changes:

- Clarifies methods for service of process in certain administrative proceedings.
- Provides that authorized personnel at branch locations of insurance agencies cannot engage in specified activities unless licensed and appointed as agents or customer representatives.
- Lists additional persons required to sign an application for an insurance agency license.
- Amends the scope of the license issued to business entities that offer motor vehicles for rent or lease.
- Allows DFS access to sealed criminal records and notices of expunged records of applicants for licensure. Deletes language that would have resulted in reprogramming costs to the Florida Department of Law Enforcement.



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 Ingram offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (g) of subsection (2) of section  
8 20.121, Florida Statutes, is amended to read:

9 20.121 Department of Financial Services.—There is created  
10 a Department of Financial Services.

11 (2) DIVISIONS.—The Department of Financial Services shall  
12 consist of the following divisions:

13 (g) The Division of Insurance Agent ~~Agents~~ and Agency  
14 Services.

15 Section 2. Subsection (6) of section 624.310, Florida  
16 Statutes, is amended to read:





Amendment No. 1

17 624.310 Enforcement; cease and desist orders; removal of  
18 certain persons; fines.—

19 (6) ADMINISTRATIVE PROCEDURES.—All administrative  
20 proceedings under subsections (3), (4), and (5) shall be  
21 conducted in accordance with chapter 120. Any service required  
22 or authorized to be made by the department or office under this  
23 code shall be made:

24 (a)1. By certified mail, return receipt requested,  
25 delivered to the addressee only; or

26 2. If service by certified mail cannot be obtained at the  
27 last address provided to the department by the recipient, then  
28 by e-mail, delivery receipt required, sent to the most recent e-  
29 mail address provided to the department by the applicant or  
30 licensee in accordance with s. 626.171, s. 626.551, s. 648.34,  
31 or s. 648.421;

32 (b) By personal delivery, including hand delivery by a  
33 department investigator;

34 (c) By publication in accordance with s. 120.60; or

35 (d) In accordance with chapter 48.

36  
37 The service provided for in this subsection ~~herein~~ shall be  
38 effective from the date of delivery.

39 Section 3. Subsection (5) of section 624.318, Florida  
40 Statutes, is amended to read:

41 624.318 Conduct of examination or investigation; access to  
42 records; correction of accounts; appraisals.—



Amendment No. 1

43           (5) ~~Neither~~ The department, the office, or an ~~nor any~~  
 44 examiner may not ~~shall~~ remove any original record, account,  
 45 document, file, or other property of the person being examined  
 46 from the offices of such person except with the written consent  
 47 of such person given in advance of such removal or pursuant to  
 48 an order of court duly obtained.

49           Section 4. Paragraphs (a) and (c) of subsection (6) and  
 50 subsections (7) and (8) of section 624.501, Florida Statutes,  
 51 are amended to read:

52           624.501 Filing, license, appointment, and miscellaneous  
 53 fees.—The department, commission, or office, as appropriate,  
 54 shall collect in advance, and persons so served shall pay to it  
 55 in advance, fees, licenses, and miscellaneous charges as  
 56 follows:

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

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

62	Appointment fee .....	\$42.00
63	State tax .....	12.00
64	County tax .....	6.00
65	Total .....	\$60.00

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



Amendment No. 1

69 (7) Life insurance agents.

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

73	Appointment fee .....	\$42.00
74	State tax .....	12.00
75	County tax .....	6.00
76	Total .....	\$60.00

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

80 (8) Health insurance agents.

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

84	Appointment fee .....	\$42.00
85	State tax .....	12.00
86	County tax .....	6.00
87	Total .....	\$60.00

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

91 Section 5. Subsection (11) of section 626.015, Florida  
92 Statutes, is amended, subsection (18) of that section is  
93 renumbered as subsection (19), and a new subsection (18) is  
94 added to that section, to read:



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95 626.015 Definitions.—As used in this part:

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

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

116 Section 6. Effective January 1, 2015, subsections (2) and  
117 (3) of section 626.0428, Florida Statutes, are amended, and  
118 subsection (4) is added to that section, to read:

119 626.0428 Agency personnel powers, duties, and  
120 limitations.—



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

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

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

139           (b) Notwithstanding paragraph (a), the licensed agent in  
140 charge of an insurance agency may also be the agent in charge of  
141 additional branch office locations of the agency if insurance  
142 activities requiring licensure as an insurance agent do not  
143 occur at any location when an agent is not physically present  
144 and unlicensed employees at the location do not engage in  
145 insurance activities requiring licensure as an insurance agent  
146 or customer representative.



## Amendment No. 1

147       (c) An insurance agency and each branch place of business  
148 of an insurance agency shall designate an agent in charge and  
149 file the name and license number of the agent in charge and the  
150 physical address of the insurance agency location with the  
151 department at the department's designated website. The  
152 designation of the agent in charge may be changed at the option  
153 of the agency. A change of the designated agent in charge is  
154 effective upon notification to the department, which shall be  
155 provided within 30 days after such change.

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

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

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



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173 by, and providing services to, the agency at all times. If the  
174 agent in charge designated with the department ends his or her  
175 affiliation with the agency for any reason and the agency fails  
176 to designate another agent in charge within the 30 days provided  
177 for in paragraph (c) and such failure continues for 90 days, the  
178 agency license shall automatically expire on the 91st day from  
179 the date the designated agent in charge ended his or her  
180 affiliation with the agency.

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

183 626.112 License and appointment required; agents, customer  
184 representatives, adjusters, insurance agencies, service  
185 representatives, managing general agents.-

186 (7) (a) An Effective October 1, 2006, no individual, firm,  
187 partnership, corporation, association, or any other entity shall  
188 not act in its own name or under a trade name, directly or  
189 indirectly, as an insurance agency, unless it complies with s.  
190 626.172 with respect to possessing an insurance agency license  
191 for each place of business at which it engages in an any  
192 activity that which may be performed only by a licensed  
193 insurance agent. However, an insurance agency that is owned and  
194 operated by a single licensed agent conducting business in his  
195 or her individual name and not employing or otherwise using the  
196 services of or appointing other licensees shall be exempt from  
197 the agency licensing requirements of this subsection.



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198       (b) A branch place of business that is established by a  
199 licensed agency is considered a branch agency and is not  
200 required to be licensed so long as it transacts business under  
201 the same name and federal tax identification number as the  
202 licensed agency and has designated with the department a  
203 licensed agent in charge of the branch location as required by  
204 s. 626.0428 and the address and telephone number of the branch  
205 location have been submitted to the department for inclusion in  
206 the licensing record of the licensed agency within 30 days after  
207 insurance transactions begin at the branch location ~~Each agency~~  
208 ~~engaged in business in this state before January 1, 2003, which~~  
209 ~~is wholly owned by insurance agents currently licensed and~~  
210 ~~appointed under this chapter, each incorporated agency whose~~  
211 ~~voting shares are traded on a securities exchange, each agency~~  
212 ~~designated and subject to supervision and inspection as a branch~~  
213 ~~office under the rules of the National Association of Securities~~  
214 ~~Dealers, and each agency whose primary function is offering~~  
215 ~~insurance as a service or member benefit to members of a~~  
216 ~~nonprofit corporation may file an application for registration~~  
217 ~~in lieu of licensure in accordance with s. 626.172(3). Each~~  
218 ~~agency engaged in business before October 1, 2006, shall file an~~  
219 ~~application for licensure or registration on or before October~~  
220 ~~1, 2006.~~

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





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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

293 ~~5. Knowingly employed any person who within the preceding~~  
294 ~~3 years has had his or her relationship with an agency~~  
295 ~~terminated in accordance with paragraph (d).~~

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

298 Section 8. Subsection (6) of section 626.171, Florida  
299 Statutes, is renumbered as subsection (7), and a new subsection  
300 (6) is added to that section to read:



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301           626.171 Application for license as an agent, customer  
302 representative, adjuster, service representative, managing  
303 general agent, or reinsurance intermediary.—

304           (6) Members of the United States Armed Forces and their  
305 spouses, and veterans of the United States Armed Forces who have  
306 retired within 24 months before application for licensure, are  
307 exempt from the application filing fee prescribed in s. 624.501.  
308 Qualified individuals must provide a copy of a military  
309 identification card, military dependent identification card,  
310 military service record, military personnel file, veteran  
311 record, discharge paper, or separation document, or a separation  
312 document that indicates such members of the United States Armed  
313 Forces are currently in good standing or were honorably  
314 discharged.

315           Section 9. Subsections (2), (3), and (4) of section  
316 626.172, Florida Statutes, are amended to read:

317           626.172 Application for insurance agency license.—

318           (2) An application for an insurance agency license must  
319 shall be signed by an individual required to be listed in the  
320 application under paragraph (a) the owner or owners of the  
321 agency. If the agency is incorporated, the application shall be  
322 signed by the president and secretary of the corporation. An  
323 insurance agency may permit a third party to complete, submit,  
324 and sign an application on the insurance agency's behalf;  
325 however, the insurance agency is responsible for ensuring that  
326 the information on the application is true and correct and is



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327 accountable for any misstatements or misrepresentations. The  
328 application for an insurance agency license must ~~shall~~ include:

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

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

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

342 (d) The physical address location of each branch agency,  
343 including its name, e-mail address, and telephone number, and  
344 the date that the branch location began transacting insurance  
345 office and the name under which each agency office conducts or  
346 will conduct business.

347 (e) The name of the each agent to be in full-time charge  
348 of the an agency office, including branch locations, and his or  
349 her corresponding location specification of which office.

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

351 1. A sole proprietor;



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

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

355           ~~3.4. Each individual owner~~ who directs or participates in  
356 the management or control of an incorporated agency whose shares  
357 are not traded on a securities exchange;

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

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

363

364 Fingerprints must be taken by a law enforcement agency or other  
365 entity approved by the department and must be accompanied by the  
366 fingerprint processing fee specified in s. 624.501. Fingerprints  
367 must ~~shall~~ be processed in accordance with s. 624.34. However,  
368 fingerprints need not be filed for an ~~any~~ individual who is  
369 currently licensed and appointed under this chapter. This  
370 paragraph does not apply to corporations whose voting shares are  
371 traded on a securities exchange.

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



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377 reports be submitted for persons required to be listed on the  
378 application.

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

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

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



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

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

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

417       Section 10. Subsection (7) of section 626.207, Florida  
418 Statutes, is amended to read:

419       626.207 Disqualification of applicants and licensees;  
420 penalties against licensees; rulemaking authority.—

421       (7) After the disqualifying period has been met, the  
422 burden is on the applicant to demonstrate that the applicant has  
423 been rehabilitated, does not pose a risk to the insurance-buying  
424 public, is fit and trustworthy to engage in the business of  
425 insurance pursuant to s. 626.611(1)(g) ~~626.611(7)~~, and is  
426 otherwise qualified for licensure.





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427 Section 11. Subsection (5) of section 626.241, Florida  
428 Statutes, is amended to read:

429 626.241 Scope of examination.—

430 (5) Examinations given applicants for a limited agent  
431 ~~license as agent or as customer representative~~ shall be limited  
432 in scope to the kind of business to be transacted under such  
433 license.

434 Section 12. Subsection (5) of section 626.261, Florida  
435 Statutes, is amended to read:

436 626.261 Conduct of examination.—

437 (5) The department may provide licensure examinations in  
438 Spanish. ~~Applicants requesting examination or reexamination in~~  
439 ~~Spanish must bear the full cost of the department's development,~~  
440 ~~preparation, administration, grading, and evaluation of the~~  
441 ~~Spanish language examination.~~ When determining whether it is in  
442 the public interest to allow the examination to be translated  
443 into and administered in Spanish, the department shall consider  
444 the percentage of the population who speak Spanish.

445 Section 13. Subsection (6) of section 626.311, Florida  
446 Statutes, is renumbered as subsection (7), and a new subsection  
447 (6) is added to that section to read:

448 626.311 Scope of license.—

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



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453 with commissions received or to be received by an insurer-  
454 appointed insurance agent or an insurance agency contracted with  
455 or employing insurer-appointed insurance agents; or receive  
456 compensation or any other thing of value from an insurer, an  
457 insurer-appointed insurance agent, or an insurance agency  
458 contracted with or employing insurer-appointed insurance agents  
459 for any transaction or referral occurring after the date of  
460 appointment as an unaffiliated insurance agent. An unaffiliated  
461 insurance agent may continue to receive commissions on sales  
462 that occurred before the date of appointment as an unaffiliated  
463 insurance agent if the receipt of such commissions is disclosed  
464 when making recommendations or evaluating products for a client  
465 that involve products of the entity from which the commissions  
466 are received.

467 Section 14. Paragraph (d) of subsection (1) of section  
468 626.321, Florida Statutes, is amended to read:

469 626.321 Limited licenses.—

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

474 (d) Motor vehicle rental insurance.—

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



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479 lease or rental agreement and the occupants of the motor  
480 vehicle:

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

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

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

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

495 2. Insurance under a motor vehicle rental insurance  
496 license may be issued only if the lease or rental agreement is  
497 for no more than 60 days, the lessee is not provided coverage  
498 for more than 60 consecutive days per lease period, and the  
499 lessee is given written notice that his or her personal  
500 insurance policy providing coverage on an owned motor vehicle  
501 may provide coverage of such risks and that the purchase of the  
502 insurance is not required in connection with the lease or rental  
503 of a motor vehicle. If the lease is extended beyond 60 days, the  
504 coverage may be extended one time only for a period not to



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505 exceed an additional 60 days. Insurance may be provided to the  
506 lessee as an additional insured on a policy issued to the  
507 licensee's employer.

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

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

520 b. The application for licensure must list the name,  
521 address, and phone number for each office, branch office, or  
522 place of business that is to be covered by the license. The  
523 licensee shall notify the department of the name, address, and  
524 phone number of any new location that is to be covered by the  
525 license before the new office, branch office, or place of  
526 business engages in the sale of insurance pursuant to this  
527 paragraph. The licensee must notify the department within 30  
528 days after closing or terminating an office, branch office, or  
529 place of business. Upon receipt of the notice, the department



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530 shall delete the office, branch office, or place of business  
531 from the license.

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

534 Section 15. Effective January 1, 2015, section 626.382,  
535 Florida Statutes, is amended to read:

536 626.382 Continuation, expiration of license; insurance  
537 agencies.—The license of an ~~any~~ insurance agency ~~shall be issued~~  
538 ~~for a period of 3 years and~~ shall continue in force until  
539 canceled, suspended, or ~~revoked,~~ or until it is otherwise  
540 terminated or expires by operation of law. ~~A license may be~~  
541 ~~renewed by submitting a renewal request to the department on a~~  
542 ~~form adopted by department rule.~~

543 Section 16. Section 626.601, Florida Statutes, is amended  
544 to read:

545 626.601 Improper conduct; inquiry; fingerprinting.—

546 (1) The department or office may, upon its own motion or  
547 upon a written complaint signed by any interested person and  
548 filed with the department or office, inquire into any alleged  
549 improper conduct of any licensed, approved, or certified  
550 licensee, insurance agency, agent, adjuster, service  
551 representative, managing general agent, customer representative,  
552 title insurance agent, title insurance agency, mediator, neutral  
553 evaluator, navigator, continuing education course provider,  
554 instructor, school official, or monitor group under this code.  
555 The department or office may thereafter initiate an



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556 investigation of any such individual or entity licensee if it  
557 has reasonable cause to believe that the individual or entity  
558 licensee has violated any provision of the insurance code.  
559 During the course of its investigation, the department or office  
560 shall contact the individual or entity licensee being  
561 investigated unless it determines that contacting such  
562 individual or entity person could jeopardize the successful  
563 completion of the investigation or cause injury to the public.

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

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

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

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



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582 require the individual licensee to file with the department or  
583 office a complete set of his or her fingerprints, which shall be  
584 accompanied by the fingerprint processing fee set forth in s.  
585 624.501. The fingerprints shall be taken by an authorized law  
586 enforcement agency or other department-approved entity.

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

599 Section 17. Section 626.611, Florida Statutes, is amended  
600 to read:

601 626.611 Grounds for compulsory refusal, suspension, or  
602 revocation of agent's, title agency's, adjuster's, customer  
603 representative's, service representative's, or managing general  
604 agent's license or appointment.—

605 (1) The department shall deny an application for, suspend,  
606 revoke, or refuse to renew or continue the license or  
607 appointment of any applicant, agent, title agency, adjuster,



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608 customer representative, service representative, or managing  
609 general agent, and it shall suspend or revoke the eligibility to  
610 hold a license or appointment of any such person, if it finds  
611 that as to the applicant, licensee, or appointee any one or more  
612 of the following applicable grounds exist:

613 (a)~~(1)~~ Lack of one or more of the qualifications for the  
614 license or appointment as specified in this code.

615 (b)~~(2)~~ Material misstatement, misrepresentation, or fraud  
616 in obtaining the license or appointment or in attempting to  
617 obtain the license or appointment.

618 (c)~~(3)~~ Failure to pass to the satisfaction of the  
619 department any examination required under this code.

620 (d)~~(4)~~ If the license or appointment is willfully used, or  
621 to be used, to circumvent any of the requirements or  
622 prohibitions of this code.

623 (e)~~(5)~~ Willful misrepresentation of any insurance policy  
624 or annuity contract or willful deception with regard to any such  
625 policy or contract, done either in person or by any form of  
626 dissemination of information or advertising.

627 (f)~~(6)~~ If, as an adjuster, or agent licensed and appointed  
628 to adjust claims under this code, he or she has materially  
629 misrepresented to an insured or other interested party the terms  
630 and coverage of an insurance contract with intent and for the  
631 purpose of effecting settlement of claim for loss or damage or  
632 benefit under such contract on less favorable terms than those  
633 provided in and contemplated by the contract.





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634        (g)~~(7)~~ Demonstrated lack of fitness or trustworthiness to  
635 engage in the business of insurance.

636        (h)~~(8)~~ Demonstrated lack of reasonably adequate knowledge  
637 and technical competence to engage in the transactions  
638 authorized by the license or appointment.

639        (i)~~(9)~~ Fraudulent or dishonest practices in the conduct of  
640 business under the license or appointment.

641        (j)~~(10)~~ Misappropriation, conversion, or unlawful  
642 withholding of moneys belonging to insurers or insureds or  
643 beneficiaries or to others and received in conduct of business  
644 under the license or appointment.

645        (k)~~(11)~~ Unlawfully rebating, attempting to unlawfully  
646 rebate, or unlawfully dividing or offering to divide his or her  
647 commission with another.

648        (l)~~(12)~~ Having obtained or attempted to obtain, or having  
649 used or using, a license or appointment as agent or customer  
650 representative for the purpose of soliciting or handling  
651 "controlled business" as defined in s. 626.730 with respect to  
652 general lines agents, s. 626.784 with respect to life agents,  
653 and s. 626.830 with respect to health agents.

654        (m)~~(13)~~ Willful failure to comply with, or willful  
655 violation of, any proper order or rule of the department or  
656 willful violation of any provision of this code.

657        (n)~~(14)~~ Having been found guilty of or having pleaded  
658 guilty or nolo contendere to a felony or a crime punishable by  
659 imprisonment of 1 year or more under the law of the United



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660 States of America or of any state thereof or under the law of  
661 any other country which involves moral turpitude, without regard  
662 to whether a judgment of conviction has been entered by the  
663 court having jurisdiction of such cases.

664 (o) ~~(15)~~ Fraudulent or dishonest practice in submitting or  
665 aiding or abetting any person in the submission of an  
666 application for workers' compensation coverage under chapter 440  
667 containing false or misleading information as to employee  
668 payroll or classification for the purpose of avoiding or  
669 reducing the amount of premium due for such coverage.

670 (p) ~~(16)~~ Sale of an unregistered security that was required  
671 to be registered, pursuant to chapter 517.

672 (q) ~~(17)~~ In transactions related to viatical settlement  
673 contracts as defined in s. 626.9911:

674 1. ~~(a)~~ Commission of a fraudulent or dishonest act.

675 2. ~~(b)~~ No longer meeting the requirements for initial  
676 licensure.

677 3. ~~(e)~~ Having received a fee, commission, or other valuable  
678 consideration for his or her services with respect to viatical  
679 settlements that involved unlicensed viatical settlement  
680 providers or persons who offered or attempted to negotiate on  
681 behalf of another person a viatical settlement contract as  
682 defined in s. 626.9911 and who were not licensed life agents.

683 4. ~~(d)~~ Dealing in bad faith with viators.

684 (2) The department shall, upon receipt of information or  
685 an indictment, immediately temporarily suspend a license or



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686 appointment issued under this chapter when the licensee is  
687 charged with a felony enumerated in s. 626.207(3). Such  
688 suspension shall continue if the licensee is found guilty of, or  
689 pleads guilty or nolo contendere to, the crime, regardless of  
690 whether a judgment or conviction is entered, during a pending  
691 appeal. A person may not transact insurance business after  
692 suspension of his or her license or appointment.

693 Section 18. Subsection (2) of section 626.641, Florida  
694 Statutes, is amended to read:

695 626.641 Duration of suspension or revocation.-

696 (2) No person or appointee under any license or  
697 appointment revoked by the department, nor any person whose  
698 eligibility to hold same has been revoked by the department,  
699 shall have the right to apply for another license or appointment  
700 under this code within 2 years from the effective date of such  
701 revocation or, if judicial review of such revocation is sought,  
702 within 2 years from the date of final court order or decree  
703 affirming the revocation. An applicant for another license or  
704 appointment pursuant to this subsection must apply and qualify  
705 for licensure in the same manner as a first-time applicant, and  
706 the application may be denied on the same grounds that apply to  
707 first-time applicants for licensure pursuant to ss. 626.207,  
708 626.611, and 626.621. In addition, the department shall not  
709 grant a new license or appointment or reinstate eligibility to  
710 hold such license or appointment if it finds that the  
711 circumstance or circumstances for which the eligibility was

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712 revoked or for which the previous license or appointment was  
713 revoked still exist or are likely to recur; if an individual's  
714 license as agent or customer representative or eligibility to  
715 hold same has been revoked upon the ground specified in s.  
716 626.611(1)(1) ~~626.611(12)~~, the department shall refuse to grant  
717 or issue any new license or appointment so applied for.

718 Section 19. Section 626.733, Florida Statutes, is amended  
719 to read:

720 626.733 Agency firms and corporations; special  
721 requirements.—If a sole proprietorship, partnership,  
722 corporation, or association holds an agency contract, all  
723 members thereof who solicit, negotiate, or effect insurance  
724 contracts, and all officers and stockholders of the corporation  
725 who solicit, negotiate, or effect insurance contracts, must ~~are~~  
726 ~~required to~~ qualify and be licensed individually as agents or  
727 customer representatives, + and all of such agents must be  
728 individually appointed as to each property and casualty insurer  
729 entering into an agency contract with such agency. Each ~~such~~  
730 ~~appointing insurer as seen as known to it~~ shall comply with this  
731 section and shall determine and require that each agent so  
732 ~~associated in or so connected~~ with such agency is likewise  
733 appointed as to the same such insurer and for the same type and  
734 class of license. However, an ~~no~~ insurer is not required to  
735 comply with the appointment provisions of this section for an  
736 agent within an agency who does not solicit, negotiate, or  
737 effect insurance contracts for that insurer ~~if such insurer~~

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738 ~~satisfactorily demonstrates to the department that the insurer~~  
739 ~~has issued an aggregate net written premium, in an agency, in an~~  
740 ~~amount of \$25,000 or less.~~

741 Section 20. Paragraphs (a) and (g) of subsection (1) of  
742 section 626.7355, Florida Statutes, are amended to read:

743 626.7355 Temporary license as customer representative  
744 pending examination.-

745 (1) The department shall issue a temporary customer  
746 representative's license with respect to a person who has  
747 applied for such license upon finding that the person:

748 (a) Has filed an application for a customer  
749 representative's license ~~or a limited customer representative's~~  
750 ~~license~~ and has paid any fees required under s. 624.501(5) in  
751 connection with such application for a customer representative's  
752 ~~license or limited customer representative's license.~~

753 (g) Is not disqualified from licensure by the department  
754 under s. 626.207. ~~Within the last 5 years, has not been~~  
755 ~~convicted, found guilty or pleaded nolo contendere to a felony~~  
756 ~~or a crime punishable by imprisonment of 1 year or more under~~  
757 ~~the law of any municipality, county, state, territory, or~~  
758 ~~country, whether or not a judgment of conviction has been~~  
759 ~~entered.~~

760 Section 21. Effective January 1, 2015, section 626.747,  
761 Florida Statutes, is repealed.

762 Section 22. Subsection (1) of section 626.7845, Florida  
763 Statutes, is amended to read:



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764 626.7845 Prohibition against unlicensed transaction of  
765 life insurance.—

766 (1) An individual may not solicit or sell variable life  
767 insurance, variable annuity contracts, or any other  
768 indeterminate value or variable contract as defined in s.  
769 627.8015, unless the individual has successfully completed a  
770 licensure examination relating to variable annuity contracts  
771 authorized and approved by the department.

772 Section 23. Effective January 1, 2015, subsection (1) of  
773 section 626.8411, Florida Statutes, is amended to read:

774 626.8411 Application of Florida Insurance Code provisions  
775 to title insurance agents or agencies.—

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

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

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

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

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

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

788 Section 24. Subsection (2) of section 626.861, Florida  
789 Statutes, is amended to read:



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790 626.861 Insurer's officers, insurer's employees,  
791 reciprocal insurer's representatives; adjustments by.—

792 (2) If any such officer, employee, attorney, or agent in  
793 connection with the adjustment of any such claim, loss, or  
794 damage engages in any of the misconduct described in or  
795 contemplated by s. 626.611(1)(f) ~~626.611(6)~~, the office may  
796 suspend or revoke the insurer's certificate of authority.

797 Section 25. Section 626.862, Florida Statutes, is amended  
798 to read:

799 626.862 Agents; adjustments by.—A licensed and appointed  
800 insurance agent may, without being licensed as an adjuster,  
801 adjust losses for the insurer represented by him or her as agent  
802 if so authorized by the insurer. The license and appointment of  
803 the agent may be suspended or revoked for violation of or  
804 misconduct prohibited by s. 626.611(1)(f) ~~626.611(6)~~.

805 Section 26. Subsection (2) of section 626.9272, Florida  
806 Statutes, is amended to read:

807 626.9272 Licensing of nonresident surplus lines agents.—

808 (2) The department may not issue a license unless the  
809 applicant satisfies the same licensing requirements under s.  
810 626.927 as required of a resident surplus lines agent, excluding  
811 the required experience or coursework and examination. The  
812 department may refuse to issue such license or appointment when  
813 it has reason to believe that any of the grounds exist for  
814 denial, suspension, or revocation of a license as set forth in  
815 ss. 626.611 and 626.621.



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816 Section 27. Section 627.4553, Florida Statutes, is created  
817 to read:

818 627.4553 Recommendations to surrender.—If an insurance  
819 agent recommends the surrender of an annuity or life insurance  
820 policy containing a cash value and does not recommend that the  
821 proceeds from the surrender be used to fund or purchase another  
822 annuity or life insurance policy, before execution of the  
823 surrender, the insurance agent, or insurance company if no agent  
824 is involved, shall provide, on a form that satisfies the  
825 requirements of the rule adopted by the department, information  
826 relating to the annuity or policy to be surrendered. Such  
827 information shall include, but is not limited to, the amount of  
828 any surrender charge, the loss of any minimum interest rate  
829 guarantees, the amount of any tax consequences resulting from  
830 the transaction, the amount of any forfeited death benefit, and  
831 the value of any other investment performance guarantees being  
832 forfeited as a result of the transaction. This section also  
833 applies to a person performing insurance agent activities  
834 pursuant to an exemption from licensure under this part.

835 Section 28. Paragraph (b) of subsection (4) of section  
836 627.7015, Florida Statutes, is amended to read:

837 627.7015 Alternative procedure for resolution of disputed  
838 property insurance claims.—

839 (4) The department shall adopt by rule a property  
840 insurance mediation program to be administered by the department  
841 or its designee. The department may also adopt special rules





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842 which are applicable in cases of an emergency within the state.  
843 The rules shall be modeled after practices and procedures set  
844 forth in mediation rules of procedure adopted by the Supreme  
845 Court. The rules shall provide for:

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

852 Section 29. Paragraph (c) of subsection (2) of section  
853 627.706, Florida Statutes, is amended to read:

854 627.706 Sinkhole insurance; catastrophic ground cover  
855 collapse; definitions.—

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

859 (c) "Neutral evaluator" means a professional engineer or a  
860 professional geologist who has completed a course of study in  
861 alternative dispute resolution designed or approved by the  
862 department for use in the neutral evaluation process, and who is  
863 determined by the department to be fair and impartial, and who  
864 is not otherwise ineligible for certification as provided in s.  
865 627.7074.

866 Section 30. Subsections (7) and (18) of section 627.7074,  
867 Florida Statutes, are amended to read:



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868           627.7074 Alternative procedure for resolution of disputed  
869 sinkhole insurance claims.—

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

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

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

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

883           3. The proposed neutral evaluator has, in a professional  
884 capacity, represented another person in the same or a  
885 substantially related matter and that person's interests are  
886 materially adverse to the interests of the parties. The term  
887 "substantially related matter" means participation by the  
888 neutral evaluator on the same claim, property, or adjacent  
889 property.

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



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

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

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

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

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

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

908           (c) ~~(b)~~ The parties shall appoint a neutral evaluator from  
909 the department list and promptly inform the department. If the  
910 parties cannot agree to a neutral evaluator within 14 business  
911 days, the department shall appoint a neutral evaluator from the  
912 list of certified neutral evaluators. The department shall allow  
913 each party to disqualify two neutral evaluators without cause.  
914 Upon selection or appointment, the department shall promptly  
915 refer the request to the neutral evaluator.

916           (d) ~~(e)~~ Within 14 business days after the referral, the  
917 neutral evaluator shall notify the policyholder and the insurer  
918 of the date, time, and place of the neutral evaluation



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919 conference. The conference may be held by telephone, if feasible  
920 and desirable. The neutral evaluator shall make reasonable  
921 efforts to hold the conference within 90 days after the receipt  
922 of the request by the department. Failure of the neutral  
923 evaluator to hold the conference within 90 days does not  
924 invalidate either party's right to neutral evaluation or to a  
925 neutral evaluation conference held outside this timeframe.

926 (18) The department shall adopt rules of procedure for the  
927 neutral evaluation process and adopt rules for certifying,  
928 denying certification of, suspending certification of, and  
929 revoking certification as a neutral evaluator.

930 Section 31. Subsection (3) of section 627.745, Florida  
931 Statutes, is amended, present subsections (4) and (5) of that  
932 section are renumbered as subsections (5) and (6), respectively,  
933 and a new subsection (4) is added to that section, to read:

934 627.745 Mediation of claims.—

935 (3)(a) The department shall approve mediators to conduct  
936 mediations pursuant to this section. All mediators must file an  
937 application under oath for approval as a mediator.

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

940 1. Possess an active certification as a Florida Supreme  
941 Court certified circuit court mediator. A Florida Supreme Court  
942 certified circuit court mediator in a lapsed, suspended,  
943 sanctioned, or decertified status is not eligible to participate  
944 in the mediation program a masters or doctorate degree in



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945 ~~psychology, counseling, business, accounting, or economics, be a~~  
946 ~~member of The Florida Bar, be licensed as a certified public~~  
947 ~~accountant, or demonstrate that the applicant for approval has~~  
948 ~~been actively engaged as a qualified mediator for at least 4~~  
949 ~~years prior to July 1, 1990.~~

950 2. Be an approved department mediator as of July 1, 2014,  
951 and have conducted at least one mediation on behalf of the  
952 department within 4 years immediately preceding that the date  
953 the application for approval is filed with the department, have  
954 completed a minimum of a 40-hour training program approved by  
955 the department and successfully passed a final examination  
956 included in the training program and approved by the department.  
957 The training program shall include and address all of the  
958 following:

- 959 a. Mediation theory.  
960 b. Mediation process and techniques.  
961 c. Standards of conduct for mediators.  
962 d. Conflict management and intervention skills.  
963 e. Insurance nomenclature.

964 (4) The department shall deny an application, or suspend  
965 or revoke its approval, of a mediator to serve in such capacity  
966 if the department finds that one or more of the following  
967 grounds exist:

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



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

972           (c) Demonstrated lack of fitness or trustworthiness to act  
973 as a mediator.

974           (d) Fraudulent or dishonest practices in the conduct of  
975 mediation or in the conduct of business in the financial  
976 services industry.

977           (e) Violation of any provision of this code or of a lawful  
978 order or rule of the department, violation of the Florida Rules  
979 of Certified and Court Appointed Mediators, or aiding,  
980 instructing, or encouraging another party in committing such a  
981 violation.

982

983 The department may adopt rules to administer this subsection.

984           Section 32. Paragraph (b) of subsection (1) of section  
985 627.952, Florida Statutes, is amended to read:

986           627.952 Risk retention and purchasing group agents.—

987           (1) Any person offering, soliciting, selling, purchasing,  
988 administering, or otherwise servicing insurance contracts,  
989 certificates, or agreements for any purchasing group or risk  
990 retention group to any resident of this state, either directly  
991 or indirectly, by the use of mail, advertising, or other means  
992 of communication, shall obtain a license and appointment to act  
993 as a resident general lines agent, if a resident of this state,  
994 or a nonresident general lines agent if not a resident. Any such



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995 person shall be subject to all requirements of the Florida  
996 Insurance Code.

997 (b) Any person required to be licensed and appointed under  
998 this subsection, in order to place business through Florida  
999 eligible surplus lines carriers, must, if a resident of this  
1000 state, be licensed and appointed as a surplus lines agent. If  
1001 not a resident of this state, such person must be licensed and  
1002 appointed as a surplus lines agent in her or his state of  
1003 residence and be licensed and appointed as a nonresident surplus  
1004 lines agent in this state ~~file and maintain a fidelity bond in~~  
1005 ~~favor of the people of the State of Florida executed by a surety~~  
1006 ~~company admitted in this state and payable to the State of~~  
1007 ~~Florida; however, such nonresident is limited to the provision~~  
1008 ~~of insurance for purchasing groups. The bond must be continuous~~  
1009 ~~in form and in the amount of not less than \$50,000, aggregate~~  
1010 ~~liability. The bond must remain in force and effect until the~~  
1011 ~~surety is released from liability by the department or until the~~  
1012 ~~bond is canceled by the surety. The surety may cancel the bond~~  
1013 ~~and be released from further liability upon 30 days' prior~~  
1014 ~~written notice to the department. The cancellation does not~~  
1015 ~~affect any liability incurred or accrued before the termination~~  
1016 ~~of the 30 day period. Upon receipt of a notice of cancellation,~~  
1017 ~~the department shall immediately notify the agent.~~

1018 Section 33. Subsection (1) of section 648.43, Florida  
1019 Statutes, is amended to read:



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1020 648.43 Power of attorney; to be approved by department;  
1021 filing of copies; notification of transfer bond.—

1022 (1) Every insurer engaged in the writing of bail bonds  
1023 through bail bond agents in this state shall submit to ~~and have~~  
1024 ~~approved by the office for prior approval department~~ a sample  
1025 power of attorney, which shall ~~will~~ be the only form of power of  
1026 attorney the insurer issues ~~will issue~~ to bail bond agents in  
1027 this state.

1028 Section 34. Subsection (3) of section 648.49, Florida  
1029 Statutes, is amended to read:

1030 648.49 Duration of suspension or revocation.—

1031 (3) During the period of suspension, ~~or after~~ revocation  
1032 of the license and until the license is reinstated or a new  
1033 license is issued, the former licensee may not engage in or  
1034 attempt to profess to engage in any transaction or business for  
1035 which a license or appointment is required under this chapter. A  
1036 ~~Any~~ person who violates this subsection commits a felony of the  
1037 third degree, punishable as provided in s. 775.082, s. 775.083,  
1038 or s. 775.084.

1039 Section 35. Paragraphs (a) and (c) of subsection (4) of  
1040 section 943.0585, Florida Statutes, are amended to read:

1041 943.0585 Court-ordered expunction of criminal history  
1042 records.—The courts of this state have jurisdiction over their  
1043 own procedures, including the maintenance, expunction, and  
1044 correction of judicial records containing criminal history  
1045 information to the extent such procedures are not inconsistent





## Amendment No. 1

1046 with the conditions, responsibilities, and duties established by  
1047 this section. Any court of competent jurisdiction may order a  
1048 criminal justice agency to expunge the criminal history record  
1049 of a minor or an adult who complies with the requirements of  
1050 this section. The court shall not order a criminal justice  
1051 agency to expunge a criminal history record until the person  
1052 seeking to expunge a criminal history record has applied for and  
1053 received a certificate of eligibility for expunction pursuant to  
1054 subsection (2). A criminal history record that relates to a  
1055 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
1056 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
1057 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
1058 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
1059 any violation specified as a predicate offense for registration  
1060 as a sexual predator pursuant to s. 775.21, without regard to  
1061 whether that offense alone is sufficient to require such  
1062 registration, or for registration as a sexual offender pursuant  
1063 to s. 943.0435, may not be expunged, without regard to whether  
1064 adjudication was withheld, if the defendant was found guilty of  
1065 or pled guilty or nolo contendere to the offense, or if the  
1066 defendant, as a minor, was found to have committed, or pled  
1067 guilty or nolo contendere to committing, the offense as a  
1068 delinquent act. The court may only order expunction of a  
1069 criminal history record pertaining to one arrest or one incident  
1070 of alleged criminal activity, except as provided in this  
1071 section. The court may, at its sole discretion, order the

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1072 expunction of a criminal history record pertaining to more than  
1073 one arrest if the additional arrests directly relate to the  
1074 original arrest. If the court intends to order the expunction of  
1075 records pertaining to such additional arrests, such intent must  
1076 be specified in the order. A criminal justice agency may not  
1077 expunge any record pertaining to such additional arrests if the  
1078 order to expunge does not articulate the intention of the court  
1079 to expunge a record pertaining to more than one arrest. This  
1080 section does not prevent the court from ordering the expunction  
1081 of only a portion of a criminal history record pertaining to one  
1082 arrest or one incident of alleged criminal activity.

1083 Notwithstanding any law to the contrary, a criminal justice  
1084 agency may comply with laws, court orders, and official requests  
1085 of other jurisdictions relating to expunction, correction, or  
1086 confidential handling of criminal history records or information  
1087 derived therefrom. This section does not confer any right to the  
1088 expunction of any criminal history record, and any request for  
1089 expunction of a criminal history record may be denied at the  
1090 sole discretion of the court.

1091 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
1092 criminal history record of a minor or an adult which is ordered  
1093 expunged by a court of competent jurisdiction pursuant to this  
1094 section must be physically destroyed or obliterated by any  
1095 criminal justice agency having custody of such record; except  
1096 that any criminal history record in the custody of the  
1097 department must be retained in all cases. A criminal history



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1098 record ordered expunged that is retained by the department is  
1099 confidential and exempt from the provisions of s. 119.07(1) and  
1100 s. 24(a), Art. I of the State Constitution and not available to  
1101 any person or entity except upon order of a court of competent  
1102 jurisdiction. A criminal justice agency may retain a notation  
1103 indicating compliance with an order to expunge.

1104 (a) The person who is the subject of a criminal history  
1105 record that is expunged under this section or under other  
1106 provisions of law, including former s. 893.14, former s. 901.33,  
1107 and former s. 943.058, may lawfully deny or fail to acknowledge  
1108 the arrests covered by the expunged record, except when the  
1109 subject of the record:

1110 1. Is a candidate for employment with a criminal justice  
1111 agency;

1112 2. Is a defendant in a criminal prosecution;

1113 3. Concurrently or subsequently petitions for relief under  
1114 this section, s. 943.0583, or s. 943.059;

1115 4. Is a candidate for admission to The Florida Bar;

1116 5. Is seeking to be employed or licensed by or to contract  
1117 with the Department of Children and Families, the Division of  
1118 Vocational Rehabilitation within the Department of Education,  
1119 the Agency for Health Care Administration, the Agency for  
1120 Persons with Disabilities, the Department of Health, the  
1121 Department of Elderly Affairs, or the Department of Juvenile  
1122 Justice or to be employed or used by such contractor or licensee



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1123 in a sensitive position having direct contact with children, the  
1124 disabled, or the elderly; ~~or~~

1125 6. Is seeking to be employed or licensed by the Department  
1126 of Education, any district school board, any university  
1127 laboratory school, any charter school, any private or parochial  
1128 school, or any local governmental entity that licenses child  
1129 care facilities; or

1130 7. Is seeking to be licensed by the Division of Insurance  
1131 Agent and Agency Services within the Department of Financial  
1132 Services.

1133 (c) Information relating to the existence of an expunged  
1134 criminal history record which is provided in accordance with  
1135 paragraph (a) is confidential and exempt from the provisions of  
1136 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
1137 except that the department shall disclose the existence of a  
1138 criminal history record ordered expunged to the entities set  
1139 forth in subparagraphs (a)1., 4., 5., 6., and 7. ~~7.~~ for their  
1140 respective licensing, access authorization, and employment  
1141 purposes, and to criminal justice agencies for their respective  
1142 criminal justice purposes. It is unlawful for any employee of an  
1143 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
1144 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7.  
1145 ~~subparagraph (a)7.~~ to disclose information relating to the  
1146 existence of an expunged criminal history record of a person  
1147 seeking employment, access authorization, or licensure with such  
1148 entity or contractor, except to the person to whom the criminal



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1149 history record relates or to persons having direct  
1150 responsibility for employment, access authorization, or  
1151 licensure decisions. Any person who violates this paragraph  
1152 commits a misdemeanor of the first degree, punishable as  
1153 provided in s. 775.082 or s. 775.083.

1154 Section 36. Paragraphs (a) and (c) of subsection (4) of  
1155 section 943.059, Florida Statutes, are amended to read:

1156 943.059 Court-ordered sealing of criminal history  
1157 records.—The courts of this state shall continue to have  
1158 jurisdiction over their own procedures, including the  
1159 maintenance, sealing, and correction of judicial records  
1160 containing criminal history information to the extent such  
1161 procedures are not inconsistent with the conditions,  
1162 responsibilities, and duties established by this section. Any  
1163 court of competent jurisdiction may order a criminal justice  
1164 agency to seal the criminal history record of a minor or an  
1165 adult who complies with the requirements of this section. The  
1166 court shall not order a criminal justice agency to seal a  
1167 criminal history record until the person seeking to seal a  
1168 criminal history record has applied for and received a  
1169 certificate of eligibility for sealing pursuant to subsection  
1170 (2). A criminal history record that relates to a violation of s.  
1171 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
1172 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
1173 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
1174 916.1075, a violation enumerated in s. 907.041, or any violation



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1175 specified as a predicate offense for registration as a sexual  
1176 predator pursuant to s. 775.21, without regard to whether that  
1177 offense alone is sufficient to require such registration, or for  
1178 registration as a sexual offender pursuant to s. 943.0435, may  
1179 not be sealed, without regard to whether adjudication was  
1180 withheld, if the defendant was found guilty of or pled guilty or  
1181 nolo contendere to the offense, or if the defendant, as a minor,  
1182 was found to have committed or pled guilty or nolo contendere to  
1183 committing the offense as a delinquent act. The court may only  
1184 order sealing of a criminal history record pertaining to one  
1185 arrest or one incident of alleged criminal activity, except as  
1186 provided in this section. The court may, at its sole discretion,  
1187 order the sealing of a criminal history record pertaining to  
1188 more than one arrest if the additional arrests directly relate  
1189 to the original arrest. If the court intends to order the  
1190 sealing of records pertaining to such additional arrests, such  
1191 intent must be specified in the order. A criminal justice agency  
1192 may not seal any record pertaining to such additional arrests if  
1193 the order to seal does not articulate the intention of the court  
1194 to seal records pertaining to more than one arrest. This section  
1195 does not prevent the court from ordering the sealing of only a  
1196 portion of a criminal history record pertaining to one arrest or  
1197 one incident of alleged criminal activity. Notwithstanding any  
1198 law to the contrary, a criminal justice agency may comply with  
1199 laws, court orders, and official requests of other jurisdictions  
1200 relating to sealing, correction, or confidential handling of

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1201 criminal history records or information derived therefrom. This  
1202 section does not confer any right to the sealing of any criminal  
1203 history record, and any request for sealing a criminal history  
1204 record may be denied at the sole discretion of the court.

1205 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
1206 history record of a minor or an adult which is ordered sealed by  
1207 a court of competent jurisdiction pursuant to this section is  
1208 confidential and exempt from the provisions of s. 119.07(1) and  
1209 s. 24(a), Art. I of the State Constitution and is available only  
1210 to the person who is the subject of the record, to the subject's  
1211 attorney, to criminal justice agencies for their respective  
1212 criminal justice purposes, which include conducting a criminal  
1213 history background check for approval of firearms purchases or  
1214 transfers as authorized by state or federal law, to judges in  
1215 the state courts system for the purpose of assisting them in  
1216 their case-related decisionmaking responsibilities, as set forth  
1217 in s. 943.053(5), or to those entities set forth in  
1218 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
1219 licensing, access authorization, and employment purposes.

1220 (a) The subject of a criminal history record sealed under  
1221 this section or under other provisions of law, including former  
1222 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
1223 deny or fail to acknowledge the arrests covered by the sealed  
1224 record, except when the subject of the record:

1225 1. Is a candidate for employment with a criminal justice  
1226 agency;



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- 1227           2. Is a defendant in a criminal prosecution;
- 1228           3. Concurrently or subsequently petitions for relief under  
1229 this section, s. 943.0583, or s. 943.0585;
- 1230           4. Is a candidate for admission to The Florida Bar;
- 1231           5. Is seeking to be employed or licensed by or to contract  
1232 with the Department of Children and Families, the Division of  
1233 Vocational Rehabilitation within the Department of Education,  
1234 the Agency for Health Care Administration, the Agency for  
1235 Persons with Disabilities, the Department of Health, the  
1236 Department of Elderly Affairs, or the Department of Juvenile  
1237 Justice or to be employed or used by such contractor or licensee  
1238 in a sensitive position having direct contact with children, the  
1239 disabled, or the elderly;
- 1240           6. Is seeking to be employed or licensed by the Department  
1241 of Education, any district school board, any university  
1242 laboratory school, any charter school, any private or parochial  
1243 school, or any local governmental entity that licenses child  
1244 care facilities; ~~or~~
- 1245           7. Is attempting to purchase a firearm from a licensed  
1246 importer, licensed manufacturer, or licensed dealer and is  
1247 subject to a criminal history check under state or federal law;  
1248 or
- 1249           8. Is seeking to be licensed by the Division of Insurance  
1250 Agent and Agency Services within the Department of Financial  
1251 Services.





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1252 (c) Information relating to the existence of a sealed  
 1253 criminal record provided in accordance with the provisions of  
 1254 paragraph (a) is confidential and exempt from the provisions of  
 1255 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 1256 except that the department shall disclose the sealed criminal  
 1257 history record to the entities set forth in subparagraphs (a)1.,  
 1258 4., 5., 6., and 8. ~~8.~~ for their respective licensing, access  
 1259 authorization, and employment purposes. It is unlawful for any  
 1260 employee of an entity set forth in subparagraph (a)1.,  
 1261 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
 1262 subparagraph (a)8. ~~subparagraph (a)8.~~ to disclose information  
 1263 relating to the existence of a sealed criminal history record of  
 1264 a person seeking employment, access authorization, or licensure  
 1265 with such entity or contractor, except to the person to whom the  
 1266 criminal history record relates or to persons having direct  
 1267 responsibility for employment, access authorization, or  
 1268 licensure decisions. Any person who violates the provisions of  
 1269 this paragraph commits a misdemeanor of the first degree,  
 1270 punishable as provided in s. 775.082 or s. 775.083.

1271 Section 37. Except as otherwise expressly provided in this  
 1272 act, this act shall take effect July 1, 2014.

1273

1274 -----

1275 T I T L E A M E N D M E N T

1276 Remove everything before the enacting clause and insert:

1277 A bill to be entitled



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1278 An act relating to the Division of Insurance Agents  
1279 and Agency Services; amending s. 20.121, F.S.;  
1280 revising the name of the division; amending s.  
1281 624.310, F.S.; revising service delivery methods;  
1282 amending s. 624.318, F.S.; prohibiting the removal of  
1283 specified original documents under certain conditions;  
1284 amending s. 624.501, F.S.; revising original  
1285 appointment and renewal fees related to certain  
1286 insurance representatives; amending s. 626.015, F.S.;  
1287 prohibiting new limited customer representative  
1288 licenses from being issued after a specified date;  
1289 defining the term "unaffiliated insurance agent";  
1290 amending s. 626.0428, F.S.; revising prohibitions  
1291 relating to binding insurance and soliciting  
1292 insurance; requiring a branch place of business to  
1293 have an agent in charge; authorizing an agent to be in  
1294 charge of more than one branch office under certain  
1295 circumstances; providing requirements relating to the  
1296 designation of an agent in charge; providing that the  
1297 agent in charge is accountable for misconduct and  
1298 violations committed by the licensee and any person  
1299 under his or her supervision; prohibiting an insurance  
1300 agency from conducting insurance business at a  
1301 location without a designated agent in charge;  
1302 providing for expiration of an agency license under  
1303 specified circumstances; amending s. 626.112, F.S.;



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1304 providing licensure exemptions that allow specified  
1305 individuals or entities to conduct insurance business  
1306 at specified locations under certain circumstances;  
1307 revising licensure requirements and penalties with  
1308 respect to registered insurance agencies; providing  
1309 that the registration of an approved registered  
1310 insurance agency automatically converts to an  
1311 insurance agency license on a specified date; amending  
1312 s. 626.171, F.S.; providing an exemption from certain  
1313 licensure application fees; amending s. 626.172, F.S.;;  
1314 revising requirements relating to applications for  
1315 insurance agency licenses; amending s. 626.207, F.S.;;  
1316 conforming a cross-reference; amending s. 626.241,  
1317 F.S.; revising the scope of the examination for a  
1318 limited agent; amending s. 626.261, F.S.; deleting a  
1319 provision requiring certain costs to be paid by  
1320 applicants who request licensure examinations in  
1321 Spanish; amending s. 626.311, F.S.; limiting the types  
1322 of business that may be transacted by certain agents;  
1323 amending s. 626.321, F.S.; providing that a limited  
1324 license to offer motor vehicle rental insurance issued  
1325 to a business that rents or leases motor vehicles  
1326 encompasses employees and authorized representatives  
1327 of such business; amending s. 626.382, F.S.; providing  
1328 that an insurance agency license continues in force  
1329 until canceled, suspended, revoked, terminated, or



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1330 expired; amending s. 626.601, F.S.; revising  
1331 terminology relating to investigations conducted by  
1332 the Department of Financial Services and the Office of  
1333 Insurance Regulation with respect to individuals and  
1334 entities involved in the insurance industry; amending  
1335 s. 626.611, F.S.; requiring the department to suspend  
1336 certain licenses and appointments; amending s.  
1337 626.641, F.S.; conforming a cross-reference; amending  
1338 s. 626.733, F.S.; revising applicability of certain  
1339 appointment provisions; amending s. 626.7355, F.S.;  
1340 revising qualifications for a temporary customer  
1341 representative's license; repealing s. 626.747, F.S.,  
1342 relating to branch agencies, agents in charge, and the  
1343 payment of additional county tax under certain  
1344 circumstances on a specified date; amending s.  
1345 626.7845, F.S.; revising a prohibition against  
1346 unlicensed transaction of life insurance; amending ss.  
1347 626.8411, 626.861, and 626.862, F.S.; conforming  
1348 cross-references; amending s. 626.9272, F.S.; revising  
1349 requirements for the licensure of nonresident surplus  
1350 lines agents; creating s. 627.4553, F.S.; requiring an  
1351 insurance agent who recommends the surrender of  
1352 certain annuity or life insurance to provide certain  
1353 information to the department; amending s. 627.7015,  
1354 F.S.; revising the rulemaking authority of the  
1355 department with respect to qualifications and



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1356 specified types of penalties covered under the  
1357 property insurance mediation program; amending s.  
1358 627.706, F.S.; revising the definition of the term  
1359 "neutral evaluator"; amending s. 627.7074, F.S.;  
1360 providing grounds for the department to deny an  
1361 application, or suspend or revoke approval of  
1362 certification, of a neutral evaluator; requiring the  
1363 department to adopt rules; amending s. 627.745, F.S.;  
1364 revising qualifications for approval as a mediator by  
1365 the department; providing grounds for the department  
1366 to deny an application, or suspend or revoke approval,  
1367 of a mediator; authorizing the department to adopt  
1368 rules; amending s. 627.952, F.S.; providing that  
1369 certain persons who are not residents of this state  
1370 must be licensed and appointed as nonresident surplus  
1371 lines agents in this state in order to engage in  
1372 specified activities with respect to servicing  
1373 insurance contracts, certificates, or agreements for  
1374 purchasing or risk retention groups; deleting a  
1375 fidelity bond requirement applicable to certain  
1376 nonresident agents who are licensed as surplus lines  
1377 agents in another state; amending s. 648.43, F.S.;  
1378 revising requirements for the submission of a power of  
1379 attorney; amending s. 648.49, F.S.; revising  
1380 provisions relating to the duration of suspension or  
1381 revocation of a license; amending ss. 943.0585 and



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1382 943.059, F.S.; prohibiting persons seeking to be  
1383 licensed by the Division of Insurance Agent and Agency  
1384 Services from denying or failing to acknowledge  
1385 certain expunged or sealed records; conforming cross-  
1386 references; providing effective dates.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 673 Financial Institutions  
**SPONSOR(S):** Broxson  
**TIED BILLS:** HB 675 **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

The bill makes a number of changes to the Codes:

- Amends the definition of "related interest" to remove the person's family and household members, for purposes of lending limits and certain reporting requirements;
- Expands the OFR's authority over affiliates and related interests;
- Enhances the OFR's enforcement authority (injunctions, administrative fines, and disapproval authority over proposed officers and directors);
- Enhances the Codes' provisions regarding money laundering and includes provisions regarding terrorist financing;
- Clarifies the OFR's examination authority;
- Clarifies permissible activities for out-of-state financial institutions and parameters for trust business;
- Provides that privilege is not waived in a legal proceeding by providing documents pursuant to an examination or investigation, and creates procedures for trade secret claims;
- Provides competitive equality to Florida-chartered credit unions by expanding allowances for branching, employee benefit plans, and specified insurance benefits plans for their officers and directors;
- Provides competitive equality to Florida-chartered banks by clarifying that Codes' par value requirement only applies to the settlement of checks between institutions, and provides that institutions may charge fees to cash checks;
- Repeals the current \$50,000 loan cap in the Codes;
- Eliminates the \$2,000 annual assessment for certain international bank offices.

The bill does not have a fiscal impact on state or local government. The bill may have a positive fiscal impact on the private financial sector by allowing Florida-chartered banks to charge check-cashing fees to non-customers, but may result in more fees for consumers if they are not customers of these banks.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules.<sup>1</sup> The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Associations
- Chapter 667, F.S. – Savings Banks

As of October 2013, the Division of Financial Institutions licenses and regulates 249 state-chartered financial institutions.<sup>2</sup>

- 139 banks
- 71 credit unions
- 27 international bank offices
- 12 trust companies

The OFR does not regulate national banks and banks that are chartered and regulated in other states:

- *National banks* are chartered under federal law, i.e., the National Bank Act. Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
  - With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.<sup>3</sup> Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over *savings banks and savings and loans associations*, in addition to nationally-chartered banks.
- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered.
  - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
  - The primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).<sup>4</sup>
- *Federal credit unions* are chartered under the Federal Credit Union Act of 1934. Their primary federal regulator is the National Credit Union Administration (NCUA), which also operates and manages the National Credit Union Share Insurance Fund, which insures deposits for account holders in all federal credit unions and most state-chartered credit unions.<sup>5</sup>

<sup>1</sup> Chapters 69U-100 through 69U-150, Florida Administrative Code.

<sup>2</sup> OFR bill analysis of HB 673 (received February 4, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>3</sup> 12 U.S.C. §5412-5413.

<sup>4</sup> 12 U.S.C. §1813(q).

<sup>5</sup> NCUA Share Information Fund Information, Reports, and Statements: <http://www.ncua.gov/DataApps/Pages/SI-FAQs.aspx> (last accessed February 22, 2013).

- *International banking entities* enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of chapter 663 of the Codes. Chapter 663 of the Codes set forth a variety of business models, each of which must be separately licensed by the OFR and abide by the permissible activities accorded to each license type.

The OFR ensures all of these Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. While the Codes do not specifically define "safety and soundness," the Codes define "unsafe and unsound practice" as:

[A]ny practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.<sup>6</sup>

*Background: Competitive Equality & Preemption*

The U.S. dual regulatory system of financial institutions is premised on two related doctrines - the competitive equality doctrine and federal preemption. The competitive equality doctrine essentially states that national banks are subject to state laws with regards to their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.<sup>7</sup>

However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to *national* banks is subject to the preemption doctrine. By operation of the U.S. Constitution's Supremacy Clause,<sup>8</sup> federal regulation of a particular subject preempts state regulation related to the same subject. In *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), for instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance, preempted a Florida statute which prohibited such sales. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for "conflict preemption" articulated in the *Barnett Bank* decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise of the national bank's powers.<sup>9</sup>

It is noted that the Codes contain a unique provision that ensures competitive equality for *Florida-chartered* financial institutions. If a state law places a Florida financial institution at a competitive disadvantage with national banks, Section 655.061, F.S., authorizes the OFR to grant Florida financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were federally chartered, and provides they are entitled to the same privileges and protections granted to their federally chartered counterparts. In addition, this provision states:

In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.<sup>10</sup>

<sup>6</sup> Section 655.005(1)(y), F.S.

<sup>7</sup> *National Bank v. Commonwealth*, 9 Wall. 353, 362, 19 L.Ed. 701(1870).

<sup>8</sup> U.S. Const., Art. VI, cl. 2.

<sup>9</sup> 12 U.S.C. §25b(b)(1).

<sup>10</sup> The OFR's orders of general application are publicly available on its agency website.

<https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx> (last accessed February 13, 2014).

### **Lending limits and related interests**

According to OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure equitable access to banking services.<sup>11</sup>

Florida-chartered banks are also subject to lending limits in the Codes:

- **General limitations:** a bank may extend unsecured credit to any person up to 15% of its capital accounts, and up to 25% of its capital accounts for secured credit. For the latter, the Codes specify that the 25% limitation must include the borrower's "related interests."<sup>12</sup>
  - If the bank's total extension of credit to any person (including his or her related interests) exceed 15% of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance.
- **Loans to executive officers, directors, and related interests:** banks are prohibited from extending credit of more than \$25,000 to any of its executive officers and directors (and their related interests), unless the majority of the board of directors have approved the loan in advance.

To the extent state lending limits are lower than those provided in Regulation O for state banks that are members of the Federal Reserve System, Reg O provides that the state lending limits control.<sup>13</sup> Currently, s. 655.005(1)(t), F.S., defines "related interest" as:

[W]ith respect to any person, *the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person.* With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

1. Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;
2. Controls in any manner the election of a majority of the directors of the organization; or
3. Has the power to exercise a controlling influence over the management or policies of the organization (emphasis added).

In 2011, the Legislature enacted legislation amending the Codes.<sup>14</sup> Prior to 2011, "related interest" was defined within the context of credit unions' loan powers<sup>15</sup> and lending limits for state banks,<sup>16</sup> and was limited to only any partnership, corporation, or other business organization controlled by a person. As a result of the 2011 legislation, "related interest" was moved to s. 655.005(1)(t), F.S., as a general definition, and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System. Regulation O does state that a principal shareholder is a person with 10% or more of a bank's voting securities, and accounts for shares owned by that person's "immediate family." However, Reg O only considers the person's spouse, minor children, and the person's children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

"Related interest" also appears in other provisions of the Codes:

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<sup>11</sup> 12 C.F.R. 32.1(b)

<sup>12</sup> Section 658.48(1)(a), F.S.

<sup>13</sup> 12 C.F.R. 215.2(i), footnote 2.

<sup>14</sup> Ch. 2011-194, L.O.F.

<sup>15</sup> Section 657.038, F.S.

<sup>16</sup> Section 658.48, F.S.

- *Required notice for significant events:* The Codes require financial institutions to provide a written disclosure for certain significant events, including any credit extension to an institution's executive officer and his or her *related interests*, that when combined with all other extensions of credit to that officer, exceed 15% of the institution's capital accounts.<sup>17</sup>
- *Stock subscriptions:* Newly formed financial institutions must provide the OFR with a list of subscribers of the capital stock of a proposed bank or trust company, following the completion of a stock offering. The Codes require that the directors provide information to the OFR regarding persons subscribing to 10% or more of the voting stock or nonvoting convertible stock. This 10% threshold must include the person's *related interests*.<sup>18</sup>
- *Changes in capital:* The Codes require banks and trust companies to provide notice to the OFR upon specified changes in capital. In certain situations where capital accounts have been diminished below regulatory requirements and the bank or trust company cannot reasonably replenish its capital, the Codes permit special stock offering plans subject to OFR's approval. The Codes provide that the OFR shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their *related interests*.<sup>19</sup>

Section 1 of the bill amends the definition of "related interest" to remove the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person from the definition. The bill provides that "related interest" applies to an individual, company, partnership, corporation, or other business organization that engages in a "common business enterprise" with a person, and sets forth criteria for finding that a "common business enterprise" exists.

### **Affiliates**

Currently, the Codes prohibit certain acts and practices of any "financial institution-affiliated party," which is defined as:

1. A director, officer, employee, or controlling stockholder, other than a financial institution holding company, of, or agent for, a financial institution, subsidiary, or service corporation;
2. Any other person who has filed or is required to file a change-of-control notice with the appropriate state or federal regulatory agency;
3. A stockholder, other than a financial institution holding company, a joint venture partner, or any other person as determined by the office who participates in the affairs of a financial institution, subsidiary, or service corporation; or
4. An independent contractor, including an attorney, appraiser, consultant, or accountant, who knowingly or recklessly participates in:
  - a. A violation of any law or regulation;
  - b. A breach of fiduciary duty; or
  - c. An unsafe and unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution, subsidiary, or service corporation.<sup>20</sup>

A violation of these prohibited acts and practices, which include various acts of fraud and self-dealing regarding a financial institution, constitute a third-degree felony.<sup>21</sup> In addition, the Codes set forth requirements for financial institution-affiliated parties regarding conflicts of interest, disclosure of personal interest, and restrictions on remuneration, participation in the assets and liabilities of a financial institution, and voting rights.<sup>22</sup> These provisions reinforce the fiduciary duty owed by financial institution-affiliated parties to their principals.

<sup>17</sup> Section 658.945(2)(a)5., F.S.

<sup>18</sup> Section 658.235(2), F.S.

<sup>19</sup> Section 658.36(3)(c), F.S.

<sup>20</sup> Section 655.005(1)(j), F.S.

<sup>21</sup> Section 655.0322, F.S.

<sup>22</sup> Section 655.0386, F.S.

Section 2 of the bill amends s. 655.0322, F.S., to include “affiliates” and “related interest” within the scope of persons subject to the Codes’ prohibited acts and practices. According to the OFR, this language is necessary to capture prohibited acts and practices that are committed by affiliates and related interests.<sup>23</sup>

The Codes define “affiliate” as “a holding company of a financial institution established pursuant to state or federal law, a subsidiary or service corporation of such holding company, or a subsidiary or a service corporation of a financial institution.”<sup>24</sup> As discussed above, Section 1 of this bill amends the current definition of “related interest.”

### ***OFR enforcement powers***

#### ***Injunctions***

Currently, the Codes authorize the OFR to pursue injunctive relief in circuit court whenever a “threatened and impending” violation of the Codes “will cause substantial injury to a state financial institution or its depositors, members, creditors, or stockholders.”<sup>25</sup>

Section 3 of the bill adds language to this injunction authority to provide that a violation of a “formal enforcement action” will also allow the circuit court to have jurisdiction to hear the complaint. The bill defines a “formal enforcement action.” Further, this bill removes language that required that the violation will cause substantial injury to members of the financial institution system, and adds language stating that the circuit court has jurisdiction to issue an injunction in order to protect the public’s interest in the safety and soundness of the financial institution system.

#### ***Disapproval of directors and executive officers***

Currently, the Codes require financial institutions to notify the OFR of proposed changes to a board of directors or to the institution’s executive officers, and authorize the OFR to issue a notice of disapproval if the proposed appointment or employment is “not in the best interests of the depositors, the members, or the public.”<sup>26</sup>

Section 5 of the bill adds language to the provision to prohibit a director or executive officer of a state financial institution or affiliate from concurrently serving as a director or officer in a nonaffiliated financial institution or affiliate in the same geographical area or the same major business market area, unless waived by the OFR. According to the OFR, this language is needed to clarify the nature of, and to prohibit, management interlocks between financial institutions (e.g., the same individual serving at different financial institutions in the same market).<sup>27</sup>

#### ***Administrative fines***

Currently, the Codes authorize the OFR to impose administrative fines against any person found to have violated the Codes or any cease and desist order or any written agreement with the OFR. The amounts of the fines range from \$2,500 a day to \$50,000 a day depending on the egregiousness, intent, and level of harm resulting from the violation to financial institutions, subsidiaries, or service corporations.

Section 6 of the bill amends this provision to:

- Provide a violation of any rules adopted under the Code is also a ground for the OFR to seek administrative fines,
- Provides that a violation of any OFR order (and not just cease and desist orders) is a basis for administrative fines.

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<sup>23</sup> Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>24</sup> Section 655.005(1)(a), F.S.

<sup>25</sup> Section 655.034, F.S.

<sup>26</sup> Section 655.0385, F.S.

<sup>27</sup> Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.

- Clarifies that the loss resulting from a violation affects affiliates.
- Expands the persons that the OFR may seek fines against.
- Adds language to provide that where there is a violation of an office order or written agreement, fines begin accruing immediately upon the service of a complaint and will continue to do so until the violation is corrected.

#### *Banking business by unauthorized persons*

Currently, the Codes prohibit any person, other than an authorized state or federal financial institution, from engaging in the business of soliciting or receiving funds for deposit, issuing certificates of deposit, or paying checks; a violation of this provision is a third-degree felony. In addition, only financial institutions are authorized to represent themselves to the public as a bank, credit union, trust company, and so on through business names and general advertising. The OFR is authorized to enjoin these violations.<sup>28</sup>

Section 14 of the bill adds language prohibiting financial institutions from using a name that may mislead consumers or cause confusion as to the identification of the proper legal business entity. It further adds language that says that the OFR may seek a circuit court order for the annulment or dissolution of a corporation found violating any provision of this section, and also issue and serve an emergency cease and desist order. It also adds that the OFR is not required to determine the consequences that a violation of this section may cause.

#### **Examinations, records, and trade secret documents**

##### *Examinations*

Currently, the OFR is required to examine every state financial institution “during each 18-month period,” although it may conduct more frequent examinations based on an institution’s risk profile, examination history, or significant changes. The OFR is authorized to coordinate with their federal regulatory counterparts on examinations of state institutions, and may accept a federal regulator’s examinations.<sup>29</sup>

Section 7 of the bill amends s. 655.045, F.S., to clarify that the OFR must conduct examinations “at least every 18 months.” Furthermore, the bill adds language that says, beginning July 1, 2014, the office shall conduct joint or concurrent examinations at least once every 36 months. According to the OFR, this language is needed to coordinate and harmonize the scheduling of bank examinations with their federal regulatory counterparts,<sup>30</sup> including the ability to alternate examinations with the federal regulators and to retain control over the content of examination reports.

##### *Records*

Section 655.057, F.S., contain various public records exemptions for information held by the OFR relating to investigations and examinations. In addition, this provision contain recordkeeping requirements and provide for the protection of confidential information used in litigation.

Section 8 of the bill provides the following changes that do not involve exemptions from the Sunshine Law:

- It adds language that says that a person providing information to the OFR pursuant to an investigation, examination, visitation, or other supervisory activity is not considered a waiver of privilege or other legal rights in certain proceedings.<sup>31</sup>

<sup>28</sup> Section 655.922, F.S.

<sup>29</sup> Section 655.045, F.S.

<sup>30</sup> Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>31</sup> It is noted that s. 90.507, F.S., of the Florida Evidence Code provides that a privilege against the disclosure of a confidential matter or communication waives such privilege if the person *voluntarily* discloses or makes the communication when he or she does not have a reasonable expectation or privacy, or *consents* to disclosure of, any significant part of the matter or communications. In addition, federal financial regulators have consistently taken the view that because they can compel privileged information pursuant to their supervisory authority (including the use of subpoenas), submission of privilege information to a supervisory authority is not voluntary

- Further, it removes language that says that both credit unions and mutual associations keep full records of all their members in their principal office where their business is transacted, thereby allowing such information to be held elsewhere.
- This bill adds language that clarifies who has the right to copy membership or shareholder records.

### *Trade secret documents*

Currently, the Codes do not contain a public records exemption for trade secret documents held by the OFR. However, House Bill 675 (2014), the public records bill linked to this bill, creates a public records exemption for certain examination documents containing “proprietary business information that is a trade secret, as defined in s. 655.059(2).”

Section 9 creates s. 655.0591, F.S., to establish a procedure for persons required to submit documents to the OFR pursuant to the Codes and who claim such documents contain trade secrets. The bill requires that a notice of trade secret be filed with the OFR when submission of documents contains trade secrets, and that failure to file a notice is considered a waiver of any claim that the information is a trade secret. Moreover, the submitting party will have to include an affidavit certifying under oath to the truth of statements contained within this section. It further provides rules which state whether a document certified as a trade secret may or may not be disclosed.<sup>32</sup>

### ***Florida Control of Money Laundering in Financial Institutions Act***

Section 655.50, F.S., is the Florida Control of Money Laundering in Financial Institutions Act, which incorporates federal recordkeeping and reporting requirements for financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties for violations.

These requirements are enforced at the federal level by 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.”<sup>33</sup> 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.”<sup>34</sup> 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 file suspicious activity reports that might signify money laundering, tax evasion, or other criminal activities.

Additionally, the *Office of Foreign Assets Control (OFAC)*, another bureau housed within the U.S. Treasury, administers and enforces economic sanctions and embargoes against targeted countries and groups of individuals engaging in terrorism, narcotics trafficking, and other threats to the national security, foreign policy or economic interests of the United States.<sup>35</sup> OFAC regulations prohibit financial institutions from doing businesses with individuals owned or controlled by, or acting for or on behalf of, targeted countries and groups that are Specially Designated Nationals.

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and therefore does not result in a privilege waiver. *See Confidential Treatment of Privileged Information*, 77 FR 39617, 39619 (Jul. 5, 2012) (codified at 12 C.F.R. part 1070, subpart D).

<sup>32</sup> It is noted that Section 624.4213, F.S., of the Insurance Code currently contains a nearly identical statute regarding trade secrets for information submitted to the Department of Financial Services or the Office of Insurance Regulation that the submitting person claims contains a trade secret.

<sup>33</sup> FinCEN, “What We Do,” at [http://www.fincen.gov/about\\_fincen/wwd/](http://www.fincen.gov/about_fincen/wwd/) (last accessed January 21, 2014).

<sup>34</sup> FinCEN, “FinCEN’s Mandate from Congress / Bank Secrecy Act,” at [http://www.fincen.gov/statutes\\_regs/bsa/](http://www.fincen.gov/statutes_regs/bsa/) (last accessed January 21, 2014).

<sup>35</sup> U.S. Department of the Treasury, About Office of Financial Assets Control: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> (last accessed February 12, 2014).

Section 10 amends the Florida Control of Money Laundering in Financial Institutions Act to include BSA/AML provisions relating to terrorist financing which were enacted by the USA PATRIOT Act of 2001. It also adds language that says a financial institution must have a BSA/AML compliance officer that is responsible for the institution's policies and procedures relating to certain federal and state rules. Further, it adds that the board of directors of the financial institution is responsible for the efficacy of the BSA/AML program. It also creates a definition for the term "suspicious activity," adding that a suspicious activity report made under this section is entitled to the same confidentiality provided under the BSA/AML regulations.<sup>36</sup>

Sections 4, 19, 20, 22, 23, 25, 27, 28, 30, and 31 of the bill provide conforming changes as a result of the changes made by Section 10 of this bill.

### **Par Value/Settlement of Checks**

Since 1992, the Codes have required banks to settle checks "at par," or at face value.<sup>37</sup> This means that if an individual presented a check made out to him for \$300 to any bank in Florida, the bank is required to provide \$300 in funds.

In the past several years, this provision has engendered significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved two main claims – 1) federal preemption and 2) whether the statute's limitations on fees apply to bank-to-bank transactions,<sup>38</sup> or to the cashing of personal checks.

- Vida Baptista ("Baptista"), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While the check was written by a Chase account holder, Baptista was not a Chase account holder, and was accordingly charged a \$6 fee by Chase to cash the check immediately. Baptista brought a class action lawsuit against Chase in federal court, asserting the fee violated s. 655.85, F.S. The federal court held that s. 655.85, F.S. applied to fees on personal checks presented by the payee in person. However, in applying the *Barnett Bank/Dodd-Frank* preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.<sup>39</sup>

The OCC, empowered by the National Bank Act to adopt bank regulations, authorizes national banks to "charge its customers non-interest charges and fees."<sup>40</sup> The OCC has interpreted "customer" to include "any person who presents a check for payment."<sup>41</sup> In light of the OCC's interpretation, the federal court held that *national banks* are not bound by the Florida statute disallowing fees to cash checks in person.<sup>42</sup>

- Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC and was charged a \$5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal reached the opposite conclusion from the federal courts' decision in the *Baptista v. Chase* lawsuit, and found that a statute was not preempted. The court held that an out-of-state state-chartered bank was not

<sup>36</sup> 31 C.F.R. s. 1020.320 (reports by banks of suspicious transactions).

<sup>37</sup> Section 655.85, F.S. This provision was enacted in 1992. Section 52, ch. 92-303, L.O.F.

<sup>38</sup> The Federal Reserve System operates a nationwide check-clearing system to facilitate the collection and settlement of checks between paying and collecting banks.

<sup>39</sup> 12 U.S.C. § 24 (Seventh).

<sup>40</sup> 12 C.F.R. § 7.4002(a).

<sup>41</sup> Cited in *Wells Fargo Bank of Texas, NA v. James*, 321 F.3d 488 (5th Cir.C.A 2003) (holding that Texas par value statute was preempted by the National Bank Act).

<sup>42</sup> *Vida Baptista v. JPMorgan Chase Bank*, 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista's petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.*, 132 S.Ct. 253 (2011).



permitted to charge check-cashing fees under the statute.<sup>43</sup> Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.

Curiously, in an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S. was preempted by federal law.<sup>44</sup> However, when presented with PNC Bank (North Carolina-chartered bank operating in Florida) in the *Baptista* case, the court did not discuss the applicability of the 1997 federal Riegle-Neal Amendments<sup>45</sup> to PNC Bank. This federal legislation gives out-of-state state-chartered banks that operate in multiple states to enjoy the same benefits of federal preemption as national banks.

- On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both *Baptista* cases.<sup>46</sup> Following the 11<sup>th</sup> Circuit Court of Appeal's decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to *both* national banks and out-of-state state-chartered banks. The court declined to follow the Fifth DCA's opinion to the extent that the Fifth DCA held s. 655.85, F.S. was not preempted,<sup>47</sup> and applied the Riegle-Neal Amendments in favor of Regions Bank. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks.

These decisions do not affect the statute's prohibition on *Florida-chartered* banks to charge check-cashing fees, because banks must follow the laws and regulations of their chartering authority.

#### *Effect of the bill on the par value statute*

Section 11 of the bill amends s. 655.86, F.S., to provide that financial institutions must settle checks at par, but overrides the Fifth DCA's decision in *Baptista* to provide that this requirement only applies to the settlement of checks between banks, not between banks and customers. The bill provides that banks are not prohibited from charging fees to cash checks presented by payees in person, and thus provides consistency with the federal decisions discussed above. This will provide consistency with the federal laws permitting national banks and out-of-state state-chartered banks operating in Florida to charge check-cashing fees, and will also place Florida-chartered banks on equal footing with national and other state-chartered banks.

Section 12 of the bill provides a statement of legislative intent for Section 11, indicating that the changes clarify the relevant portions of the Codes, relating to the fees imposed by financial institutions.

#### **Credit Unions**

##### *Authority to establish or relocate branch offices of a Florida credit union*

Currently, s. 657.008, F.S., allows Florida credit unions to establish or relocate branch offices only if the credit union is operating in a safe and sound manner, if its board has determined that such branches is reasonably necessary to furnish service to its members, and if the credit union has provided 30 days' prior written notification to the OFR. Thus, Florida credit unions that do not meet these criteria cannot establish or relocate branch offices, even if the establishment or relocation of a branch would be in the best interests of the credit union and its members. This has placed Florida credit unions at a competitive disadvantage with their federally chartered counterparts, who are permitted under the Federal Credit Union Act and the National Credit Union Administration's regulations to establish or relocate branches simply if its directors determine that such action would be in the best interest of the federal credit union's members.

<sup>43</sup> *Vida Baptista v. PNC, N.A.*, 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), cert. denied, 133 S.Ct. 895 (2013).

<sup>44</sup> *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).

<sup>45</sup> 12 U.S.C. § 1831a(j)1.

<sup>46</sup> *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).

<sup>47</sup> Id. at footnote 4. See also *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (holding that federal courts are "not bound by state court interpretations" of federal law).

In 2008, the OFR issued an Order of General Application (OGA) to authorize Florida credit unions (that were ineligible for the written notification process) to apply to establish or relocate branch offices if their boards of directors determined such branches were reasonably necessary, was in the best interest of the credit union and its members, and was consistent with all business and regulatory compliance matters for safety and soundness considerations. The OGA also set forth required information for applications for authority to establish or relocate branch offices of a Florida credit union.<sup>48</sup>

Section 15 amends s. 657.008, F.S., to provide a statutory measure for what the OGA permitted for Florida credit union branching. It provides under what conditions a credit union may maintain branches without requiring prior OFR examination and approval. It adds language that provides requirements, and criteria for approval, for a credit union office examination and approval before establishing or relocating a branch.

#### *Activities of directors, officers, committee members, employees, and agents of credit unions*

Currently, the Codes grant the OFR with general authority to disapprove proposed directors or officers at any Florida financial institution "if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the state financial institution."<sup>49</sup> Additionally, s. 657.028, F.S., sets forth specific grounds that disqualify proposed officers, directors, or committee members from serving at a Florida credit union, such as specified criminal convictions.

Section 16 of the bill amends s. 657.028, F.S., to add a criterion relating to whether a person may serve in an official capacity with a credit union. The bill provides having default on a debt or obligation to a financial institution which results in a material loss to the financial institution is a ground for disapproval. This section also makes technical drafting changes and conforms s. 657.028 to the changes made by section 10 of the bill, regarding the Money Laundering and Terrorist Financing Act.

#### *Employee benefit plans for Florida credit unions*

Currently, Florida credit unions are permitted to exercise the general powers granted to corporations, so long as those powers are not limited by the Codes.<sup>50</sup> Accordingly, to the extent not in conflict with the Codes, a Florida credit union could "pay pensions and establish pension plans...and benefit or incentive plans for any or all of its current or former directors, officers, [and] employees."<sup>51</sup> However, while the Codes specify for permissible investments that Florida credit unions may hold, the Codes currently do not have an exception for investments in credit union employee benefit plans and limits the insurance coverage that a Florida credit union may provide its directors, officers, and employees to "any liability arising out of such person's capacity or status with the credit union."<sup>52</sup> Additionally, the Codes prohibit elected officers and directors of Florida credit unions from receiving compensation for their services, but do not define "compensation" for these "voluntary" officials. In contrast, NCUA regulations permit federal credit unions to provide certain types of insurance and employee benefits (including retirement benefits) to their officials, and excludes certain types of insurance from the definition of "compensation" as applied to federal credit unions. This has placed Florida credit unions at a competitive disadvantage, particularly in terms of their ability to attract and retain experienced and qualified executive officials and employees due to the lack of a parallel allowance in the Codes.

In 2010, the OFR issued an OGA to authorize Florida credit unions to make investments for employee benefit plans and to fund premiums for health and long-term care insurance benefit plans, so long as these plans are reasonable in light of the credit union's size and financial condition and the employee's duties; do

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<sup>48</sup> OFR Order of General Application, *In Re: Applications for Authority to Establish or Relocate a Branch Office of a Florida State-Chartered Credit Union* (issued Aug. 21, 2008), on file with the Insurance & Banking Subcommittee staff.

<sup>49</sup> Section 655.0385(3), F.S.

<sup>50</sup> Sections 607.0302 and 657.03(1), F.S.

<sup>51</sup> Section 607.0302(15), F.S.

<sup>52</sup> Section 657.041(2), F.S.

not create a unsafe or unsound condition for the credit union; comply with all applicable Florida and federal law; and are approved by the boards and by the OFR before the benefit plan is implemented.<sup>53</sup>

Section 17 of the bill amends s. 657.041, F.S., to provide a statutory measure for what the OGA has permitted for employee benefit plans and specified insurance benefit plans. It adds language which permits, with prior approval of the credit union and the office, to pay health and accident insurance premiums and to fund employee benefit plans under certain circumstances. Such coverage will cease upon the insured person's leaving office without residual benefits other than from pending claims.

## **Miscellaneous**

### *Permissible activities for out-of-state financial institutions*

Section 13 amends s. 655.921, F.S., to provide that out-of-state financial institutions may file suit in any state court to collect a security interest in collateral without being subject to the Codes. According to the OFR, this provision is to clarify permissible activities for out-of-state trust companies and business trusts, since this statute is focused on general banking issues. Although the bill does not define "business trust," chapter 609, F.S. addresses common-law declarations of trust (which are also known as business trusts or Massachusetts trusts), which are often used to securitize mortgages for the secondary market and a financial institution is often designated as the trustee.<sup>54</sup> Section 609.05, F.S. requires an entity organized under ch. 609, F.S. to obtain a permit from the OFR before any person may offer to sell a unit or share of such trust. However, ch. 609, F.S. is generally written in the context of entities organized under Florida law, and does not address business trusts organized under the laws of other states.<sup>55</sup>

The bill clarifies the Codes to provide that out-of-state business trusts that own pools of mortgages and pursue foreclosure actions in Florida courts are not considered to be engaging in trust business in Florida.<sup>56</sup>

### *Trust business*

Section 18 amends the definition of "trust business" in s. 658.12, F.S., to provide that trust business means acting as a fiduciary for compensation that the office does not consider to be "de minimis." The OFR has indicated that it has receive inquiries on behalf of individuals engaging in estate and trust planning activities whereby fiduciaries serve as trustees with only minimal compensation and expense reimbursement. In these situations, the OFR has opined that such individuals are not engaging in the trust business as professional fiduciaries, and the bill's language provides clarification to that effect.<sup>57</sup>

### *Bank loans not exceeding \$50,000*

Section 21 repeals s. 658.49, F.S., which currently authorizes banks to lend or to extend credit up to \$50,000 in principal, to charge simple interest up to 18%, computed in accordance with the usury statute, and to collect specified charges and costs.<sup>58</sup> According to the Florida Bankers Association (FBA), national banks are not subject to the same lending limitation,<sup>59</sup> which raises a competitive equality issue for Florida-chartered banks. Sections 26 and 29 of the bill conform cross-references to this provision.

### *Annual assessments for international bank offices*

Currently, the Codes require international bank agencies to pay semiannual assessments in amounts determined by commission rule.<sup>60</sup> These semiannual assessments are calculated in a manner so as to the

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<sup>53</sup> OFR Order of General Application, *In Re: Credit Unions – Employee and Volunteer Officials Benefit Plans* (issued November 5, 2010), on file with the Insurance & Banking Subcommittee staff

<sup>54</sup> E-mail from the OFR (received September 20, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>55</sup> *Id.*

<sup>56</sup> Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>57</sup> *Id.*

<sup>58</sup> The last time this loan statute has been amended was in 1992. Chapter 92-303, L.O.F.

<sup>59</sup> FBA letter to the OFR (dated November 22, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>60</sup> See Rule 69U-140.020, F.A.C. (regarding semiannual assessments for international banking agencies).

cover the OFR's costs incurred in connection with the supervision of international banking activities.<sup>61</sup> In addition, the Codes require each international representative office, international administrative office, or international trust company representative office to pay an annual assessment in the amount of \$2,000, payable on or before January 31 of each year to the OFR.<sup>62</sup>

Section 24 of the bill removes the requirement in s. 663.12, F.S., for international representative office, international administrative office, or international trust company representative office to pay an annual assessment in the amount of \$2,000, payable on or before January 31 of each year to the OFR. According to the OFR, the current semiannual assessments imposed on all international bank offices are sufficient and adequate to cover the OFR's supervision costs.<sup>63</sup>

#### B. SECTION DIRECTORY:

Section 1 amends s. 655.005, F.S., relating to definitions.

Section 2 amends s. 655.0322, F.S., relating to prohibited acts and practices; criminal penalties.

Section 3 amends s. 655.034, F.S., relating to injunctions.

Section 4 amends s. 655.037, F.S., relating to removal of a financial institution-affiliated party by the office.

Section 5 amends s. 655.0385, F.S., relating to disapproval of directors and executive officers.

Section 6 amends s. 655.041, F.S., relating to administrative fines; enforcement.

Section 7 amends s. 655.045, F.S., relating to examinations, reports, and internal audits; penalty.

Section 8 amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 9 creates s. 655.0591, F.S., relating to trade secret documents.

Section 10 amends s. 655.50, F.S., relating to the Florida Control of Money Laundering Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.

Section 11 amends s. 655.85, F.S., relating to settlement of checks.

Section 12 provides a statement of legislative intent for Section 11.

Section 13 amends s. 655.921, F.S., relating to transaction of business by out-of-state financial institutions; exempt transactions in the financial institutions codes.

Section 14 amends s. 655.922, F.S., relating to banking business by unauthorized persons; use of name.

Section 15 amends s. 657.008, F.S., relating to place of doing business.

Section 16 amends s. 657.028, F.S., relating to activities of directors, officers, committee members, employees, and agents.

Section 17 amends s. 657.041, F.S., relating to insurance.

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<sup>61</sup> Section 663.12(2), F.S.

<sup>62</sup> *Id.*

<sup>63</sup> Telephone conversation with the OFR (February 12, 2014).

Section 18 amends s. 658.12, F.S., relating to definitions.

Section 19 amends s. 658.21, F.S., relating to approval of application; findings required.

Section 20 amends s. 658.235, F.S., relating to subscriptions for stock; approval of major shareholders.

Section 21 repeals s. 658.49, F.S., relating to loans by banks not exceeding \$50,000.

Section 22 amends s. 663.02, F.S., relating to applicability of state banking laws.

Section 23 amends 663.09, F.S., relating to reports; records.

Section 24 amends s. 663.12, F.S., relating to fees; assessments; fines.

Section 25 amends s. 663.306, F.S., relating to decision by office.

Section 26 amends s. 663.013, F.S., relating to applicability of chapter 658.

Section 27 amends s. 665.033, F.S., relating to conversion of state or federal mutual association to capital stock association.

Section 28 amends s. 665.034, F.S., relating to acquisition of assets of or control over an association.

Section 29 amends s. 667.003, F.S., relating to applicability of chapter 658.

Section 30 amends s. 667.006, F.S., relating to conversion of state or federal mutual savings bank to capital stock savings bank.

Section 31 amends s. 667.008, F.S., relating to acquisition of assets of or control over a savings bank.

Section 32 provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

According to the OFR, the loss of the \$2,000 annual payment by international institutions will have negligible fiscal impact to the OFR.<sup>64</sup>

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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<sup>64</sup> OFR bill analysis of HB 673, on file with the Insurance & Banking Subcommittee staff.  
STORAGE NAME: h0673.IBS.DOCX  
DATE: 2/17/2014

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private financial sector by allowing Florida-chartered banks to charge check-cashing fees to non-customers, but may result in more fees for consumers if they are not customers of these banks.

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:

None provided by the bill. However, passage of the bill's provisions regarding credit union branching and the Florida Control of Money Laundering in Financial Institutions Act may require amendment of these administrative rules:

- 69U-110.008, F.A.C. (credit union branches)
- 69U-100.005, F.A.C. (Florida Control of Money Laundering in Financial Institutions)

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Bankers Association and the League of Southeastern Credit Unions & Affiliates are supportive of this bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
2       An act relating to financial institutions; amending s.  
3       655.005, F.S.; revising the definition of the term  
4       "related interest"; amending s. 655.0322, F.S.;  
5       revising provisions relating to prohibited acts and  
6       practices by a financial institution; applying certain  
7       provisions to affiliates; amending s. 655.034, F.S.;  
8       authorizing the circuit court to issue an injunction  
9       in order to protect the public's interest in the  
10      safety and soundness of the financial institution  
11      system; amending s. 655.037, F.S.; conforming a cross-  
12      reference; amending s. 655.0385, F.S.; prohibiting a  
13      director or executive officer of a state financial  
14      institution or affiliate from concurrently serving as  
15      a director or officer in a nonaffiliated financial  
16      institution or affiliate in the same geographical area  
17      or the same major business market area unless waived  
18      by the Office of Financial Regulation; amending s.  
19      655.041, F.S.; revising provisions relating to  
20      administrative fines; clarifying that the office may  
21      initiate administrative proceedings for violations of  
22      rules; providing that fines for violations begin  
23      accruing immediately upon the service of a complaint;  
24      applying certain provisions to affiliates; revising  
25      the conditions for imposing a fine; amending s.  
26      655.045, F.S.; authorizing the office to conduct a

27 joint or concurrent examination of a financial  
 28 institution within a specified period; amending s.  
 29 655.057, F.S.; conforming a cross-reference; providing  
 30 that specified records are not considered a waiver of  
 31 privileges or legal rights in certain proceedings;  
 32 clarifying who has a right to copy member or  
 33 shareholder records; creating s. 655.0591, F.S.;  
 34 providing notice requirements and procedures that  
 35 allow a financial institution to protect trade secrets  
 36 included in documents submitted to the office;  
 37 amending s. 655.50, F.S.; amending provisions relating  
 38 to the control of money laundering to also include  
 39 terrorist financing; adding and revising definitions;  
 40 requiring a financial institution to have a BSA/AML  
 41 compliance officer; updating cross-references;  
 42 amending s. 655.85, F.S.; clarifying that an  
 43 institution may impose a fee for the settlement of a  
 44 check under certain circumstances; providing  
 45 applicability; providing legislative intent; amending  
 46 s. 655.921, F.S.; revising provisions relating to  
 47 business transactions by an out-of-state financial  
 48 institution; providing that such institution may file  
 49 suit in any state court to collect a security interest  
 50 in collateral; amending s. 655.922, F.S.; revising  
 51 provisions relating to the name of a financial  
 52 institution; prohibiting certain financial



53 institutions from using a name that may mislead  
 54 consumers; authorizing the office to seek court orders  
 55 to annul or dissolve a business entity for certain  
 56 violations and to issue emergency cease and desist  
 57 orders; amending s. 657.008, F.S.; requiring certain  
 58 credit unions seeking to establish a branch office to  
 59 submit an application to the office for examination  
 60 and approval; providing the criteria for the  
 61 examination; amending s. 657.028, F.S.; revising  
 62 provisions relating to prohibited activities of  
 63 directors, officers, committee members, employees, and  
 64 agents of credit unions; requiring the name and  
 65 address of the credit manager to be submitted to the  
 66 office; amending s. 657.041, F.S.; authorizing a  
 67 credit union to pay health and accident insurance  
 68 premiums and to fund employee benefit plans under  
 69 certain circumstances; amending s. 658.12, F.S.;  
 70 revising the definition of the term "trust business";  
 71 amending ss. 658.21 and 658.235, F.S.; conforming  
 72 cross-references; repealing s. 658.49, F.S., relating  
 73 to requirements for bank loans up to \$50,000; amending  
 74 ss. 663.02, 663.09, 663.306, F.S.; conforming  
 75 provisions to changes made by the act; amending s.  
 76 663.12, F.S.; deleting an annual assessment imposed on  
 77 certain international offices; amending ss. 665.013,  
 78 665.033, 665.034, 667.003, 667.006, and 667.008, F.S.;

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79 conforming cross-references; making editorial changes;  
 80 providing an effective date.

81

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

83

84 Section 1. Paragraph (t) of subsection (1) of section  
 85 655.005, Florida Statutes, is amended to read:

86 655.005 Definitions.—

87 (1) As used in the financial institutions codes, unless  
 88 the context otherwise requires, the term:

89 (t) "Related interest" means, with respect to a ~~any~~  
 90 person:7

91 1. The person's spouse, ~~partner, sibling, parent,~~ child,  
 92 or other dependent individual residing in the same household as  
 93 the person; ~~. With respect to any person, the term means~~

94 2. A company, partnership, corporation, or other business  
 95 organization controlled by the person. A person has control if  
 96 the person:

97 a.1- Owns, controls, or has the power to vote 25 percent  
 98 or more of any class of voting securities of the organization;

99 b.2- Controls in any manner the election of a majority of  
 100 the directors of the organization; or

101 c.3- Has the power to exercise a controlling influence  
 102 over the management or policies of the organization; or-

103 3. An individual, company, partnership, corporation, or  
 104 other business organization that engages in a common business

105 enterprise with the person. A common business enterprise exists  
 106 if:

107 a. The expected source for repayment of a loan or  
 108 extension of credit is the same for each borrower and neither  
 109 borrower has another source of income from which the loan,  
 110 together with the borrower's other obligations, may be fully  
 111 repaid. An employer will not be treated as a source of repayment  
 112 under this paragraph because of wages and salaries paid to an  
 113 employee, unless the standards of sub-subparagraph b. are met;

114 b. Loans or extensions of credit are made:

115 (I) To borrowers who are directly or indirectly related  
 116 through common control, including where one borrower is directly  
 117 or indirectly controlled by another borrower; and

118 (II) Substantial financial interdependence exists between  
 119 or among the borrowers. Substantial financial interdependence  
 120 exists if 50 percent or more of one borrower's gross receipts or  
 121 gross expenditures on an annual basis are derived from  
 122 transactions with the other borrower. Gross receipts and  
 123 expenditures include gross revenues and expenses, intercompany  
 124 loans, dividends, capital contributions, and similar receipts or  
 125 payments;

126 c. Separate persons borrow from a financial institution to  
 127 acquire a common business enterprise such that those borrowers  
 128 will own more than 50 percent of the voting securities or voting  
 129 interests of the enterprise, in which case a common business  
 130 enterprise is deemed to exist between the borrowers for purposes

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131 of combining the acquisition loans; or

132 d. The office determines, based upon an evaluation of the  
 133 facts and circumstances of particular transactions, that a  
 134 common business enterprise exists.

135 Section 2. Section 655.0322, Florida Statutes, is amended  
 136 to read:

137 655.0322 Prohibited acts and practices; criminal  
 138 penalties.-

139 (1) As used in this section, the term "financial  
 140 institution" means a financial institution as defined in s.  
 141 655.005 ~~s. 655.50 which includes a state trust company, state or~~  
 142 ~~national bank, state or federal association, state or federal~~  
 143 ~~savings bank, state or federal credit union, Edge Act or~~  
 144 ~~agreement corporation, international bank agency, international~~  
 145 ~~branch, representative office or administrative office or other~~  
 146 business entity as defined by the commission by rule, whether  
 147 organized under the laws of this state, the laws of another  
 148 state, or the laws of the United States, which ~~institution~~ is  
 149 located in this state.

150 (2) ~~A It is unlawful for any~~ financial institution-  
 151 affiliated party may not ~~to~~ ask for, or willfully and knowingly  
 152 receive or consent to receive for the party or any related  
 153 interest, a ~~any~~ commission, emolument, gratuity, money,  
 154 property, or thing of value for:

155 (a) Procuring, or endeavoring to procure, for any person a  
 156 loan or extension of credit from such financial institution,

157 affiliate, subsidiary, or service corporation; or

158 (b) Procuring, or endeavoring to procure, the purchase or  
 159 discount of any note, draft, check, bill of exchange, or other  
 160 obligation by such financial institution, affiliate, subsidiary,  
 161 or service corporation.

162  
 163 Any person who violates this subsection commits ~~is guilty of~~ a  
 164 felony of the third degree, punishable as provided in s.  
 165 775.082, s. 775.083, or s. 775.084.

166 (3) A ~~It is unlawful for any~~ financial institution-  
 167 affiliated party may not ~~to~~:

168 (a) Knowingly receive or possess ~~himself or herself of~~ any  
 169 of such financial institution's ~~its~~ property other ~~otherwise~~  
 170 than in payment of a just demand, or ~~and~~, with intent to deceive  
 171 or defraud, to omit to make or cause to be made a full and true  
 172 entry thereof in the financial institution's ~~its~~ books and  
 173 accounts, or concur in omitting to make any material entry  
 174 thereof;

175 (b) Embezzle, abstract, or misapply any money, property,  
 176 or thing of value of such ~~the~~ financial institution, affiliate,  
 177 subsidiary, or service corporation with intent to deceive or  
 178 defraud the ~~such~~ financial institution, affiliate, subsidiary,  
 179 or service corporation;

180 (c) Knowingly make, draw, issue, put forth, or assign any  
 181 certificate of deposit, draft, order, bill of exchange,  
 182 acceptance, note, debenture, bond or other obligation, mortgage,

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183 judgment, or decree without authority from the board of  
 184 directors of such financial institution;

185 (d) Make a ~~any~~ false entry in any book, report, or  
 186 statement of such financial institution, affiliate, subsidiary,  
 187 or service corporation with intent to deceive or defraud the  
 188 ~~such~~ financial institution, affiliate, subsidiary, or service  
 189 corporation, or another person, firm, or corporation, or with  
 190 intent to deceive the office, any other appropriate federal or  
 191 state regulatory agency, or an ~~any~~ authorized representative  
 192 appointed to examine the affairs of the ~~such~~ financial  
 193 institution, affiliate, subsidiary, or service corporation; or

194 (e) Deliver or disclose to the office or ~~any of~~ its  
 195 employees an application, ~~any~~ examination report, report of  
 196 condition, report of income and dividends, internal audit,  
 197 account, statement, or other document known by the party ~~him or~~  
 198 ~~her~~ to be fraudulent or false as to any material matter.

199  
 200 Any person who violates this subsection commits ~~is guilty of~~ a  
 201 felony of the third degree, punishable as provided in s.  
 202 775.082, s. 775.083, or s. 775.084.

203 (4) A ~~It is unlawful for any~~ financial institution-  
 204 affiliated party may not ~~to~~ knowingly place among the assets of  
 205 such financial institution, affiliate, subsidiary, or service  
 206 corporation any note, obligation, or security that ~~which~~ the  
 207 financial institution, affiliate, subsidiary, or service  
 208 corporation does not own or that, ~~which~~ to the party's

209 ~~individual's~~ knowledge, is fraudulent or otherwise worthless or  
 210 for the financial institution-affiliated party ~~any such~~  
 211 ~~individual~~ to represent to the office that any note, obligation,  
 212 or security carried as an asset of such financial institution,  
 213 affiliate, subsidiary, or service corporation is the property of  
 214 the financial institution, affiliate, subsidiary, or service  
 215 corporation and is genuine if it is known to such party  
 216 ~~individual~~ that such representation is false or that the ~~such~~  
 217 note, obligation, or security is fraudulent or otherwise  
 218 worthless. Any person who violates this subsection commits ~~is~~  
 219 ~~guilty of~~ a felony of the third degree, punishable as provided  
 220 in s. 775.082, s. 775.083, or s. 775.084.

221 (5) Any person who willfully makes a a ~~any~~ false statement  
 222 or report, or willfully overvalues any land, property, or  
 223 security, for the purposes of influencing in any way the action  
 224 of a ~~any~~ financial institution, affiliate, subsidiary, or  
 225 service corporation or any other entity authorized by law to  
 226 extend credit, upon an ~~any~~ application, advance, discount,  
 227 purchase, purchase agreement, repurchase agreement, commitment,  
 228 or loan, or any change or extension of ~~any of~~ the same, by  
 229 renewal, deferment of action or otherwise, or the acceptance,  
 230 release, or substitution of security therefor, commits ~~is guilty~~  
 231 ~~of~~ a felony of the second degree, punishable as provided in s.  
 232 775.082, s. 775.083, or s. 775.084.

233 (6) Any person who knowingly executes, or attempts to  
 234 execute, a scheme or artifice to defraud a financial

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235 institution, affiliate, subsidiary, or service corporation or  
 236 any other entity authorized by law to extend credit, or to  
 237 obtain ~~any of~~ the moneys, funds, credits, assets, securities, or  
 238 other property owned by, or under the custody or control of, a  
 239 financial institution, affiliate, subsidiary, service  
 240 corporation, or ~~any~~ other entity authorized by law to extend  
 241 credit, by means of false or fraudulent pretenses,  
 242 representations, or promises, commits ~~is guilty of~~ a felony of  
 243 the second degree, punishable as provided in s. 775.082, s.  
 244 775.083, or s. 775.084.

245 Section 3. Section 655.034, Florida Statutes, is amended  
 246 to read:

247 655.034 Injunctions.—

248 (1) If the office determines that ~~Whenever~~ a violation of  
 249 the financial institutions codes or a violation of formal  
 250 enforcement action has occurred or is threatened or impending  
 251 ~~and such violation will cause substantial injury to a state~~  
 252 ~~financial institution or to the depositors, members, creditors,~~  
 253 ~~or stockholders thereof~~, the circuit court has jurisdiction to  
 254 hear a ~~any~~ complaint filed by the office and, upon proper  
 255 showing, to issue an injunction restraining such violation or  
 256 granting other ~~such~~ appropriate relief. Upon proper showing, the  
 257 circuit court may also issue an injunction restraining any  
 258 conduct or other act in order to protect the interests of  
 259 depositors, members, creditors, or stockholders of a financial  
 260 institution, or the interests of the public, in the safety and



261 soundness of the financial institution system in this state and  
 262 the proper conduct of fiduciary functions.

263 (2) For the purposes of this section, the term "formal  
 264 enforcement action" means:

265 (a) With regard to a financial institution as defined in  
 266 s. 655.005(1)(i), a supervisory action that is subject to  
 267 enforcement pursuant to s. 655.033, s. 655.037, or s. 655.041,  
 268 directing that the financial institution take corrective actions  
 269 to address violations of law or safety and soundness  
 270 deficiencies.

271 (b) With regard to a person or entity that is not a  
 272 financial institution as defined in s. 655.005(1)(i), any order  
 273 issued by the office pursuant the financial institutions codes  
 274 that is directed to such person or entity.

275 Section 4. Subsection (1) of section 655.037, Florida  
 276 Statutes, is amended to read:

277 655.037 Removal of a financial institution-affiliated  
 278 party by the office.—

279 (1) The office may issue and serve upon any financial  
 280 institution-affiliated party and upon the ~~state~~ financial  
 281 institution, subsidiary, or service corporation involved, a  
 282 complaint stating charges if ~~whenever~~ the office has reason to  
 283 believe that the financial institution-affiliated party is  
 284 engaging or has engaged in conduct that is:

285 (a) An unsafe or unsound practice;

286 (b) A prohibited act or practice;

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287 (c) A willful violation of any law relating to financial  
288 institutions;

289 (d) A violation of any other law involving fraud or moral  
290 turpitude which constitutes a felony;

291 (e) A violation of s. 655.50, relating to the ~~Florida~~  
292 ~~control of money laundering and terrorist financing in Financial~~  
293 ~~Institutions Act~~; chapter 896, relating to offenses related to  
294 financial transactions; or ~~any~~ similar state or federal law;

295 (f) A willful violation of any rule of the commission;

296 (g) A willful violation of any order of the office;

297 (h) A willful breach of any written agreement with the  
298 office; or

299 (i) An act of commission or omission or a practice which  
300 is a breach of trust or a breach of fiduciary duty.

301 Section 5. Subsections (4) and (5) of section 655.0385,  
302 Florida Statutes, are renumbered as subsections (5) and (6),  
303 respectively, and a new subsection (4) is added to that section  
304 to read:

305 655.0385 Disapproval of directors and executive officers.-

306 (4) A director or executive officer of a state financial  
307 institution or affiliate may not concurrently serve as a  
308 director, or be employed as an officer, of a nonaffiliated  
309 financial institution or affiliate whose principal place of  
310 business is located in the same metropolitan statistical area in  
311 this state. A person affected by this prohibition may provide  
312 written notice to the office of the proposed appointment or

313 employment. Such notice may provide information that the  
 314 concurrent service does not present a conflict of interest and  
 315 that neither institution is competitively disadvantaged in the  
 316 common market area. The office may waive this prohibition if the  
 317 information provided demonstrates that the individual's proposed  
 318 concurrent service does not present a conflict of interest and  
 319 neither institution is competitively disadvantaged in the common  
 320 market area. A person who violates this subsection is subject to  
 321 suspension, removal, or prohibition under s. 655.037.

322 Section 6. Section 655.041, Florida Statutes, is amended  
 323 to read:

324 655.041 Administrative fines; enforcement.—

325 (1) The office may, by complaint, initiate a proceeding  
 326 pursuant to chapter 120 to impose an administrative fine against  
 327 any person found to have violated a any provision of the  
 328 financial institutions codes or the rules adopted thereunder, an  
 329 ~~or a cease and desist~~ order of the office, or a any written  
 330 agreement with the office. Such ~~No such~~ proceeding may not shall  
 331 be initiated ~~and no fine shall accrue pursuant to this section~~  
 332 until after such person has been notified in writing of the  
 333 nature of the violation and ~~has been~~ afforded a reasonable  
 334 period of time, as set forth in the notice, to correct the  
 335 violation and has failed to do so. If the office provided such  
 336 notice, a fine for a violation of an office order or written  
 337 agreement begins to accrue immediately upon service of the  
 338 complaint and continues to accrue until the violation is

339 corrected.

340 (2) ~~Any~~ Such fine may not exceed \$2,500 per ~~a~~ day for each  
 341 violation except as provided in this section.

342 (a) If the office determines that ~~any~~ such person has  
 343 recklessly violated a ~~any~~ provision of the financial  
 344 institutions codes, an ~~or a cease and desist~~ order of the  
 345 office, or a ~~any~~ written agreement with the office, which  
 346 violation results in more than a minimal loss to a financial  
 347 institution, affiliate, subsidiary, or service corporation, or  
 348 in a pecuniary benefit to such person, the office may impose a  
 349 fine of up to ~~not exceeding~~ \$10,000 per ~~a~~ day for each day the  
 350 violation continues.

351 (b) If the office determines that ~~any~~ such person has  
 352 knowingly violated a ~~any~~ provision of the financial institutions  
 353 codes, an ~~or a cease and desist~~ order of the office, or a ~~any~~  
 354 written agreement with the office, which violation results in  
 355 more than a minimal loss to a financial institution, affiliate,  
 356 subsidiary, or service corporation, or in a pecuniary benefit to  
 357 such ~~a~~ person, the office may impose a fine of up to ~~not~~  
 358 ~~exceeding~~ the lesser of \$500,000 per day or 1 percent of the  
 359 total assets in the case of a financial institution, or \$50,000  
 360 per day in any other case for each day the violation continues.

361 (c) The office may by complaint impose an administrative  
 362 fine of up to, ~~not exceeding~~ \$10,000 per ~~a~~ day on a, ~~upon~~ ~~any~~  
 363 financial institution-affiliated party; on, ~~and upon~~ a state  
 364 financial institution, subsidiary, service corporation, or

365 affiliate; or on a person subject to supervision by the office  
 366 pursuant to s. 655.0391 if the entity or person, ~~who~~ refuses to  
 367 permit an examiner to examine a state financial institution,  
 368 subsidiary, or service corporation; ~~who refuses~~ to permit an  
 369 examiner to review the books and records of an affiliate or a  
 370 contracting service entity subject to supervision by the office  
 371 pursuant to s. 655.0391; ~~or who refuses~~ to give an examiner any  
 372 information required in the course of an ~~any~~ examination or  
 373 review of the books and records.

374 (3) An ~~Any~~ administrative fine levied by the office may be  
 375 enforced by the office ~~by appropriate proceedings~~ in the circuit  
 376 court of the county in which such person resides or in which the  
 377 principal office of a state financial institution, affiliate,  
 378 subsidiary, service corporation, or contracting service entity  
 379 is located or does business in the state. In any administrative  
 380 or judicial proceeding arising under this section, a party may  
 381 elect to correct the violation asserted by the office and, upon  
 382 doing so, any fine ceases to accrue; however, an election to  
 383 correct the violation does not render an ~~any~~ administrative or  
 384 judicial proceeding moot.

385 Section 7. Section 655.045, Florida Statutes, is amended  
 386 to read:

387 655.045 Examinations, reports, and internal audits;  
 388 penalty.-

389 (1) The office shall conduct an examination of the  
 390 condition of each state financial institution at least every 18

391 ~~months during each 18-month period.~~ The office may conduct more  
 392 frequent examinations based upon the risk profile of the  
 393 financial institution, prior examination results, or significant  
 394 changes in the institution or its operations. The office may use  
 395 continuous, phase, or other flexible scheduling examination  
 396 methods for very large or complex state financial institutions  
 397 and financial institutions owned or controlled by a multi-  
 398 financial institution holding company. The office shall consider  
 399 examination guidelines from federal regulatory agencies in order  
 400 to facilitate, coordinate, and standardize examination  
 401 processes.

402 (a) ~~With respect to, and examination of, the condition of~~  
 403 ~~a state institution,~~ The office may accept an examination of a  
 404 state financial institution made by an appropriate federal  
 405 regulatory agency, or may conduct ~~make~~ a joint or concurrent  
 406 examination of the institution with the federal agency. However,  
 407 beginning July 1, 2014, the office shall conduct such joint or  
 408 concurrent examinations at least once every 36 months, in a  
 409 manner that allows the preparation of a complete examination  
 410 report not subject to the right of a federal or other non-  
 411 Florida entity to limit access to the information contained in  
 412 the report. The office may furnish a copy of all examinations or  
 413 reviews made of financial institutions or their affiliates to  
 414 the state or federal agencies participating in the examination,  
 415 investigation, or review, or as otherwise authorized under ~~by~~ s.  
 416 655.057.

417 (b) If, as a part of an examination or investigation of a  
 418 state financial institution, subsidiary, or service corporation,  
 419 the office has reason to believe that the conduct or business  
 420 operations of an affiliate may have a negative impact on the  
 421 state financial institution, subsidiary, or service corporation,  
 422 the office may conduct such examination or investigation of the  
 423 affiliate as the office deems necessary.

424 (c) The office may recover the costs of examination and  
 425 supervision of a state financial institution, subsidiary, or  
 426 service corporation that is determined by the office to be  
 427 engaged in an unsafe or unsound practice. The office may also  
 428 recover the costs of a ~~any~~ review conducted pursuant to  
 429 paragraph (b) of an ~~any~~ affiliate of a state financial  
 430 institution determined by the office to have contributed to an  
 431 unsafe or unsound practice at a state financial institution,  
 432 subsidiary, or service corporation.

433 (d) As used in ~~For the purposes of~~ this section, the term  
 434 "costs" means the salary and travel expenses directly  
 435 attributable to the field staff examining the state financial  
 436 institution, subsidiary, or service corporation, and the travel  
 437 expenses of any supervisory staff required as a result of  
 438 examination findings. The mailing of any costs incurred under  
 439 this subsection must be postmarked within 30 days after the date  
 440 of receipt of a notice stating that such costs are due. The  
 441 office may levy a late payment of up to \$100 per day or part  
 442 thereof that a payment is overdue, unless excused for good

443 cause. However, for intentional late payment of costs, the  
 444 office may levy an administrative fine of up to \$1,000 per day  
 445 for each day the payment is overdue.

446 (e) The office may require an audit of a state financial  
 447 institution, subsidiary, or service corporation by an  
 448 independent certified public accountant, or other person  
 449 approved by the office, if the office, after conducting an  
 450 examination of the state financial institution, subsidiary, or  
 451 service corporation, or after accepting an examination of the  
 452 ~~such~~ state financial institution by an appropriate state or  
 453 federal regulatory agency, determines that an audit is necessary  
 454 in order to ascertain the condition of the financial  
 455 institution, subsidiary, or service corporation. The cost of  
 456 such audit shall be paid by the state financial institution,  
 457 subsidiary, or state service corporation audited.

458 (2)(a) Each state financial institution, subsidiary, or  
 459 service corporation shall submit a report, at least four times  
 460 each calendar year, on as of such dates determined by ~~as~~ the  
 461 commission or office ~~determines~~. The ~~Such~~ report must include  
 462 such information as the commission by rule requires for that  
 463 type of institution.

464 (a)(b) The office shall levy an administrative fine of up  
 465 to \$100 per day for each day the report is past due, unless it  
 466 is excused for good cause. ~~However,~~

467 (b) For an intentional late filing of the report ~~required~~  
 468 ~~under paragraph (a)~~, the office shall levy an administrative



469 fine of up to \$1,000 per day for each day the report is past  
 470 due.

471 (3) ~~(a)~~ The board of directors of each state financial  
 472 institution or, in the case of a credit union, the supervisory  
 473 committee or audit committee shall perform or cause to be  
 474 performed, within each calendar year, an internal audit of each  
 475 state financial institution, subsidiary, or service corporation  
 476 and ~~to~~ file a copy of the report and findings of such audit with  
 477 the office on a timely basis. The ~~Such~~ internal audit must  
 478 include such information as the commission by rule requires for  
 479 that type of institution.

480 (a) ~~(b)~~ With the approval of the office, the board of  
 481 directors or, in the case of a credit union, the supervisory  
 482 committee may elect, in lieu of such periodic audits, to adopt  
 483 and implement an adequate continuous audit system and procedure  
 484 that includes ~~which must include~~ full, adequate, and continuous  
 485 written reports to, and review by, the board of directors or, in  
 486 the case of a credit union, the supervisory committee, together  
 487 with written statements of the actions taken thereon and reasons  
 488 for omissions to take actions, all of which shall be noted in  
 489 the minutes and filed among the records of the board of  
 490 directors or, in the case of a credit union, the supervisory  
 491 committee. If at any time such continuous audit system and  
 492 procedure, including the reports and statements, becomes  
 493 inadequate, in the judgment of the office, the state financial  
 494 institution shall promptly make such changes as may be required

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495 by the office to cause the same to accomplish the purpose of  
 496 this section.

497 ~~(b)(c)~~ A ~~Any~~ de novo state financial institution open less  
 498 than 4 months is exempt from the audit requirements of this  
 499 section.

500 (4) A copy of the report of each examination must be  
 501 furnished to the entity examined and. ~~Such report shall be~~  
 502 presented to the board of directors at its next regular or  
 503 special meeting.

504 Section 8. Paragraph (a) of subsection (3) and subsections  
 505 (4) through (6) of section 655.057, Florida Statutes, are  
 506 amended to read:

507 655.057 Records; limited restrictions upon public access.-

508 (3) The provisions of this section do not prevent or  
 509 restrict:

510 (a) Publishing reports that are required to be submitted  
 511 to the office pursuant to s. 655.045(2)~~(a)~~ or required by  
 512 applicable federal statutes or regulations to be published.

513  
 514 Any confidential information or records obtained from the office  
 515 pursuant to this subsection shall be maintained as confidential  
 516 and exempt from the provisions of s. 119.07(1).

517 (4)(a) Orders of courts or of administrative law judges  
 518 for the production of confidential records or information must  
 519 ~~shall~~ provide for inspection in camera ~~by the court or the~~  
 520 ~~administrative law judge~~ and, after the court or administrative

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521 law judge determines ~~has made a determination~~ that the documents  
 522 requested are relevant or would likely lead to the discovery of  
 523 admissible evidence and that the information sought is not  
 524 otherwise reasonably available from other sources, the said  
 525 documents shall be subject to further orders by the court or the  
 526 administrative law judge to protect the confidentiality thereof.  
 527 An ~~Any~~ order directing the release of information is ~~shall be~~  
 528 immediately reviewable, and a petition by the office for review  
 529 of such order ~~shall~~ automatically stays ~~stay~~ further proceedings  
 530 in the trial court or the administrative hearing until the  
 531 disposition of such petition by the reviewing court. If any  
 532 other party files such a petition for review, it operates ~~will~~  
 533 ~~operate~~ as a stay of such proceedings only upon order of the  
 534 reviewing court.

535 (b) Confidential records and information furnished  
 536 pursuant to a legislative subpoena shall be kept confidential by  
 537 the legislative body or committee that ~~which~~ received the  
 538 records or information. However, except in a case involving  
 539 investigation of charges against a public official subject to  
 540 impeachment or removal, ~~and then~~ disclosure of such information  
 541 shall be only to the extent necessary as determined by the  
 542 legislative body or committee ~~to be necessary~~.

543 (c) A person providing documents, statements, books,  
 544 records, and any other information to the office pursuant to an  
 545 investigation, examination, visitation, or other supervisory  
 546 activity by the office does not waive any privilege or other

547 legal right in an administrative or legal proceeding in which  
 548 the office is not a party.

549 (5) Every credit union and mutual association shall  
 550 maintain, ~~in the principal office where its business is~~  
 551 ~~transacted,~~ full and correct records of the names and residences  
 552 of all the members of the credit union or mutual association in  
 553 the principal office where its business is transacted. Such  
 554 records are ~~shall be~~ subject to ~~the~~ inspection by ~~of~~ all ~~the~~  
 555 members of the credit union or mutual association, and the  
 556 officers authorized to assess taxes under state authority,  
 557 during normal business hours ~~of each business day.~~ No member or  
 558 any other person has the right to copy the membership records  
 559 for any purpose other than in the course of business of the  
 560 credit union or mutual association, as authorized by the office  
 561 or the board of directors of the credit union or mutual  
 562 association. A current list of members shall be made available  
 563 to the office's examiners for their inspection and, upon the  
 564 request of the office, shall be submitted to the office. Except  
 565 as otherwise provided in this subsection, the list of the  
 566 members of the credit union or mutual association is  
 567 confidential and exempt from ~~the provisions of~~ s. 119.07(1).

568 (6) Every bank, trust company, and stock association shall  
 569 maintain, in the principal office where its business is  
 570 transacted, full and complete records of the names and  
 571 residences of all the shareholders of the bank, trust company,  
 572 or stock association and the number of shares held by each. Such

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573 records ~~are shall be~~ subject to the inspection of all the  
 574 shareholders of the bank, trust company, or stock association,  
 575 and the officers authorized to assess taxes under state  
 576 authority, during normal business hours ~~of each banking day~~. No  
 577 shareholder or any other person has the right to copy the  
 578 shareholder records for any purpose other than in the course of  
 579 business of the bank, trust company, or stock association, as  
 580 authorized by the office or the board of directors of the bank,  
 581 trust company, or stock association. A current list of  
 582 shareholders shall be made available to the office's examiners  
 583 for their inspection and, upon the request of the office, shall  
 584 be submitted to the office. Except as otherwise provided in this  
 585 subsection, any portion of this list which reveals the  
 586 identities of the shareholders is confidential and exempt from  
 587 ~~the provisions of s. 119.07(1)~~.

588 Section 9. Section 655.0591, Florida Statutes, is created  
 589 to read:

590 655.0591 Trade secret documents.-

591 (1) If a person who is required to submit documents or  
 592 other information to the office pursuant to the financial  
 593 institutions codes, or by rule or order of the office or  
 594 commission, claims that such submission contains a trade secret,  
 595 the person may file with the office a notice of trade secret  
 596 when the information is submitted to the office as provided in  
 597 this section. Failure to file a notice constitutes a waiver of  
 598 any claim by the person that the document or information is a

599 trade secret. The notice must provide the contact information of  
 600 the person claiming ownership of the trade secret. The person  
 601 claiming the trade secret is responsible for updating the  
 602 contact information with the office.

603 (a) Each page of a document or specific portion of a  
 604 document claimed to be a trade secret must be clearly marked  
 605 with the words "trade secret."

606 (b) All material identified as a trade secret shall be  
 607 segregated from all other submitted material by being  
 608 transmitted in a separate envelope or other delivery method and  
 609 clearly marked with the words "trade secret."

610 (c) In submitting a notice of trade secret to the office  
 611 or department, the submitting party shall include an affidavit  
 612 certifying under oath to the truth of the following statements  
 613 concerning all documents or information that are claimed to be  
 614 trade secrets:

615 1. [...I consider/my company considers...] this  
 616 information a trade secret that has value and provides an  
 617 advantage or an opportunity to obtain an advantage over those  
 618 who do not know or use it.

619 2. [...I have/my company has...] taken measures to prevent  
 620 the disclosure of the information to anyone other than those who  
 621 have been selected to have access for limited purposes, and  
 622 [...I intend/my company intends...] to continue to take such  
 623 measures.

624 3. The information is not, and has not been, reasonably

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625 obtainable without [...my/our...] consent by other persons by  
 626 use of legitimate means.

627 4. The information is not publicly available elsewhere.

628 (2) If the office receives a public records request for a  
 629 document or information that is marked and certified as a trade  
 630 secret, the office shall promptly notify the person that  
 631 certified the document as a trade secret. The office shall send  
 632 the notice to the most recent address provided to the office and  
 633 must inform the person that, in order to avoid disclosure of the  
 634 trade secret, the person must file an action in circuit court  
 635 within 30 days after the date of the notice seeking a  
 636 declaratory judgment that the document in question contains  
 637 trade secrets and an order barring public disclosure of the  
 638 document. The person shall provide written notice to the office  
 639 that he or she filed an action. The office may not release the  
 640 documents pending the outcome of the legal action. Failure to  
 641 file an action within 30 days constitutes a waiver of any claim  
 642 of confidentiality, and the office shall release the document as  
 643 requested.

644 (3) The office may disclose a trade secret, together with  
 645 the claim that it is a trade secret, to an officer or employee  
 646 of another governmental agency whose use of the trade secret is  
 647 within the scope of the officer's or employee's employment.

648 Section 10. Section 655.50, Florida Statutes, is reordered  
 649 and amended to read:

650 655.50 Florida Control of Money Laundering and Terrorist

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651 Financing in Financial Institutions Act; ~~reports of transactions~~  
 652 ~~involving currency or monetary instruments; when required,~~  
 653 ~~purpose; definitions; penalties.-~~

654 (1) This section may be cited as the "Florida Control of  
 655 Money Laundering and Terrorist Financing in Financial  
 656 Institutions Act."

657 (2) ~~It is~~ The purpose of this section is to require the  
 658 submission to the office of certain reports and the maintenance  
 659 of certain records of customers, accounts, and transactions  
 660 involving currency or monetary instruments or suspicious  
 661 activities if ~~when~~ such reports and records deter using the use  
 662 ~~of~~ financial institutions to conceal, move, or provide the  
 663 proceeds obtained from or intended for ~~of~~ criminal or terrorist  
 664 activities and if such reports and records activity and have a  
 665 high degree of usefulness in criminal, tax, or regulatory  
 666 investigations or proceedings.

667 (3) As used in this section, the term:

668 (a) "BSA/AML compliance officer" means the financial  
 669 institution's officer responsible for the development and  
 670 implementation of the financial institution's policies and  
 671 procedures for complying with the requirements of this section  
 672 relating to anti-money laundering (AML), and the requirements of  
 673 the Bank Secrecy Act of 1970 (BSA), Pub. L. No. 91-508, as  
 674 amended, the USA Patriot Act of 2001, Pub. L. No. 107-56, as  
 675 amended, and federal and state rules and regulations adopted  
 676 thereunder, and 31 C.F.R. parts 500-598, relating to the



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677 regulations of the Office of Foreign Assets Control (OFAC) of  
 678 the United States Department of the Treasury.

679 (b)~~(a)~~ "Currency" means currency and coin of the United  
 680 States or of any other country.

681 (c)~~(b)~~ "Financial institution" means a financial  
 682 institution, as defined in 31 U.S.C. s. 5312, as amended,  
 683 including a credit card bank, located in this state.

684 (d)~~(e)~~ "Financial transaction" means a transaction  
 685 involving the movement of funds by wire, electronic funds  
 686 transfer, or any other means, or involving one or more monetary  
 687 instruments, which in any way or degree affects commerce, or a  
 688 transaction involving the use of a financial institution that  
 689 ~~which~~ is engaged in, or the activities of which affect, commerce  
 690 in any way or degree.

691 (e)~~(d)~~ "Monetary instruments" means coin or currency of  
 692 the United States or of any other country, travelers' checks,  
 693 personal checks, bank checks, money orders, stored value cards,  
 694 prepaid cards, investment securities or ~~in bearer form or~~  
 695 ~~otherwise in such form that title thereto passes upon delivery,~~  
 696 ~~and~~ negotiable instruments in bearer form or otherwise in such  
 697 form that title thereto passes upon delivery, or similar  
 698 devices.

699 (i)~~(e)~~ "Transaction" means a purchase, sale, loan, pledge,  
 700 gift, transfer, delivery, or other disposition, and with respect  
 701 to a financial institution includes a deposit, withdrawal,  
 702 transfer between accounts, exchange of currency, loan, extension

703 of credit, purchase or sale of any stock, bond, certificate of  
 704 deposit, or other monetary instrument, or any other payment,  
 705 transfer, or delivery by, through, or to a financial  
 706 institution, by whatever means effected.

707 (f) "Report" means a report of each deposit, withdrawal,  
 708 exchange of currency, or other payments or transfer, by,  
 709 through, or to that financial institution, which ~~that~~ involves a  
 710 transaction required or authorized to be reported by this  
 711 section, and includes the electronic submission of such  
 712 information in the manner provided ~~for~~ by rule of the  
 713 commission.

714 (g) "Specified unlawful activity" means ~~any~~ "racketeering  
 715 activity" as defined in s. 895.02.

716 (h) "Suspicious activity" means any transaction reportable  
 717 as required and described under 31 C.F.R. s. 1020.320.

718 (4) A financial institution shall designate and retain a  
 719 BSA/AML compliance officer. The board of directors of a  
 720 financial institution must ensure that the designated compliance  
 721 officer is properly qualified and has sufficient authority and  
 722 resources to administer an effective BSA/AML compliance program.  
 723 The board is ultimately responsible for establishing the  
 724 institution's BSA/AML policies and overall BSA/AML compliance. A  
 725 change in the BSA/AML compliance officer must be reported to the  
 726 office.

727 (5) ~~(4)~~ (a) A ~~Every~~ financial institution shall keep a  
 728 record of each financial transaction occurring in this state

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729 known to it which involves ~~to involve~~ currency or other monetary  
 730 instrument, as the commission prescribes by rule, has ~~of~~ a value  
 731 greater than in excess of \$10,000, and involves ~~to involve~~ the  
 732 proceeds of specified unlawful activity, or is ~~to be~~ designed to  
 733 evade the reporting requirements of this section, chapter 896,  
 734 or ~~any~~ similar state or federal law, or which the financial  
 735 institution reasonably believes is suspicious activity. Each  
 736 financial institution ~~and~~ shall maintain appropriate procedures  
 737 to ensure compliance with this section, chapter 896, and ~~any~~  
 738 other similar state or federal law. Any report of suspicious  
 739 activity made pursuant to this subsection is entitled to the  
 740 same confidentiality provided under 31 C.F.R. s. 1020.320,  
 741 whether the report or information pertaining to or identifying  
 742 the report is in the possession or control of the office or the  
 743 reporting institution.

744 (a) ~~(b)~~ Multiple financial transactions shall be treated as  
 745 a single transaction if the financial institution has knowledge  
 746 that they are made by or on behalf of any person and result in  
 747 ~~either~~ cash in or cash out totaling more than \$10,000 during any  
 748 business day, as defined in s. 655.89(1).

749 (b) ~~(c)~~ A ~~Any~~ financial institution may keep a record of  
 750 any financial transaction occurring in this state, regardless of  
 751 the value, if it suspects that the transaction involves ~~to~~  
 752 ~~involve~~ the proceeds of specified unlawful activity.

753 (c) ~~(d)~~ A financial institution, or officer, employee, or  
 754 agent thereof, which ~~that~~ files a report in good faith pursuant

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755 to this subsection ~~section~~ is not liable to any person for loss  
 756 or damage caused in whole or in part by the making, filing, or  
 757 governmental use of the report, or any information contained  
 758 therein.

759 ~~(d)(5)(a)~~ Each financial institution shall file a report  
 760 ~~with the office of the records record~~ required under this  
 761 subsection with the office paragraphs (4)(a) and (b) and any  
 762 ~~record maintained pursuant to paragraph (4)(c).~~ Each report  
 763 shall record filed pursuant to subsection (4) must be filed at  
 764 such time and must contain such information as the commission  
 765 requires by rule.

766 ~~(e)(b)~~ The timely filing of the reports ~~report~~ required by  
 767 31 U.S.C. s. 5313 and 31 C.F.R. part 1020 with the appropriate  
 768 federal agency is deemed compliance with the reporting  
 769 requirements of this subsection unless the reports are not  
 770 regularly and comprehensively transmitted by the federal agency  
 771 to the office.

772 (6) Each financial institution shall maintain a record of  
 773 each qualified business customer that is ~~designation of a person~~  
 774 granted an exemption under ~~the authority of~~ 31 U.S.C. s. 5313,  
 775 including any name, address, and taxpayer identification number  
 776 of the exempt customer ~~person~~, as well as the name and address  
 777 of the financial institution and the signature of the financial  
 778 institution official designating the exempt customer ~~person~~.  
 779 Such record of exemptions shall be made available to the office  
 780 for inspection and copying and ~~shall be~~ submitted to the office

781 within 15 days after request.

782 (7) All reports and records filed with the office pursuant  
 783 to this section are confidential and exempt from s. 119.07(1).  
 784 However, the office shall provide any report filed pursuant to  
 785 this section, or information contained therein, to federal,  
 786 state, and local law enforcement and prosecutorial agencies, and  
 787 any federal or state agency responsible for the regulation or  
 788 supervision of financial institutions.

789 (8) ~~(a)~~ Each financial institution shall maintain:

790 (a) ~~For a minimum of 5 calendar years~~ Full and complete  
 791 records of all financial transactions, including all records  
 792 required by 31 C.F.R. parts 500-598 and 1010 for a minimum of 5  
 793 calendar years ~~parts 103.33 and 103.34.~~

794 ~~(b) The financial institution shall retain~~ A copy of all  
 795 reports filed with the office under subsection (5) ~~(4)~~ for a  
 796 minimum of 5 calendar years after submission of the report.

797 ~~(c) The financial institution shall retain~~ A copy of all  
 798 records of exemption for each qualified business customer  
 799 ~~designation of exempt person~~ made pursuant to subsection (6) for  
 800 a minimum of 5 calendar years after termination of exempt status  
 801 of such customer.

802 (9) The office, in addition to any other power conferred  
 803 upon it to enforce and administer this chapter and the financial  
 804 institutions codes, ~~the office~~ may:

805 (a) Bring an action in any court of competent jurisdiction  
 806 to enforce or administer this section. In such action, the

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807 office may seek an award of any civil penalty authorized by law  
 808 and any other appropriate relief at law or equity.

809 (b) Pursuant to s. 655.033, issue and serve upon a person  
 810 an order requiring such person to cease and desist and take  
 811 corrective action if ~~whenever~~ the office finds that such person  
 812 is violating, has violated, or is about to violate any provision  
 813 of this section, chapter 896, or ~~any~~ similar state or federal  
 814 law; any rule or order adopted under this section, chapter 896,  
 815 or ~~any~~ similar state or federal law; or any written agreement  
 816 related to this section, chapter 896, or ~~any~~ similar state or  
 817 federal law and entered into with the office.

818 (c) Pursuant to s. 655.037, issue and serve upon any  
 819 person an order of removal if ~~whenever~~ the office finds that  
 820 such person is violating, has violated, or is about to violate  
 821 any provision of this section, chapter 896, or ~~any~~ similar state  
 822 or federal law; any rule or order adopted under this section,  
 823 chapter 896, or ~~any~~ similar state or federal law; or any written  
 824 agreement related to this section, chapter 896, or ~~any~~ similar  
 825 state or federal law and entered into with the office.

826 (d) Impose and collect an administrative fine against any  
 827 person found to have violated any provision of this section,  
 828 chapter 896, or ~~any~~ similar state or federal law; any rule or  
 829 order adopted under this section, chapter 896, or ~~any~~ similar  
 830 state or federal law; or any written agreement related to this  
 831 section, chapter 896, or ~~any~~ similar state or federal law and  
 832 entered into with the office, in an amount up to ~~not exceeding~~

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833 \$10,000 per a day for each willful violation or \$500 per a day  
 834 for each negligent violation.

835 (10) (a) Except as provided in paragraph (b), a person who  
 836 willfully violates ~~any provision of~~ this section commits is  
 837 ~~guilty of~~ a misdemeanor of the first degree, punishable as  
 838 provided in s. 775.082 or s. 775.083.

839 (b) A person who willfully violates or knowingly causes  
 840 another to violate ~~any provision of~~ this section, when the  
 841 violation involves:

842 1. Financial transactions totaling or exceeding \$300 but  
 843 less than \$20,000 in any 12-month period, commits is guilty of a  
 844 felony of the third degree, punishable as provided in s. 775.082  
 845 or s. 775.083; ~~or~~

846 2. Financial transactions totaling or exceeding \$20,000  
 847 but less than \$100,000 in any 12-month period, commits is guilty  
 848 ~~of~~ a felony of the second degree, punishable as provided in s.  
 849 775.082 or s. 775.083; or

850 3. Financial transactions totaling or exceeding \$100,000  
 851 in any 12-month period, commits is guilty of a felony of the  
 852 first degree, punishable as provided in s. 775.082 or s.  
 853 775.083.

854 (c) In addition to the penalties otherwise authorized by  
 855 ss. 775.082 and 775.083, a person who has been convicted of or  
 856 who has pleaded guilty or nolo contendere to having violated  
 857 paragraph (b) may be sentenced to pay a fine of up to not  
 858 ~~exceeding~~ \$250,000 or twice the value of the financial

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859 transaction, whichever is greater, except that on a second or  
 860 subsequent conviction for or plea of guilty or nolo contendere  
 861 to a violation of paragraph (b), the fine may be up to \$500,000  
 862 or quintuple the value of the financial transaction, whichever  
 863 is greater.

864 (d) A financial institution as defined in s. 655.005 which  
 865 ~~that~~ willfully violates this section is also liable for a civil  
 866 penalty of not more than the greater of the value of the  
 867 financial transaction involved or \$25,000. However, the civil  
 868 penalty may not exceed \$100,000.

869 (e) A person other than a financial institution as defined  
 870 in s. 655.005 who violates this section is also liable for a  
 871 civil penalty of not more than the greater of the value of the  
 872 financial transaction involved or \$25,000.

873 (11) In any prosecution brought pursuant to this section,  
 874 the common law corpus delicti rule does not apply. The  
 875 defendant's confession or admission is admissible during trial  
 876 without the state having to prove the corpus delicti if the  
 877 court finds in a hearing conducted outside the presence of the  
 878 jury that the defendant's confession or admission is  
 879 trustworthy. Before the court admits the defendant's confession  
 880 or admission, the state must prove by a preponderance of the  
 881 evidence that there is sufficient corroborating evidence that  
 882 tends to establish the trustworthiness of the statement by the  
 883 defendant. Hearsay evidence is admissible during the  
 884 presentation of evidence at the hearing. In making its



885 determination, the court may consider all relevant corroborating  
 886 evidence, including the defendant's statements.

887 Section 11. Section 655.85, Florida Statutes, is amended  
 888 to read:

889 655.85 Settlement of checks.—If a ~~Whenever any~~ check is  
 890 forwarded or presented to a financial ~~an~~ institution for  
 891 payment, except when presented by the payee in person, the  
 892 paying institution or remitting institution shall settle the  
 893 amount of the check at par ~~may pay or remit the same~~, at its  
 894 option, ~~either~~ in money or in exchange drawn on its reserve  
 895 agent or agents in the City of New York or in any reserve city  
 896 within the Sixth Federal Reserve District; ~~however, an~~  
 897 ~~institution may not settle any check drawn on it otherwise than~~  
 898 at par. The term "at par" applies only to the settlement of  
 899 checks between collecting and paying or remitting institutions  
 900 and does not apply to, or prohibit an institution from,  
 901 deducting from the face amount of the check drawn on it a fee  
 902 for paying the check if the check is presented to the  
 903 institution by the payee in person. The provisions of This  
 904 section does ~~de~~ not apply ~~with respect~~ to the settlement of a  
 905 check sent to such institution as a special collection item.

906 Section 12. The Legislature intends that the amendment  
 907 made by this act to s. 655.85, Florida Statutes, shall be used  
 908 to clarify the relevant portions of the financial institutions  
 909 codes as defined in s. 655.005, Florida Statutes, relating to  
 910 fees imposed by a financial institution for the payment of

911 checks presented in person without requiring further amendment.

912 Section 13. Section 655.921, Florida Statutes, is amended  
913 to read:

914 655.921 Transaction of business by out-of-state financial  
915 institutions; exempt transactions ~~in the financial institutions~~  
916 ~~codes.~~—

917 (1) ~~Nothing in~~ The financial institutions codes do not  
918 ~~shall be construed to~~ prohibit a financial institution or  
919 business trust that has ~~having~~ its principal place of business  
920 outside this state and that does not operate ~~operating~~ branches  
921 in this state from:

922 (a) Contracting in this state with any person to acquire  
923 from such person a part, or the entire, interest in a loan that  
924 such person ~~proposes to make, has heretofore made, or hereafter~~  
925 makes, together with a like interest in any security instrument  
926 covering real or personal property in the state ~~proposed to be~~  
927 ~~given or hereafter or heretofore~~ given to such person to secure  
928 or evidence such loan.

929 (b) Entering into mortgage servicing contracts with  
930 persons authorized to transact business in this state and  
931 enforcing in this state the obligations ~~heretofore or hereafter~~  
932 acquired by it in the transaction of business outside this state  
933 or in the transaction of any business authorized by this  
934 section.

935 (c) Acquiring, holding, leasing, mortgaging, contracting  
936 with respect to, or otherwise protecting, managing, or conveying

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937 property in this state which is ~~has heretofore or may hereafter~~  
 938 ~~be~~ assigned, transferred, mortgaged, or conveyed to it as  
 939 security for, or in whole or in part in satisfaction of, a loan  
 940 or loans made by it or obligations acquired by it in the  
 941 transaction of any business authorized by this section.

942 (d) Making loans or committing to make loans to any person  
 943 located in this state and soliciting compensating deposit  
 944 balances in connection therewith.

945 (e) Filing suit in any court in this state to collect any  
 946 debt or foreclose on any security interest in collateral  
 947 securing a debt.

948 (2) A ~~No such~~ financial institution or business trust may  
 949 not shall be deemed to be transacting business in this state, or  
 950 be required to qualify ~~se~~ to do so, solely by reason of the  
 951 performance of any of the acts or business authorized in this  
 952 section.

953 Section 14. Section 655.922, Florida Statutes, is amended  
 954 to read:

955 655.922 Banking business by unauthorized persons; use of  
 956 name.—

957 (1) Only ~~No person other than~~ a financial institution  
 958 authorized to do business in this state pursuant to the  
 959 financial institutions codes of any state or federal law may  
 960 ~~shall, in this state,~~ engage in the business of soliciting or  
 961 receiving funds for deposit, ~~or of~~ issuing certificates of  
 962 deposit, ~~or of~~ paying checks in this state; and only such

963 financial institution may ~~no person shall~~ establish or maintain  
 964 a place of business in this state for any of the functions,  
 965 transactions, or purposes identified ~~mentioned~~ in this  
 966 subsection. A ~~Any~~ person who violates ~~the provisions of~~ this  
 967 subsection commits ~~is guilty of~~ a felony of the third degree,  
 968 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 969 This subsection does not prohibit the issuance or sale by a  
 970 financial institution of traveler's checks, money orders, or  
 971 other instruments for the transmission or payment of money, by  
 972 or through employees or agents of the financial institution off  
 973 the financial institution's premises.

974 (2) Only ~~No person other than~~ a financial institution  
 975 authorized to do business shall, in this state as provided under  
 976 subsection (1) may:

977 (a) Transact or solicit business under any name or title  
 978 that contains the words "bank," "banc," "banco," "banque,"  
 979 "banker," "banking," "trust company," "savings and loan  
 980 association," "savings bank," ~~or~~ "credit union," or words of  
 981 similar import, in any context or in any manner;

982 (b) Use any name, word, trademark, service mark, trade  
 983 name, Internet address, logo, sign, symbol, or device in any  
 984 context or in any manner; or

985 (c) Circulate or use any letterhead, billhead, circular,  
 986 paper, electronic media, Internet website or posting, or writing  
 987 of any kind or otherwise advertise or represent in any manner,  
 988

989 which indicates or reasonably implies that the business being  
 990 solicited, conducted, or advertised is the kind or character of  
 991 business transacted or conducted by a financial institution or  
 992 which is likely to lead any person to believe that such business  
 993 is that of a financial institution; however, the words "bank,"  
 994 "banc," "banco," "banque," "banker," "banking," "trust company,"  
 995 "savings and loan association," "savings bank," or "credit  
 996 union," or the plural of any thereof, may be used by, and in the  
 997 corporate or other name or title of, any company that ~~which~~ is  
 998 or becomes a ~~financial institution~~ holding company of a  
 999 financial institution pursuant to state or federal law; any  
 1000 subsidiary of ~~any such financial institution~~ holding company  
 1001 which includes as a part of its name or title all or any part,  
 1002 or abbreviations, of the name or title of the ~~financial~~  
 1003 ~~institution~~ holding company of which it is a subsidiary; any  
 1004 trade organization or association, whether or not incorporated,  
 1005 functioning for the purpose of promoting the interests of  
 1006 financial institutions or ~~financial institution~~ holding  
 1007 companies, the active members of which are financial  
 1008 institutions or ~~financial institution~~ holding companies; and any  
 1009 international development bank chartered pursuant to part II of  
 1010 chapter 663.

1011 (3) A ~~No~~ person may not use the name, trademark, service  
 1012 mark, trade name, Internet address, or logo of a ~~any~~ financial  
 1013 institution or an affiliate or subsidiary thereof, or use a name  
 1014 similar to that of a financial institution or an affiliate or

1015 subsidiary thereof, to market or solicit business from a  
 1016 customer or prospective customer of such institution if:

1017 (a) The solicitation is done without the written consent  
 1018 of the financial institution or its affiliate or subsidiary; and

1019 (b) A reasonable person would believe that the materials  
 1020 originated from, are endorsed by, or are connected with the  
 1021 financial institution or its affiliates or subsidiaries.

1022 (4) A financial institution, affiliate, subsidiary, or  
 1023 service corporation may not do business, solicit, or advertise  
 1024 in this state using a name, trademark, service mark, trade name,  
 1025 Internet address, or logo that may mislead consumers or cause  
 1026 confusion as to the identification of the proper legal business  
 1027 entity or the nature of the financial institution's business.

1028 (5) ~~(4)~~ Any court, in a proceeding brought by the office,  
 1029 by a ~~any~~ financial institution the principal place of business  
 1030 of which is in this state, or by any other person residing ~~7~~ or  
 1031 whose principal place of business is ~~located~~ ~~7~~ in this state and  
 1032 whose interests are substantially affected thereby, may enjoin  
 1033 any person from violating any provision ~~of the provisions~~ of  
 1034 this section. Except for a financial institution duly chartered  
 1035 by the office, the office may also seek an order from the  
 1036 circuit court for the annulment or dissolution of a corporation  
 1037 or any other business entity found violating any provision of  
 1038 this section. For the purposes of this subsection, the interests  
 1039 of a trade organization or association are deemed to be  
 1040 substantially affected if the interests of ~~any of~~ its members

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1041 are so affected. ~~In addition,~~ The office may also issue and  
 1042 serve upon any person who violates any provision ~~of the~~  
 1043 ~~provisions~~ of this section an emergency cease and desist order  
 1044 or a complaint seeking a cease and desist order in accordance  
 1045 with ~~the procedures and in the manner prescribed by s. 655.033.~~  
 1046 The office is not required to make any finding or determination  
 1047 that a violation of this section is likely to result in  
 1048 insolvency, substantial dissipation of assets or earnings, or  
 1049 substantial prejudice to any person in association with the  
 1050 issuance of an emergency cease and desist order.

1051 ~~(6)(5) Nothing in~~ This section does not shall be construed  
 1052 ~~to~~ prohibit the lawful establishment or operation ~~the lawful~~  
 1053 ~~operations~~ of a financial institution, affiliate, subsidiary, or  
 1054 service corporation or and nothing in this code shall be  
 1055 ~~construed to~~ prohibit any advertisement or other activity in  
 1056 this state by any person if such prohibition would contravene  
 1057 any applicable federal law that ~~which~~ preempts the law of this  
 1058 state.

1059 Section 15. Section 657.008, Florida Statutes, is amended  
 1060 to read:

1061 657.008 Place of doing business.—

1062 (1) A ~~Every~~ credit union authorized to transact business  
 1063 pursuant to the laws of this state shall have one principal  
 1064 place of doing business as designated in its bylaws and where  
 1065 legal process may be served. A credit union may change its place  
 1066 of business through an amendment to its bylaws.

1067           (2)~~(a)~~ Following ~~With~~ 30 days' prior written notification  
 1068 to the office or within such other time as is approved by the  
 1069 office, a credit union operating in a safe and sound manner may  
 1070 maintain branches without requiring prior office examination and  
 1071 approval at locations other than its main office or relocate  
 1072 branches previously established if the maintenance of such  
 1073 branches is determined by the board of directors to be  
 1074 reasonably necessary to furnish service to its members.

1075           (a) A credit union that requires office examination and  
 1076 approval before establishing or relocating a branch must submit  
 1077 a written application in such form and supported by such  
 1078 information, data, and records as the commission or office may  
 1079 require to make all findings necessary for approval. Upon  
 1080 receiving the application and a nonrefundable filing fee for the  
 1081 establishment of the branch, the office shall consider the  
 1082 following in determining whether to reject or approve the  
 1083 application:

1084           1. The sufficiency of the net worth of the credit union in  
 1085 relation to its deposit liabilities, including the proposed  
 1086 branch, and the additional fixed assets, if any, which are  
 1087 proposed for the branch and its operations without undue risk to  
 1088 the credit union or its depositors;

1089           2. The sufficiency of earnings and earnings prospects of  
 1090 the credit union necessary to support the anticipated expenses  
 1091 and operating losses of the branch during its formative or  
 1092 initial years;



1093           3. The sufficiency and quality of management available to  
 1094 operate the branch;

1095           4. The name of the proposed branch in order to determine  
 1096 if it reasonably identifies the branch as a branch of the main  
 1097 office and is not likely to unduly confuse the public; and

1098           5. The substantial compliance of the applicant with the  
 1099 applicable law governing its operations.

1100           (b) If any branch is located outside this state, the cost  
 1101 of examining such branch shall be borne by the credit union.  
 1102 Such cost includes ~~shall include~~, but is ~~shall~~ not ~~be~~ limited  
 1103 to, examiner travel expense and per diem.

1104           (3) A credit union may share office space with one or more  
 1105 credit unions and contract with any person or corporation to  
 1106 provide facilities or personnel.

1107           (4) A ~~Any~~ credit union organized under this state or  
 1108 federal law, the members of which are presently, or were at the  
 1109 time of admission into the credit union, employees of the state  
 1110 or a political subdivision or municipality thereof, or members  
 1111 of the immediate families of such employees, may apply for space  
 1112 in any building owned or leased by the state or respective  
 1113 political subdivision or municipality in the community or  
 1114 district in which the credit union does business.

1115           (a) The application shall be addressed to the officer  
 1116 charged with the allotment of space in such building. If space  
 1117 is available, the officer may allot space to the credit union at  
 1118 a reasonable charge for rent or services.

1119           **(b)** If the governing body having jurisdiction over the  
 1120 building determines that the services rendered by the credit  
 1121 union to the employees of the governing body are equivalent to a  
 1122 reasonable charge for rent or services, available space may be  
 1123 allotted to the credit union without charge for rent or  
 1124 services.

1125           (5) (a) The office may authorize foreign credit unions to  
 1126 establish branches in this state ~~Florida~~ if all of the following  
 1127 criteria are met:

1128           1. The state in which the foreign credit union's home  
 1129 office is located permits Florida credit unions to do business  
 1130 in the state under restrictions that are no greater than those  
 1131 placed upon a domestic credit union doing business in that  
 1132 state. For this purpose, such restrictions must ~~shall~~ include,  
 1133 ~~but are not limited to,~~ any fees, bonds, or other charges levied  
 1134 on domestic credit unions doing business in that state.

1135           2. The deposits of such foreign credit union and its  
 1136 proposed Florida branch must ~~shall~~ have insurance of accounts  
 1137 with the National Credit Union Administration.

1138           3. The credit union's field of membership is so limited as  
 1139 to be within that meaning of that term as defined in s. 657.002.

1140           **(b)** Every foreign credit union operating in this state  
 1141 must ~~Florida shall~~ keep the office informed of every location at  
 1142 which it is operating.

1143           **(c)** If the office has reason to believe that a foreign  
 1144 credit union is operating a branch in this state in an unsafe

1145 and unsound manner, it shall have the right to examine such  
 1146 branch. If, upon examination, the office finds that such branch  
 1147 is operating in an unsafe and unsound manner, it shall require  
 1148 the branch office to make appropriate modifications to bring the  
 1149 ~~such~~ branch operations into compliance with generally accepted  
 1150 credit union operation in this state. The ~~Such~~ foreign credit  
 1151 union shall reimburse the office for the full cost of such ~~this~~  
 1152 examination. Costs ~~shall~~ include examiner salaries, per diem,  
 1153 and travel expenses.

1154 (d) Any foreign credit union operating in this state  
 1155 shall, in any connection therewith, be subject to suit in the  
 1156 courts of this state, ~~by this state and~~ by the residents  
 1157 ~~citizens~~ of this state.

1158 (6) A credit union may provide, directly or through a  
 1159 contract with another company, off-premises armored car services  
 1160 to its members. Armored car services do not constitute a branch  
 1161 for the purposes of this section.

1162 Section 16. Section 657.028, Florida Statutes, is amended  
 1163 to read:

1164 657.028 Activities of directors, officers, committee  
 1165 members, employees, and agents.-

1166 (1) An individual may not disburse funds of the credit  
 1167 union for any extension of credit approved by her or him.

1168 (2) An elected officer, or ~~or~~ director, or ~~any~~ committee  
 1169 member, other than the chief executive officer, may not be  
 1170 compensated for her or his service as such.

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1171 (3) Except with the prior approval of the office, a person  
 1172 may not serve as an officer, director, or committee member of a  
 1173 credit union if she or he:

1174 (a) Has been convicted of a felony or of an offense  
 1175 involving dishonesty, a breach of trust, a violation of this  
 1176 chapter, or fraud, ~~except with the prior approval of the office;~~

1177 (b) Has been adjudicated bankrupt within the previous 7  
 1178 years;

1179 (c) Has been removed by any regulatory agency as a  
 1180 director, officer, committee member, or employee of a any  
 1181 financial institution, ~~except with the prior approval of the~~  
 1182 ~~office;~~

1183 (d) Has performed acts of fraud or dishonesty, or has  
 1184 failed to perform duties, resulting in a loss that ~~which~~ was  
 1185 subject to a paid claim under a fidelity bond, ~~except with the~~  
 1186 ~~prior approval of the office; or~~

1187 (e) Has been found guilty of a violation of s. 655.50,  
 1188 relating to the ~~Florida~~ control of money laundering and  
 1189 terrorist financing in Financial Institutions Act; chapter 896,  
 1190 relating to offenses related to financial transactions; or ~~any~~  
 1191 similar state or federal law; or

1192 (f) Has defaulted on a debt or obligation to a financial  
 1193 institution which resulted in a material loss to the financial  
 1194 institution.

1195 (4) A person may not serve as a director of a credit union  
 1196 if she or he is an employee of the credit union, other than the

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1197 chief executive officer of the credit union.

1198 (5) A director, officer, committee member, ~~officer~~, agent,  
 1199 or employee of the credit union may not in any manner, directly  
 1200 or indirectly, participate in the deliberation upon or the  
 1201 determination of any question affecting her or his pecuniary  
 1202 interest or the pecuniary interest of any corporation,  
 1203 partnership, or association, other than the credit union, in  
 1204 which she or he or a member of her or his immediate family is  
 1205 directly or indirectly interested.

1206 (6) Within 30 days after election or appointment, a record  
 1207 of the names and addresses of the members of the board, members  
 1208 of committees, ~~and~~ all officers of the credit union, and the  
 1209 credit manager shall be filed with the office on forms  
 1210 prescribed by the commission.

1211 Section 17. Section 657.041, Florida Statutes, is amended  
 1212 to read:

1213 657.041 Insurance; employee benefit plans.-

1214 (1) A credit union may purchase for or make available to  
 1215 its members credit life insurance, credit disability insurance,  
 1216 life savings or depositors life insurance, or any other  
 1217 insurance coverage which may be directly related to the  
 1218 extension of credit or to the receipt of shares or deposits in  
 1219 amounts related to the members' respective ages, shares,  
 1220 deposits, or credit balances, or to any combination thereof.

1221 (2) A credit union may purchase and maintain insurance on  
 1222 behalf of any person who is or was a director, officer,

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1223 employee, or agent of the credit union, or who is or was serving  
 1224 at the request of the credit union as a director, officer,  
 1225 employee, or agent of another corporation, partnership, joint  
 1226 venture, trust, or other enterprise, against any liability  
 1227 arising out of such person's capacity or status with the credit  
 1228 union, whether or not the credit union would have the power to  
 1229 indemnify such person against the asserted liability.

1230 (3) With the prior approval of members of a credit union  
 1231 and the office, the credit union may pay the premiums for  
 1232 reasonable health, accident, and related types of insurance  
 1233 protection for members of the credit union's board of directors,  
 1234 credit committee, supervisory committee, or other volunteer  
 1235 committee established by the board. Any insurance protection  
 1236 purchased must cease upon the insured person's leaving office  
 1237 without residual benefits other than from pending claims, if  
 1238 any, except that the credit union must comply with federal and  
 1239 state laws providing departing officials the right to maintain  
 1240 health insurance coverage at their own expense. The office shall  
 1241 consider the credit union's size and financial condition and the  
 1242 duties of the board or other officials in its consideration of  
 1243 the request for approval for insurance coverage and may withhold  
 1244 approval if the request would create an unsafe or unsound  
 1245 practice or condition for the credit union.

1246 (4) With the prior approval of the board of a credit union  
 1247 and the office, the credit union may fund employee benefit  
 1248 plans. The office shall consider the credit union's size and

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1249 financial condition and the duties of the employees and may  
 1250 withhold approval if the request would create an unsafe or  
 1251 unsound practice or condition for the credit union.

1252 Section 18. Subsection (20) of section 658.12, Florida  
 1253 Statutes, is amended to read:

1254 658.12 Definitions.—Subject to other definitions contained  
 1255 in the financial institutions codes and unless the context  
 1256 otherwise requires:

1257 (20) "Trust business" means the business of acting as a  
 1258 fiduciary when such business is conducted by a bank, a state or  
 1259 federal association, or a trust company, or ~~and also~~ when  
 1260 conducted by any other business organization for compensation  
 1261 that the office does not consider to be de minimis as its sole  
 1262 or principal business.

1263 Section 19. Subsection (4) of section 658.21, Florida  
 1264 Statutes, is amended to read:

1265 658.21 Approval of application; findings required.—The  
 1266 office shall approve the application if it finds that:

1267 (4) The proposed officers have sufficient financial  
 1268 institution experience, ability, standing, and reputation and  
 1269 the proposed directors have sufficient business experience,  
 1270 ability, standing, and reputation to indicate reasonable promise  
 1271 of successful operation, and none of the proposed officers or  
 1272 directors has been convicted of, or pled guilty or nolo  
 1273 contendere to, any violation of s. 655.50, relating to the  
 1274 Florida control of money laundering and terrorist financing in

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1275 ~~Financial Institutions Act~~; chapter 896, relating to offenses  
 1276 related to financial institutions; or ~~any~~ similar state or  
 1277 federal law. At least two of the proposed directors who are not  
 1278 also proposed officers must ~~shall~~ have had at least 1 year  
 1279 direct experience as an executive officer, regulator, or  
 1280 director of a financial institution within the 3 years before ~~of~~  
 1281 the date of the application. However, if the applicant  
 1282 demonstrates that at least one of the proposed directors has  
 1283 very substantial experience as an executive officer, director,  
 1284 or regulator of a financial institution more than 3 years before  
 1285 the date of the application, the office may modify the  
 1286 requirement and allow only one director to have direct financial  
 1287 institution experience within the last 3 years. The proposed  
 1288 president or chief executive officer must ~~shall~~ have had at  
 1289 least 1 year of direct experience as an executive officer,  
 1290 director, or regulator of a financial institution within the  
 1291 last 3 years.

1292 Section 20. Subsection (2) of section 658.235, Florida  
 1293 Statutes, is amended to read:

1294 658.235 Subscriptions for stock; approval of major  
 1295 shareholders.—

1296 (2) The directors shall also provide such detailed  
 1297 financial, business, and biographical information as the  
 1298 commission or office may reasonably require for each person who,  
 1299 together with related interests, subscribes to 10 percent or  
 1300 more of the voting stock or nonvoting stock that ~~which~~ is



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1301 convertible into voting stock of the proposed bank or trust  
 1302 company. The office shall make an investigation of the  
 1303 character, financial responsibility, and financial standing of  
 1304 each such person in order to determine whether he or she is  
 1305 likely to control the bank or trust company in a manner that  
 1306 ~~which~~ would jeopardize the interests of the depositors and  
 1307 creditors of the bank or trust company, the other stockholders,  
 1308 or the general public. The ~~This~~ investigation must ~~shall~~ include  
 1309 a determination of whether ~~any~~ such person has been convicted  
 1310 of, or pled guilty or nolo contendere to, a violation of s.  
 1311 655.50, relating to the ~~Florida~~ control of money laundering and  
 1312 terrorist financing in Financial Institutions Act; chapter 896,  
 1313 relating to offenses related to financial transactions; or ~~any~~  
 1314 similar state or federal law.

1315 Section 21. Section 658.49, Florida Statutes, is repealed.

1316 Section 22. Subsection (1) of section 663.02, Florida  
 1317 Statutes, is amended to read:

1318 663.02 Applicability of state banking laws.—

1319 (1) International banking corporations having offices in  
 1320 this state are ~~shall be~~ subject to all the provisions of the  
 1321 financial institutions codes and chapter 655 as though such  
 1322 ~~international banking~~ corporations were state banks or trust  
 1323 companies, except where it may appear, from the context or  
 1324 otherwise, that such provisions are clearly applicable only to  
 1325 banks or trust companies organized under the laws of this state  
 1326 or the United States. Without limiting the foregoing general

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1327 provisions, it is the intent of the Legislature that the  
 1328 following provisions are applicable to such banks or trust  
 1329 companies: s. 655.031, relating to administrative enforcement  
 1330 guidelines; s. 655.032, relating to investigations, subpoenas,  
 1331 hearings, and witnesses; s. 655.0321, relating to hearings,  
 1332 proceedings, and related documents and restricted access  
 1333 thereto; s. 655.033, relating to cease and desist orders; s.  
 1334 655.037, relating to removal by the office of an officer,  
 1335 director, committee member, employee, or other person; s.  
 1336 655.041, relating to administrative fines and enforcement; s.  
 1337 655.50, relating to the control of money laundering and  
 1338 terrorist financing; ~~s. 658.49, relating to loans by banks not~~  
 1339 ~~exceeding \$50,000;~~ and any ~~provision of~~ law for which the  
 1340 penalty is increased under s. 775.31 for facilitating or  
 1341 furthering terrorism. International banking corporations do  
 1342 ~~shall~~ not have the powers conferred on domestic banks by ~~the~~  
 1343 ~~provisions of~~ s. 658.60, relating to deposits of public funds.  
 1344 ~~The provisions of~~ Chapter 687, relating to interest and usury,  
 1345 applies shall apply to all bank loans not subject to s. 658.49.

1346 Section 23. Subsection (1) of section 663.09, Florida  
 1347 Statutes, is amended to read:

1348 663.09 Reports; records.—

1349 (1) An Every international banking corporation doing  
 1350 business in this state shall, at such times and in such form as  
 1351 the commission prescribes, make written reports in the English  
 1352 language to the office, under the oath of one of its officers,

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1353 managers, or agents transacting business in this state, showing  
 1354 the amount of its assets and liabilities and containing such  
 1355 other matters as the commission or office requires. An  
 1356 international banking corporation that maintains two or more  
 1357 offices may consolidate such information in one report unless  
 1358 the office otherwise requires for purposes of its supervision of  
 1359 the condition and operations of each such office. The late  
 1360 filing of such reports is ~~shall be~~ subject to an ~~the imposition~~  
 1361 ~~of the~~ administrative fine as prescribed under ~~by~~ s.  
 1362 655.045(2) ~~(b)~~. If ~~any~~ such international banking corporation  
 1363 fails ~~shall fail~~ to make ~~any~~ such report, as directed by the  
 1364 office, or if ~~any~~ such report contains a ~~shall contain any~~ false  
 1365 statement knowingly made, the same shall be grounds for  
 1366 revocation of the license of the international banking  
 1367 corporation.

1368 Section 24. Subsection (2) of section 663.12, Florida  
 1369 Statutes, is amended to read:

1370 663.12 Fees; assessments; fines.—

1371 (2) Each international bank agency, international branch,  
 1372 and state-chartered investment company shall pay to the office a  
 1373 ~~semiannual assessment, payable~~ on or before January 31 and July  
 1374 31 of each year, a semiannual assessment in an amount determined  
 1375 ~~by rule~~ by the commission by rule and calculated ~~in a manner so~~  
 1376 ~~as~~ to recover the costs of the office incurred in connection  
 1377 with the supervision of international banking activities  
 1378 licensed under this part. The ~~These~~ rules must ~~shall~~ provide ~~for~~

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1379 uniform rates of assessment for all licenses of the same type  
 1380 and, ~~shall~~ provide for declining rates of assessment in relation  
 1381 to the total assets of the licensee held in the state, but may  
 1382 ~~shall not result, in any event, provide for~~ rates of assessment  
 1383 which exceed the rate applicable to state banks pursuant to s.  
 1384 658.73, unless the rate ~~of assessment~~ would result in a  
 1385 semiannual assessment of less than \$1,000. For the purposes of  
 1386 this subsection, the total assets of an international bank  
 1387 agency, international branch, or state-chartered investment  
 1388 company must ~~shall~~ include amounts due the agency or branch or  
 1389 state investment company from other offices, branches, or  
 1390 subsidiaries of the international banking corporations or other  
 1391 corporations of which the agency, branch, or state-chartered  
 1392 investment company is a part or from entities related to that  
 1393 international banking corporation. ~~Each international~~  
 1394 ~~representative office, international administrative office, or~~  
 1395 ~~international trust company representative office shall pay to~~  
 1396 ~~the office an annual assessment in the amount of \$2,000, payable~~  
 1397 ~~on or before January 31 of each year.~~

1398 Section 25. Subsection (3) of section 663.306, Florida  
 1399 Statutes, is amended to read:

1400 663.306 Decision by office.—The office may, in its  
 1401 discretion, approve or disapprove the application, but it shall  
 1402 not approve the application unless it finds that:

1403 (3) The proposed officers and directors have sufficient  
 1404 experience, ability, standing, and reputation to indicate

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1405 reasonable promise of successful operation and none of the  
 1406 proposed officers or directors have been convicted of, or pled  
 1407 guilty or nolo contendere to, a violation of s. 655.50, relating  
 1408 to the ~~Florida~~ control of money laundering and terrorist  
 1409 financing in Financial Institutions Act; chapter 896, relating  
 1410 to offenses related to financial transactions; or ~~any~~ similar  
 1411 state or federal law.

1412 Section 26. Subsection (28) of section 665.013, Florida  
 1413 Statutes, is amended to read:

1414 665.013 Applicability of chapter 658.—The following  
 1415 sections of chapter 658, relating to banks and trust companies,  
 1416 are applicable to an association to the same extent as if the  
 1417 association were a "bank" operating thereunder:

1418 ~~(28) Section 658.49, relating to loans by banks not~~  
 1419 ~~exceeding \$50,000.~~

1420 Section 27. Paragraph (c) of subsection (1) of section  
 1421 665.033, Florida Statutes, is amended to read:

1422 665.033 Conversion of state or federal mutual association  
 1423 to capital stock association.—

1424 (1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state  
 1425 or federal mutual association may apply to the office for  
 1426 permission to convert itself into an association operated under  
 1427 the provisions of this chapter in accordance with the following  
 1428 procedures:

1429 (c) The office may approve or disapprove the plan ~~in its~~  
 1430 ~~discretion~~, but may ~~it shall~~ not approve the plan unless it

1431 finds that the association will comply sufficiently with the  
 1432 requirements of the financial institutions codes after  
 1433 conversion to entitle it to become an association operating  
 1434 under the financial institutions codes and the rules of the  
 1435 commission. The office may deny an ~~any~~ application from any  
 1436 federal association that is subject to a ~~any~~ cease and desist  
 1437 order or other supervisory restriction or order imposed by any  
 1438 state or the federal supervisory authority, or insurer, or  
 1439 guarantor or that has been convicted of, or pled guilty or nolo  
 1440 contendere to, a violation of s. 655.50, relating to the ~~Florida~~  
 1441 control of money laundering and terrorist financing in Financial  
 1442 ~~Institutions Act~~; chapter 896, relating to offenses related to  
 1443 financial transactions; or ~~any~~ similar state or federal law.

1444 Section 28. Paragraph (a) of subsection (2) of section  
 1445 665.034, Florida Statutes, is amended to read:

1446 665.034 Acquisition of assets of or control over an  
 1447 association.-

1448 (2) The office shall issue the certificate of approval  
 1449 only after it has made an investigation and determined that:

1450 (a) The proposed new owner or owners of voting capital  
 1451 stock are qualified by character, experience, and financial  
 1452 responsibility to control the association in a legal and proper  
 1453 manner and none of the proposed new owners have been convicted  
 1454 of, or pled guilty or nolo contendere to, a violation of s.  
 1455 655.50, relating to the ~~Florida~~ control of money laundering and  
 1456 terrorist financing in Financial Institutions Act; chapter 896,

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1457 relating to offenses related to financial transactions; or ~~any~~  
 1458 similar state or federal law.

1459 Section 29. Subsection (29) of section 667.003, Florida  
 1460 Statutes, is amended to read:

1461 667.003 Applicability of chapter 658.—Any state savings  
 1462 bank is subject to all the provisions, and entitled to all the  
 1463 privileges, of the financial institutions codes except where it  
 1464 appears, from the context or otherwise, that such provisions  
 1465 clearly apply only to banks or trust companies organized under  
 1466 the laws of this state or the United States. Without limiting  
 1467 the foregoing general provisions, it is the intent of the  
 1468 Legislature that the following provisions apply to a savings  
 1469 bank to the same extent as if the savings bank were a "bank"  
 1470 operating under such provisions:

1471 ~~(29) Section 658.49, relating to loans by banks not~~  
 1472 ~~exceeding \$50,000.~~

1473 Section 30. Paragraph (c) of subsection (1) of section  
 1474 667.006, Florida Statutes, is amended to read:

1475 667.006 Conversion of state or federal mutual savings bank  
 1476 or state or federal mutual association to capital stock savings  
 1477 bank.—

1478 (1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.—Any state  
 1479 or federal mutual savings bank or state or federal mutual  
 1480 association may apply to the office for permission to convert  
 1481 itself into a capital stock savings bank operated under the  
 1482 provisions of this chapter in accordance with the following

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1483 procedures:

1484 (c) The office may approve or disapprove the plan ~~in its~~  
 1485 ~~discretion~~, but may ~~it shall~~ not approve the plan unless it  
 1486 finds that the savings bank will comply sufficiently with the  
 1487 requirements of the financial institutions codes after  
 1488 conversion to entitle it to become a savings bank operating  
 1489 under the financial institutions codes and the rules of the  
 1490 commission. The office may deny any application from a ~~any~~  
 1491 federal savings bank that is subject to a ~~any~~ cease and desist  
 1492 order or other supervisory restriction or order imposed by any  
 1493 state or the federal supervisory authority, or insurer, or  
 1494 guarantor or that has been convicted of, or pled guilty or nolo  
 1495 contendere to, a violation of s. 655.50, relating to the ~~Florida~~  
 1496 ~~control of money laundering and terrorist financing in Financial~~  
 1497 ~~Institutions Act~~; chapter 896, relating to offenses related to  
 1498 financial transactions; or ~~any~~ similar state or federal law.

1499 Section 31. Paragraph (a) of subsection (2) of section  
 1500 667.008, Florida Statutes, is amended to read:

1501 667.008 Acquisition of assets of or control over a savings  
 1502 bank.—

1503 (2) The office shall issue the certificate of approval  
 1504 only after it has made an investigation and determined that:

1505 (a) The proposed new owner or owners of voting capital  
 1506 stock are qualified by character, experience, and financial  
 1507 responsibility to control the savings bank in a legal and proper  
 1508 manner and none of the proposed new owners have been convicted



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
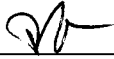
1509 | of, or pled guilty or nolo contendere to, a violation of s.  
1510 | 655.50, relating to the ~~Florida~~ control of money laundering and  
1511 | terrorist financing in Financial Institutions Act; chapter 896,  
1512 | relating to offenses related to financial transactions; or ~~any~~  
1513 | similar state or federal law.

1514 |       Section 32. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 675 Pub. Rec./Office of Financial Regulation  
**SPONSOR(S):** Broxson  
**TIED BILLS:** HB 673 **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

The State of Florida has a long history of providing public access to governmental records and meetings. In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level. In addition to the State Constitution, the Public Records Act, which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency. Unless specifically exempted, all agency records are available for public inspection. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

This bill amends s. 655.057, F.S., a public records exemption for certain records held by the Office of Financial Regulation (OFR) relating to the supervision and regulation of financial institutions chartered in Florida. The bill creates a public records exemption for reports of examination, including "working papers," that relate to the supervision, regulation, investigation, or examination of a financial institution and contains:

- Personal financial information from the books and records of a financial institution,
- Personal identifying information from the books and records pertaining to the deposit accounts and loans of depositors, bondholders, members, borrowers, and stockholders of a financial institution, or
- Proprietary business information that is a trade secret, as defined in s. 688.002, F.S.

The bill also creates an exemption to provide that examination reports (including working papers or portions thereof submitted to or prepared by the OFR) that relate to an investigation or examination of a subsidiary, affiliate, or service corporation of a financial institution. In addition, the bill defines:

- Examination report,
- Personal financial information,
- Personal identifying information,
- Working papers, which include informal enforcement actions, and
- Informal enforcement action.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that HB 673 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it appears to require a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24, of the State Constitution, provides that:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Fla. Const. art. I, s. 24.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>15</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.<sup>17</sup> The Legislature is only limited in its review process by constitutional requirements.

### **Supervision of State-Chartered Financial Institutions**

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667,

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<sup>8</sup> Florida Attorney General Opinion 85-62.

<sup>9</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>10</sup> *Supra* fn. 1.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> *Supra* fn. 1.

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

House Bill 673 (2014), which is linked to this bill, amends a number of provisions throughout the Codes.

### **Current Public Records Exemptions Under the Codes**

Currently, s. 655.057, F.S., of the Codes contains the following public records exemptions:

- All records and information relating to an “active” investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, the following information remains confidential and exempt to the extent that disclosure would:
  - Jeopardize the integrity of another active investigation;
  - Impair the safety and soundness of the financial institution;
  - Reveal personal financial information;
  - Reveal the identity of a confidential source;
  - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers* or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
  - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within 1 year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Florida-chartered credit unions and mutual associations are required to maintain and submit to the OFR a list of their members' names and residences. This list of members is confidential and exempt.
- Florida-chartered banks, trust companies, and stock associations are required to maintain and produce to the OFR lists of their shareholders' names, addresses, and number of shares held by each shareholder. Any portion of this list which reveals the shareholders' identities is confidential and exempt.

In addition, s. 655.059, F.S. provides that the books and records of a financial institution are “confidential” and may only be made available to specified persons, including the OFR.<sup>18</sup> However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the Sunshine Law, unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.<sup>19</sup> This statute merely prohibits financial institution from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

### **Effect of the Bill**

#### *Working Papers*

The bill, which is linked to the passage of HB 673, defines and creates a public records exemption for reports of examination, including “working papers,” that relate to the supervision, regulation, investigation, or examination of a financial institution and contains:

- Personal financial information from the books and records of a financial institution,

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<sup>18</sup> In addition, s. 655.012(1)(b), F.S. the Codes grant the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR as prescribed by the Codes.

<sup>19</sup> Florida Attorney General Opinion 07-27.

- Personal identifying information from the books and records pertaining to the deposit accounts and loans of depositors, bondholders, members, borrowers, and stockholders of a financial institution, or
- Proprietary business information that is a trade secret, as defined in s. 688.002, F.S.<sup>20</sup>

However, s. 655.057(2), F.S., already provides that working papers (as they are included in reports of examination, operation, or condition) are confidential and exempt, *regardless* whether they contain trade secrets or contain personal financial information or personal identifying information derived from a financial institution's books and records.

#### *Reports of Examination & Working Papers Relating to Subsidiaries, Affiliates, or Service Corporations*

The bill also creates an exemption to provide that examination reports (including working papers or portions thereof submitted to or prepared by the OFR) that relate to an investigation or examination of a *subsidiary, affiliate, or service corporation*<sup>21</sup> are also confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution, and specifies persons to whom such reports or portions thereof may be released.

The bill provides certain exceptions to confidentiality in which the examination reports may be released to specified persons, and appears similar to the current exemption for parent financial institutions in s. 655.057(2), F.S.

#### *Definitions*

The following terms are defined in the bill:

- Examination report,
- Personal financial information,
- Personal identifying information,
- Working papers, which the bill broadly defines as “correspondence, informal enforcement actions, electronic communications, supervisory reports, and other documents submitted to or prepared by the office in the supervision and regulation of a financial institution,” and
- Informal enforcement action.

#### *Statement of Public Necessity*

Section 2 of the bill is the statement of public necessity as required by the State Constitution. It contains:

- Legislative findings that (1) working papers containing specified information and (2) examination reports (including working papers) relating to an investigation or examination of a subsidiary, affiliate, or a service corporation must be kept confidential and exempt; and
- Identified public purposes for exempting:
  - Information derived from the books and records of a financial institution (to the extent they contain personal financial and identifying information),
  - Informal enforcement actions (which the bill includes in the definition of working papers), and
  - Trade secrets.

Section 2 provides that exempting the protected information is a public necessity because disclosure could, among other things:

- Increase an individual's risk of identity theft and jeopardize his or her financial and personal safety,
- Violate an individual's right of privacy as provided in s. 23, Art. I of the State Constitution,
- Erode public confidence in and reduce competitive equality for Florida-chartered financial institutions, and
- Result in an economic loss to a business entity.

<sup>20</sup> HB 673 creates s. 655.0591, F.S., to provide a statutory procedure when a person required to submit documents to the OFR pursuant to the Codes claims that such documents contain a trade secret.

<sup>21</sup> The Codes define “subsidiary,” “affiliate,” and “service corporation” at s. 655.001(1)(x), (a), and (u), F.S., respectively.

The bill provides that subsections (3)(b) and (4)(b) are subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

**Section 2** provides a statement of public necessity as required by the State Constitution.

**Section 3** provides a contingent effective date.

**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 protection of proprietary business information in working papers may benefit financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace. In addition, the bill's protection of personal identifying and financial information of consumers may reduce the risk of identity theft.

**D. FISCAL COMMENTS:**

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**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:

*Vote Requirement and Public Necessity Statement for Public Records Bills*

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

*Subject Requirement*

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes.

*Public Necessity Statement*

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created public-records or public-meetings exemption.

**B. RULE-MAKING AUTHORITY:**

None provided by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

While the bill does define and provide a public necessity statement for personal financial information, personal identifying information, and trade secrets, it is unclear why a new exemption for working papers is needed. As noted above, current law already provides a blanket exemption for examination reports and working papers, and permits access by a narrow class of specified persons. Passage of this bill, without amendment to the current exemption for examination reports and working papers in s. 655.057(2), F.S., may result in uncertainty and litigation regarding how these provisions should be interpreted and applied together.

Secondly, the bill does not provide an identifiable public purpose as to why an exemption for these documents as they relate to an investigation or examination of a subsidiary, affiliate, or a service corporation is needed. The bill merely provides a legislative finding that these items must be kept confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

Thirdly, the bill creates a very broad definition of "working papers" which may be broader than is necessary to meet the public purpose it serves.

Finally, lines 138 and 144 of the bill refer to the "Office of Financial Regulations' records." The correct agency reference should be "Office of Financial Regulation's records."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           655.057, F.S.; providing an exemption from public  
 4           records requirements for certain working papers held  
 5           by the Office of Financial Regulation relating to the  
 6           supervision, regulation, or investigation or  
 7           examination of financial institutions, to which  
 8           penalties apply for willful disclosure of such  
 9           confidential information; providing for future  
 10          legislative review and repeal of the exemption;  
 11          providing an exemption from public records  
 12          requirements for examination reports and working  
 13          papers held by the office relating to investigations  
 14          or examinations of subsidiaries, affiliates, or  
 15          service corporations of state financial institutions,  
 16          to which penalties apply for willful disclosure of  
 17          such confidential information; providing for release  
 18          of such reports and papers in certain circumstances;  
 19          providing definitions; providing a statement of public  
 20          necessity; providing a contingent effective date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1. Subsections (3) through (9) and subsection (10)  
 25           of section 655.057, Florida Statutes, are renumbered as  
 26           subsections (5) through (11) and subsection (13), respectively,

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

27 and new subsections (3), (4), and (12) are added to that section  
 28 to read:

29 655.057 Records; limited restrictions upon public access.-

30 (3)(a) Except as otherwise provided in this section and  
 31 except for such portions thereof which are otherwise public  
 32 record, working papers or portions thereof submitted to or  
 33 prepared by the office relating to the supervision, regulation,  
 34 or investigation or examination of a financial institution and  
 35 containing:

36 1. Personal financial information from the books and  
 37 records of a financial institution, which must be kept  
 38 confidential as provided in s. 655.059(1);

39 2. Personal identifying information from the books and  
 40 records pertaining to the deposit accounts and loans of  
 41 depositors, bondholders, members, borrowers, and stockholders of  
 42 a financial institution, which must be kept confidential as  
 43 provided in s. 655.059(2); or

44 3. Proprietary business information that is a trade  
 45 secret, as defined in s. 688.002,

46  
 47 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 48 I of the State Constitution.

49 (b) This subsection is subject to the Open Government  
 50 Sunset Review Act in accordance with s. 119.15 and shall stand  
 51 repealed on October 2, 2019, unless reviewed and saved from  
 52 repeal through reenactment by the Legislature.

53 (4) (a) Except as otherwise provided in this section and  
 54 except for such portions thereof which are otherwise public  
 55 record, examination reports, including working papers or  
 56 portions thereof submitted to or prepared by the office,  
 57 relating to an investigation or examination of a subsidiary,  
 58 affiliate, or service corporation of a state financial  
 59 institution are confidential and exempt from s. 119.07(1) and s.  
 60 24(a), Art. I of the State Constitution. However, such reports  
 61 or papers or portions thereof may be released to:

62 1. The subsidiary, affiliate, or service corporation under  
 63 examination;

64 2. Any holding company or financial institution of which  
 65 the examined entity is a subsidiary, affiliate, or service  
 66 corporation;

67 3. Any other state, federal, or foreign agency responsible  
 68 for the supervision or regulation of financial institutions,  
 69 including the Financial Crimes Enforcement Network and the  
 70 Office of Foreign Assets Control of the United States Department  
 71 of the Treasury; or

72 4. Entities to which the office may release reports and  
 73 working papers in accordance with other provisions of this  
 74 section.

75 (b) This subsection is subject to the Open Government  
 76 Sunset Review Act in accordance with s. 119.15 and shall stand  
 77 repealed on October 2, 2019, unless reviewed and saved from  
 78 repeal through reenactment by the Legislature.

79        (12) For purposes of this section, the term:  
 80        (a) "Examination report" means records submitted to or  
 81 prepared by the office as part of the office's duties performed  
 82 pursuant to s. 655.012 or s. 655.045(1).  
 83        (b) "Informal enforcement action" means a board  
 84 resolution, a document of resolution, or an agreement in writing  
 85 between the office and a financial institution that:  
 86            1. The office imposes on an institution when the office  
 87 considers the administrative enforcement guidelines in s.  
 88 655.031 and determines that a formal enforcement action is not  
 89 an appropriate administrative remedy.  
 90            2. Sets forth a program of corrective action to address  
 91 one or more safety and soundness deficiencies and violations of  
 92 law or rule at the institution.  
 93            3. Is not subject to enforcement by imposition of an  
 94 administrative fine pursuant to s. 655.041.  
 95        (c) "Personal financial information" means:  
 96            1. Information relating to the existence, nature, source,  
 97 or amount of a person's personal income, expenses, or debt.  
 98            2. Information relating to a person's financial  
 99 transactions of any kind.  
 100            3. Information relating to the existence, identification,  
 101 nature, or value of a person's assets, liabilities, or net  
 102 worth.  
 103        (d) "Personal identifying information" includes, but is  
 104 not limited to, a person's name, signature, social security

105 number, date of birth, residence address, and telephone number.

106 (e) "Working papers" means correspondence, informal  
 107 enforcement actions, electronic communications, supervisory  
 108 reports, and other documents submitted to or prepared by the  
 109 office in the supervision and regulation of a financial  
 110 institution.

111 Section 2. (1) The Legislature finds that it is a public  
 112 necessity that working papers or portions thereof submitted to  
 113 or prepared by the Office of Financial Regulation relating to  
 114 the supervision, regulation, or investigation or examination of  
 115 a financial institution and containing personal financial  
 116 information from the books and records of a financial  
 117 institution; personal identifying information from the books and  
 118 records pertaining to the deposit accounts and loans of  
 119 depositors, bondholders, members, borrowers, and stockholders of  
 120 a financial institution; or proprietary business information of  
 121 a financial institution that is a trade secret must be kept  
 122 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 123 s. 24(a), Article I of the State Constitution.

124 (2) The Legislature finds that it is a public necessity  
 125 that examination reports, including working papers or portions  
 126 thereof submitted to or prepared by the Office of Financial  
 127 Regulation, relating to an investigation or examination of a  
 128 subsidiary, affiliate, or service corporation of a state  
 129 financial institution must be kept confidential and exempt from  
 130 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

131 State Constitution.

132 (3) The books and records of financial institutions are  
 133 confidential and may only be released pursuant to s. 655.059,  
 134 Florida Statutes. Records submitted to or prepared by the Office  
 135 of Financial Regulation may contain information that is derived  
 136 directly or indirectly from the books and records of financial  
 137 institutions. A financial institution's books and records, and  
 138 the Office Financial Regulations' records relating to financial  
 139 institutions, may contain the personal financial information and  
 140 personal identifying information of depositors, bondholders,  
 141 members, borrowers, and stockholders that is otherwise protected  
 142 from disclosure pursuant to ss. 655.057 and 655.059, Florida  
 143 Statutes, and applicable federal law. To the extent that the  
 144 Office of Financial Regulations' records contain information  
 145 that would identify depositors, bondholders, members, borrowers,  
 146 and stockholders, or reveal their personal financial  
 147 information, those individuals have not knowingly or directly  
 148 submitted their personal information to the Office of Financial  
 149 Regulation or otherwise voluntarily subjected themselves to the  
 150 office's jurisdiction. Disclosure of this information in  
 151 response to a public records request would violate the  
 152 individual's right of privacy as provided in s. 23, Art. I of  
 153 the State Constitution.

154 (4) Although a person may have otherwise taken legitimate  
 155 measures to protect his or her personal and financial  
 156 information and limit the information's public disclosure in

157 accordance with applicable law to prevent identity theft and  
 158 protect his or her financial and personal safety, the Office of  
 159 Financial Regulation obtains personal financial information and  
 160 personal identifying information during investigations and  
 161 examinations that may not otherwise be public record. This  
 162 information includes signatures; social security numbers; dates  
 163 of birth; residence addresses; telephone numbers; credit card,  
 164 loan, and other bank account numbers; and ownership and  
 165 membership percentages. To the extent that this information is  
 166 not otherwise public record, the disclosure of this information  
 167 in response to a public records request submitted to the Office  
 168 of Financial Regulation would unnecessarily increase a person's  
 169 risk of becoming a victim of various criminal activities. The  
 170 disclosure of this information in response to a public records  
 171 request would also not otherwise further public policy if other  
 172 applicable laws permit an applicant to limit its disclosure.  
 173 Disclosure of this information in response to a public records  
 174 request is also contrary to the purposes of the financial  
 175 institutions codes as provided in s. 655.001, Florida Statutes.

176 (5) Public disclosure of the existence of an informal  
 177 enforcement action could further impair the safety and soundness  
 178 of a financial institution that is subject to the action.  
 179 Furthermore, the public disclosure of this information could  
 180 erode public confidence in financial institutions and the  
 181 financial institution system of this state and may lead to a  
 182 reduced level of protection of the interests of the depositors



183 and creditors of financial institutions. Maintaining informal  
 184 enforcement actions as confidential and exempt from s.  
 185 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 186 State Constitution will provide the same protections for  
 187 financial institutions chartered by this state as are available  
 188 to financial institutions chartered under federal law or by  
 189 other states, maintain public confidence in financial  
 190 institutions subject to the financial institutions codes,  
 191 protect the safety and soundness of the financial institution  
 192 system of this state, protect the interests of the depositors  
 193 and creditors of financial institutions, promote the opportunity  
 194 for state-chartered financial institutions to be and remain  
 195 competitive with financial institutions chartered under federal  
 196 law or by other states, and otherwise provide for and promote  
 197 the purposes of the financial institutions codes as provided in  
 198 s. 655.001, Florida Statutes.

199 (6) A trade secret derives independent economic value,  
 200 actual or potential, from not being generally known to, and not  
 201 readily ascertainable by, other persons who can obtain economic  
 202 value from its disclosure or use. Without an exemption for a  
 203 trade secret held by the Office of Financial Regulation, the  
 204 trade secret becomes public record when received and must be  
 205 disclosed upon request. Disclosing a trade secret under the  
 206 public records law would destroy the value of that property,  
 207 causing a financial loss to the person or entity submitting the  
 208 trade secret. Release of that information would give business

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209 competitors an unfair advantage and weaken the position of the  
210 person or entity supplying the trade secret in the marketplace.

211       Section 3. This act shall take effect on the same date  
212 that HB 673 or similar legislation takes effect, if such  
213 legislation is adopted in the same legislative session or an  
214 extension thereof and becomes law.

## INSURANCE & BANKING SUBCOMMITTEE

HB 675 by Rep. Broxson  
Public Records / Office of Financial Regulation

### AMENDMENT SUMMARY February 19, 2014

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

- Removes the exemption for working papers that the bill created, since current law already exempts working papers,
- Removes the exemption for examination reports and working papers for subsidiaries, affiliates, and service corporations,
- Creates an exemption for trade secrets held by the Office in accordance with their statutory duties,
- Creates a definition and a limited exemption for informal enforcement actions by the Office,
- Makes references to the state constitution instead of only s. 119.07(1) for all current and new exemptions in s. 655.057, F.S.,
- Subjects the entire section to Open Government Sunset Review, and
- Provides a more specific definition of "working papers."



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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 Broxson offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 655.057, Florida Statutes, is amended  
 8 to read:

9 655.057 Records; limited restrictions upon public access.—

10 (1) Except as otherwise provided in this section and  
 11 except for such portions thereof which are otherwise public  
 12 record, all records and information relating to an investigation  
 13 by the office are confidential and exempt from the provisions of  
 14 s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 15 until such investigation is completed or ceases to be active.

16 For purposes of this subsection, an investigation is considered  
 17 "active" while such investigation is being conducted by the



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18 office with a reasonable, good faith belief that it may lead to  
19 the filing of administrative, civil, or criminal proceedings. An  
20 investigation does not cease to be active if the office is  
21 proceeding with reasonable dispatch, and there is a good faith  
22 belief that action may be initiated by the office or other  
23 administrative or law enforcement agency. After an investigation  
24 is completed or ceases to be active, portions of such records  
25 relating to the investigation shall be confidential and exempt  
26 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
27 State Constitution to the extent that disclosure would:

- 28 (a) Jeopardize the integrity of another active  
29 investigation;
- 30 (b) Impair the safety and soundness of the financial  
31 institution;
- 32 (c) Reveal personal financial information;
- 33 (d) Reveal the identity of a confidential source;
- 34 (e) Defame or cause unwarranted damage to the good name or  
35 reputation of an individual or jeopardize the safety of an  
36 individual; or
- 37 (f) Reveal investigative techniques or procedures.
- 38 (2) Except as otherwise provided in this section and  
39 except for such portions thereof which are public record,  
40 reports of examinations, operations, or condition, including  
41 working papers, or portions thereof, prepared by, or for the use  
42 of, the office or any state or federal agency responsible for  
43 the regulation or supervision of financial institutions in this



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44 state are confidential and exempt from the provisions of s.  
45 119.07(1) and s. 24(a), Art. I of the State Constitution.

46 However, such reports or papers or portions thereof may be  
47 released to:

48 (a) The financial institution under examination;

49 (b) Any holding company of which the financial institution  
50 is a subsidiary;

51 (c) Proposed purchasers if necessary to protect the  
52 continued financial viability of the financial institution, upon  
53 prior approval by the board of directors of such institution;

54 (d) Persons proposing in good faith to acquire a  
55 controlling interest in or to merge with the financial  
56 institution, upon prior approval by the board of directors of  
57 such financial institution;

58 (e) Any officer, director, committee member, employee,  
59 attorney, auditor, or independent auditor officially connected  
60 with the financial institution, holding company, proposed  
61 purchaser, or person seeking to acquire a controlling interest  
62 in or merge with the financial institution; or

63 (f) A fidelity insurance company, upon approval of the  
64 financial institution's board of directors. However, a fidelity  
65 insurance company may receive only that portion of an  
66 examination report relating to a claim or investigation being  
67 conducted by such fidelity insurance company.

68 (g) Examination, operation, or condition reports of a  
69 financial institution shall be released by the office within 1



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70 year after the appointment of a liquidator, receiver, or  
71 conservator to such financial institution. However, any portion  
72 of such reports which discloses the identities of depositors,  
73 bondholders, members, borrowers, or stockholders, other than  
74 directors, officers, or controlling stockholders of the  
75 institution, shall remain confidential and exempt from the  
76 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
77 Constitution.

78

79 Any confidential information or records obtained from the office  
80 pursuant to this paragraph shall be maintained as confidential  
81 and exempt from the provisions of s. 119.07(1) and s. 24(a),  
82 Art. I of the State Constitution.

83 (3) Except as otherwise provided in this section and except  
84 for such portions thereof which are otherwise public record,  
85 after an investigation relating to an informal enforcement  
86 action is completed or ceases to be active, informal enforcement  
87 actions are confidential and exempt from s. 119.07(1) and s.  
88 24(a), Art. I of the State Constitution, to the extent that  
89 disclosure would:

90 (a) Jeopardize the integrity of another active  
91 investigation;

92 (b) Impair the safety and soundness of the financial  
93 institution;

94 (c) Reveal personal financial information;

95 (d) Reveal the identity of a confidential source;



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96 (e) Defame or cause unwarranted damage to the good name or  
97 reputation of an individual or jeopardize the safety of an  
98 individual; or

99 (f) Reveal investigative techniques or procedures.

100 (4) Except as otherwise provided in this section and except  
101 for such portions thereof which are otherwise public record,  
102 trade secrets, as defined in s. 688.002 and that comply with s.  
103 655.0591, that are held by the Office of Financial Regulation in  
104 accordance with its statutory duties with respect to the Codes,  
105 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
106 I of the State Constitution.

107 (5) ~~(3)~~ The provisions of this section do not prevent or  
108 restrict:

109 (a) Publishing reports required to be submitted to the  
110 office pursuant to s. 655.045(2)(a) or required by applicable  
111 federal statutes or regulations to be published.

112 (b) Furnishing records or information to any other state,  
113 federal, or foreign agency responsible for the regulation or  
114 supervision of financial institutions, including Federal Home  
115 Loan Banks.

116 (c) Disclosing or publishing summaries of the condition of  
117 financial institutions and general economic and similar  
118 statistics and data, provided that the identity of a particular  
119 financial institution is not disclosed.





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120 (d) Reporting any suspected criminal activity, with  
121 supporting documents and information, to appropriate law  
122 enforcement and prosecutorial agencies.

123 (e) Furnishing information upon request to the Chief  
124 Financial Officer or the Division of Treasury of the Department  
125 of Financial Services regarding the financial condition of any  
126 financial institution that is, or has applied to be, designated  
127 as a qualified public depository pursuant to chapter 280.

128

129 Any confidential information or records obtained from the office  
130 pursuant to this subsection shall be maintained as confidential  
131 and exempt from the provisions of s. 119.07(1) and s. 24(a),  
132 Art. I of the State Constitution.

133 (6)~~(4)~~(a) Orders of courts or of administrative law judges  
134 for the production of confidential records or information shall  
135 provide for inspection in camera by the court or the  
136 administrative law judge and, after the court or administrative  
137 law judge has made a determination that the documents requested  
138 are relevant or would likely lead to the discovery of admissible  
139 evidence, said documents shall be subject to further orders by  
140 the court or the administrative law judge to protect the  
141 confidentiality thereof. Any order directing the release of  
142 information shall be immediately reviewable, and a petition by  
143 the office for review of such order shall automatically stay  
144 further proceedings in the trial court or the administrative  
145 hearing until the disposition of such petition by the reviewing



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146 court. If any other party files such a petition for review, it  
147 will operate as a stay of such proceedings only upon order of  
148 the reviewing court.

149 (b) Confidential records and information furnished  
150 pursuant to a legislative subpoena shall be kept confidential by  
151 the legislative body or committee which received the records or  
152 information, except in a case involving investigation of charges  
153 against a public official subject to impeachment or removal, and  
154 then disclosure of such information shall be only to the extent  
155 determined by the legislative body or committee to be necessary.

156 (7)~~(5)~~ Every credit union and mutual association shall  
157 maintain, in the principal office where its business is  
158 transacted, full and correct records of the names and residences  
159 of all the members of the credit union or mutual association.  
160 Such records shall be subject to the inspection of all the  
161 members of the credit union or mutual association, and the  
162 officers authorized to assess taxes under state authority,  
163 during business hours of each business day. A current list of  
164 members shall be made available to the office's examiners for  
165 their inspection and, upon the request of the office, shall be  
166 submitted to the office. Except as otherwise provided in this  
167 subsection, the list of the members of the credit union or  
168 mutual association is confidential and exempt from the  
169 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
170 Constitution.



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171        ~~(8)(6)~~ Every bank, trust company, and stock association  
172 shall maintain, in the principal office where its business is  
173 transacted, full and complete records of the names and  
174 residences of all the shareholders of the bank, trust company,  
175 or stock association and the number of shares held by each. Such  
176 records shall be subject to the inspection of all the  
177 shareholders of the bank, trust company, or stock association,  
178 and the officers authorized to assess taxes under state  
179 authority, during business hours of each banking day. A current  
180 list of shareholders shall be made available to the office's  
181 examiners for their inspection and, upon the request of the  
182 office, shall be submitted to the office. Except as otherwise  
183 provided in this subsection, any portion of this list which  
184 reveals the identities of the shareholders is confidential and  
185 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
186 of the State Constitution.

187        ~~(9)(7)~~ Materials supplied to the office or to employees of  
188 any financial institution by other governmental agencies,  
189 federal or state, shall remain the property of the submitting  
190 agency or the corporation, and any document request must be made  
191 to the appropriate agency. Any confidential documents supplied  
192 to the office or to employees of any financial institution by  
193 other governmental agencies, federal or state, shall be  
194 confidential and exempt from the provisions of s. 119.07(1) and  
195 s. 24(a), Art. I of the State Constitution. Such information



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196 shall be made public only with the consent of such agency or the  
197 corporation.

198 (10)~~(8)~~ Examination reports, investigatory records,  
199 applications, and related information compiled by the office, or  
200 photographic copies thereof, shall be retained by the office for  
201 a period of at least 10 years.

202 (11)~~(9)~~ A copy of any document on file with the office  
203 which is certified by the office as being a true copy may be  
204 introduced in evidence as if it were the original. The  
205 commission shall establish a schedule of fees for preparing true  
206 copies of documents.

207 (12) For purposes of this section, the term:

208 (a) "Examination report" means records submitted to or  
209 prepared by the office as part of the office's duties performed  
210 pursuant to s. 655.012 or s. 655.045(1).

211 (b) "Informal enforcement action" means a board resolution,  
212 document of resolution, or an agreement in writing between the  
213 office and a financial institution that:

214 1. The office imposes on an institution when the office  
215 considers the administrative enforcement guidelines in s.  
216 655.031 and determines that a formal enforcement action is not  
217 an appropriate administrative remedy.

218 2. Sets forth a program of corrective action to address one  
219 or more safety and soundness deficiencies and violations of law  
220 or rule at the institution.



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221 3. Is not subject to enforcement by imposition of an  
222 administrative fine pursuant to s. 655.041.

223 (c) "Working papers" means the records of the procedures  
224 followed, the tests performed, the information obtained and the  
225 conclusions reached in an examination or investigation performed  
226 under s. 655.032 and 655.045. Working papers include planning,  
227 documentation, work programs, analyses, memoranda, letters of  
228 confirmation and representation, abstracts of the books and  
229 records of a financial institution as defined in s.  
230 655.005(1)(i), and schedules or commentaries prepared or  
231 obtained in the course of such examination or investigation.

232 (d) "Personal financial information" means:

233 1. Information relating to the existence, nature, source,  
234 or amount of a person's personal income, expenses, or debt.

235 2. Information relating to a person's financial  
236 transactions of any kind.

237 3. Information relating to the existence, identification,  
238 nature, or value of a person's assets, liabilities, or net  
239 worth.

240 (13) ~~(10)~~ Any person who willfully discloses information  
241 made confidential by this section is guilty of a felony of the  
242 third degree, punishable as provided in s. 775.082, s. 775.083,  
243 or s. 775.084.

244 (14) This section is subject to the Open Government Sunset  
245 Review Act in accordance with s. 119.15 and shall stand repealed



Amendment No. 1

246 on October 2, 2019, unless otherwise saved from repeal through  
247 reenactment by the Legislature.

248 Section 2. (1) The Legislature finds it a public necessity  
249 that informal enforcement actions and trade secrets, as defined  
250 in s. 688.002, must be kept confidential and exempt from s.  
251 119.07(1) and s. 24(a), Art. I of the State Constitution.

252 (2) Public disclosure of an informal enforcement action  
253 could further impair the safety and soundness of a financial  
254 institution that is subject to the action. Furthermore, the  
255 public disclosure of this information could erode public  
256 confidence in financial institutions and the financial  
257 institution system in this State and may lead to a reduced level  
258 of protection of the interests of the depositors and creditors  
259 of financial institutions. Maintaining informal enforcement  
260 actions as confidential and exempt from s. 119.07(1), Florida  
261 Statutes, and s. 24(a), Art. I of the State Constitution will:  
262 provide the same protections for financial institutions that are  
263 chartered by this state that are available to financial  
264 institutions chartered under federal law and by other states;  
265 maintain public confidence in financial institutions subject to  
266 the financial institutions codes; protect the safety and  
267 soundness of the financial institution system in this State;  
268 protect the interests of the depositors and creditors of  
269 financial institutions; promote the opportunity for state-  
270 chartered financial institutions to be and remain competitive  
271 with financial institutions chartered by other states or the



Amendment No. 1

272 United States, and; otherwise provide for and promote the  
273 purposes of the financial institutions codes as set forth in s.  
274 655.001.

275 (3) A trade secret derives independent economic value,  
276 actual or potential, from not being generally known to, and not  
277 readily ascertainable by, other persons who can obtain economic  
278 value from its disclosure or use. Without an exemption for a  
279 trade secret held by the office, that trade secret becomes a  
280 public record when received and must be divulged upon request.  
281 Divulging a trade secret under the public-records law would  
282 destroy the value of that property, causing a financial loss to  
283 the person or entity submitting the trade secret. Release of  
284 that information would give business competitors an unfair  
285 advantage and weaken the position of the person or entity  
286 supplying the trade secret in the marketplace.

287 Section 3. This act shall take effect on the same date  
288 that HB 673 or similar legislation takes effect, if such  
289 legislation is adopted in the same legislative session or an  
290 extension thereof and becomes law.

291

292 -----

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

294 Remove lines 4-20 and insert:  
295 records requirements for certain informal enforcement actions by  
296 the Office of Financial Regulation, to which penalties apply for  
297 willful disclosure of such confidential information; providing



Amendment No. 1

298 an exemption from public records requirements for certain trade  
299 secrets held by the office, to which penalties apply for willful  
300 disclosure of such confidential information; providing for  
301 release of trade secrets in circumstances; providing  
302 definitions; providing for future legislative review and repeal  
303 of the section; providing a statement of public necessity;  
304 providing a contingent effective date.

305







# State of the Florida Property Insurance Market: *Past, Present and Future*

Florida House Insurance & Banking Subcommittee

February 19, 2014

***Download at [www.iii.org/presentations](http://www.iii.org/presentations)***

Lynne McChristian, Florida Representative

Insurance Information Institute ♦ 110 William Street ♦ New York, NY 10038

Cell: 813.480.6446 ♦ [lynnem@iii.org](mailto:lynnem@iii.org) ♦ [www.iii.org](http://www.iii.org) ♦ [www.Insuring.Florida](http://www.Insuring.Florida)

# Presentation Outline



- **Property/Casualty Performance & Historical Impacts**
- **Profitability & Growth Analyses**
- **Economic Outlook & Property Exposure Impacts**
- **Catastrophe Loss Update: Florida's Role in History**
  - ◆ **It's Not Just Hurricanes Anymore!**
    - **Tornado**
    - **Flood/Surge—Key Issues in Flood Insurance**



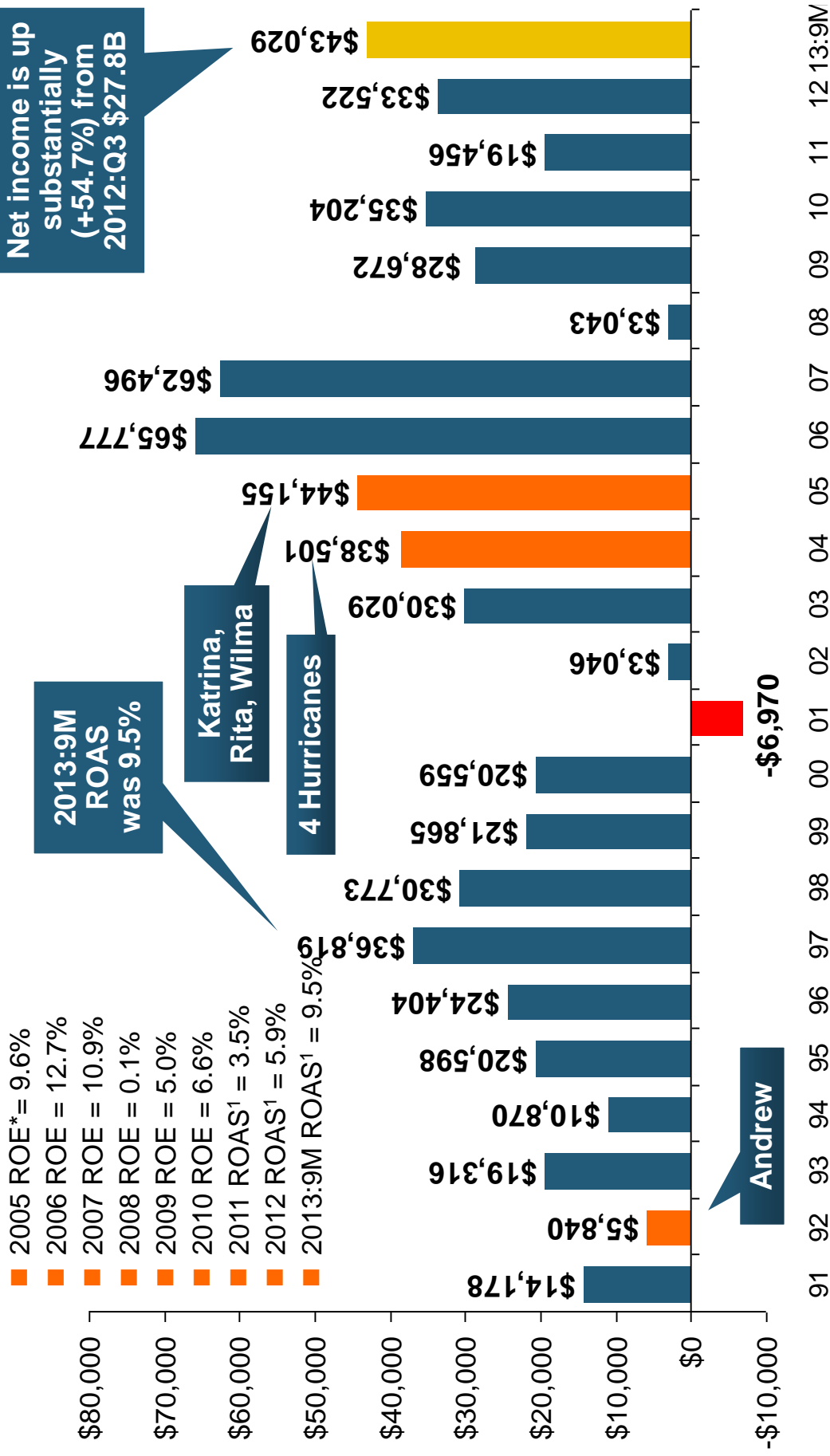
# Property/Casualty Insurance Industry Financial Overview

**2013: Best Year in the  
Post-Crisis Era**

***Few Catastrophes in U.S.***

***What Happens (or Doesn't Happen) in  
Florida Impacts Performance***

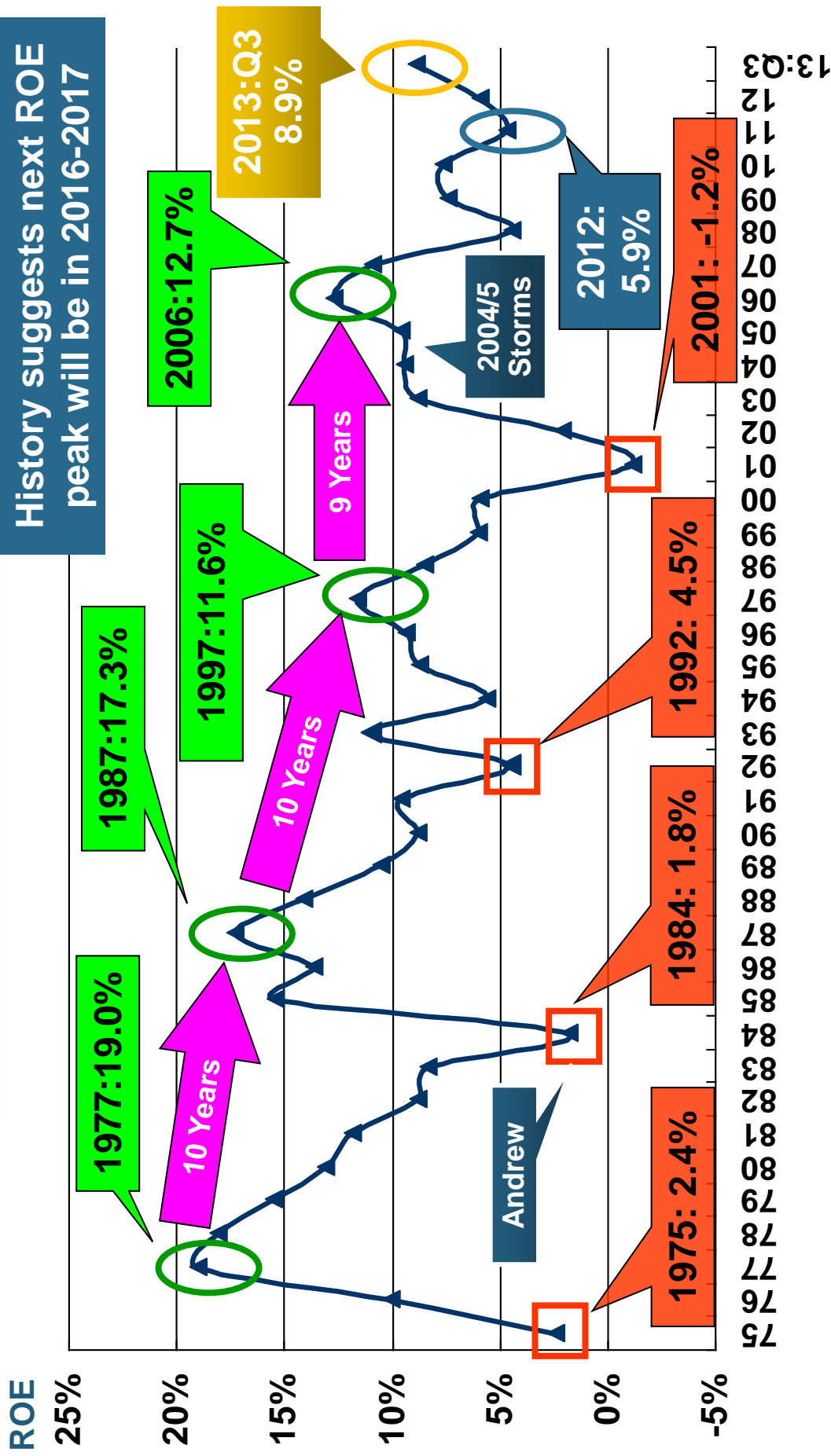
# P/C Net Income After Taxes 1991–2013:Q3 (\$ Millions)



• ROE figures are GAAP; <sup>1</sup>Return On Avg. Surplus. Excluding Mortgage & Financial Guaranty insurers yields a 8.9% ROAS through 2013:Q3, 6.2% ROAS in 2012, 4.7% ROAS for 2011, 7.6% for 2010 and 7.4% for 2009.

Sources: A.M. Best, ISO, Insurance Information Institute

# Profitability Peaks & Troughs in the P/C Insurance Industry, 1975 – 2013:Q3\*



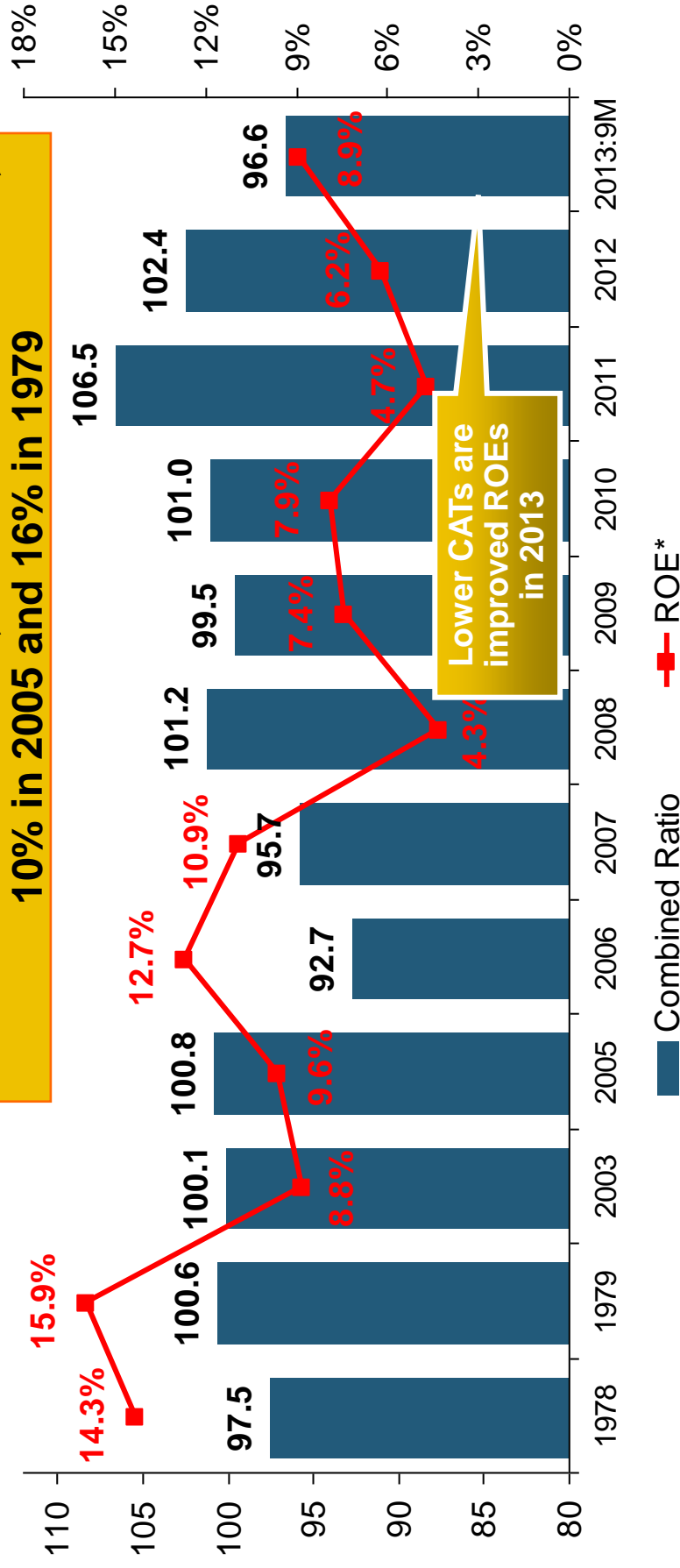
\*Profitability = P/C insurer ROEs. 2011-13 figures are estimates based on ROAS data. Note: Data for 2008-2013 exclude mortgage and financial guaranty insurers.

Source: Insurance Information Institute; NAIC, ISO, A.M. Best.

# A 100 Combined Ratio Isn't What It Once Was: Investment Impact on ROEs



Combined Ratio / ROE

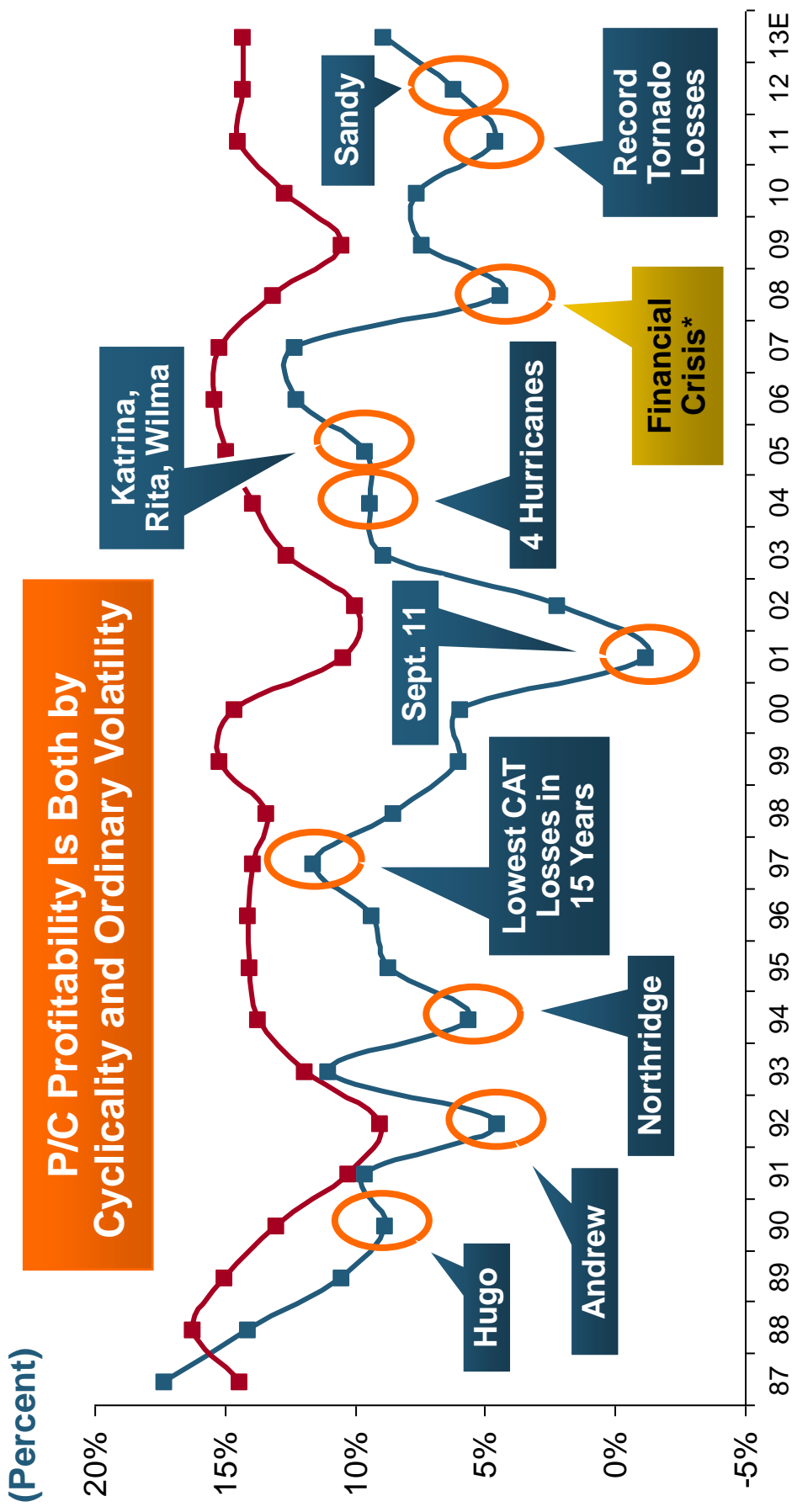


A combined ratio of about 100 generates an ROE of ~7.0% in 2012, ~7.5% ROE in 2009/10, 10% in 2005 and 16% in 1979

Combined Ratios Must Be Lower in Today's Depressed Investment Environment to Generate Risk Appropriate ROEs

\* 2008 -2013 figures are return on average surplus and exclude mortgage and financial guaranty insurers. 2013:9M combined ratio including M&FG insurers is 95.8; 2012 =103.2, 2011 = 108.1, ROAS = 3.5%. Source: Insurance Information Institute from A.M. Best and ISO Verisk Analytics data.

# Return on Equity: Property/Casualty Insurance vs. Fortune 500, 1987-2013E\*



\* Excludes Mortgage & Financial Guarantee in 2008 - 2013E. 2013 P/C ROE is through 2013:Q3. Sources: ISO, *Fortune*; Insurance Information Institute.

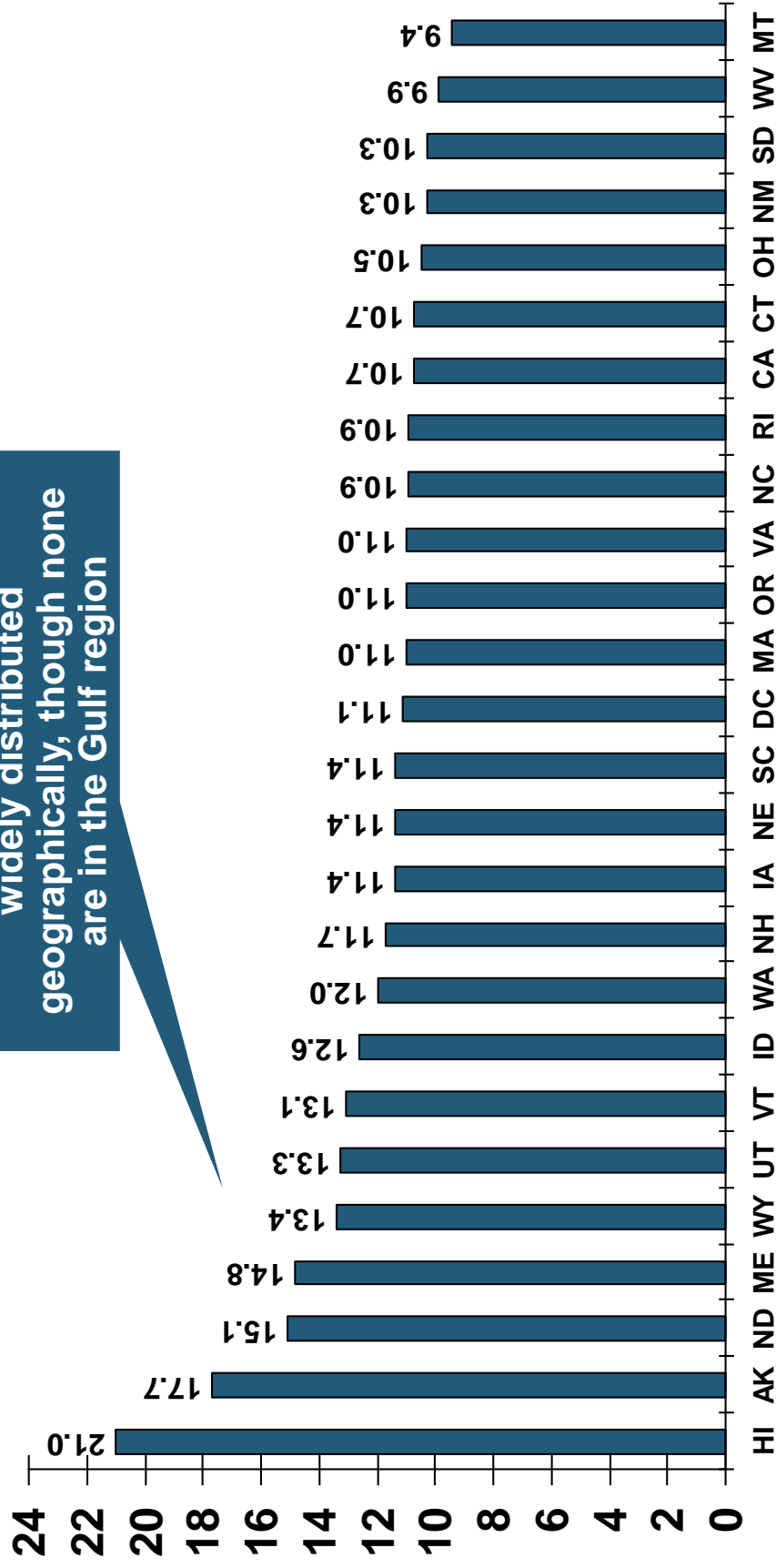


# Return on Net Worth: All Lines of Insurance by State, 2003-2012 Average



## Highest 25 States

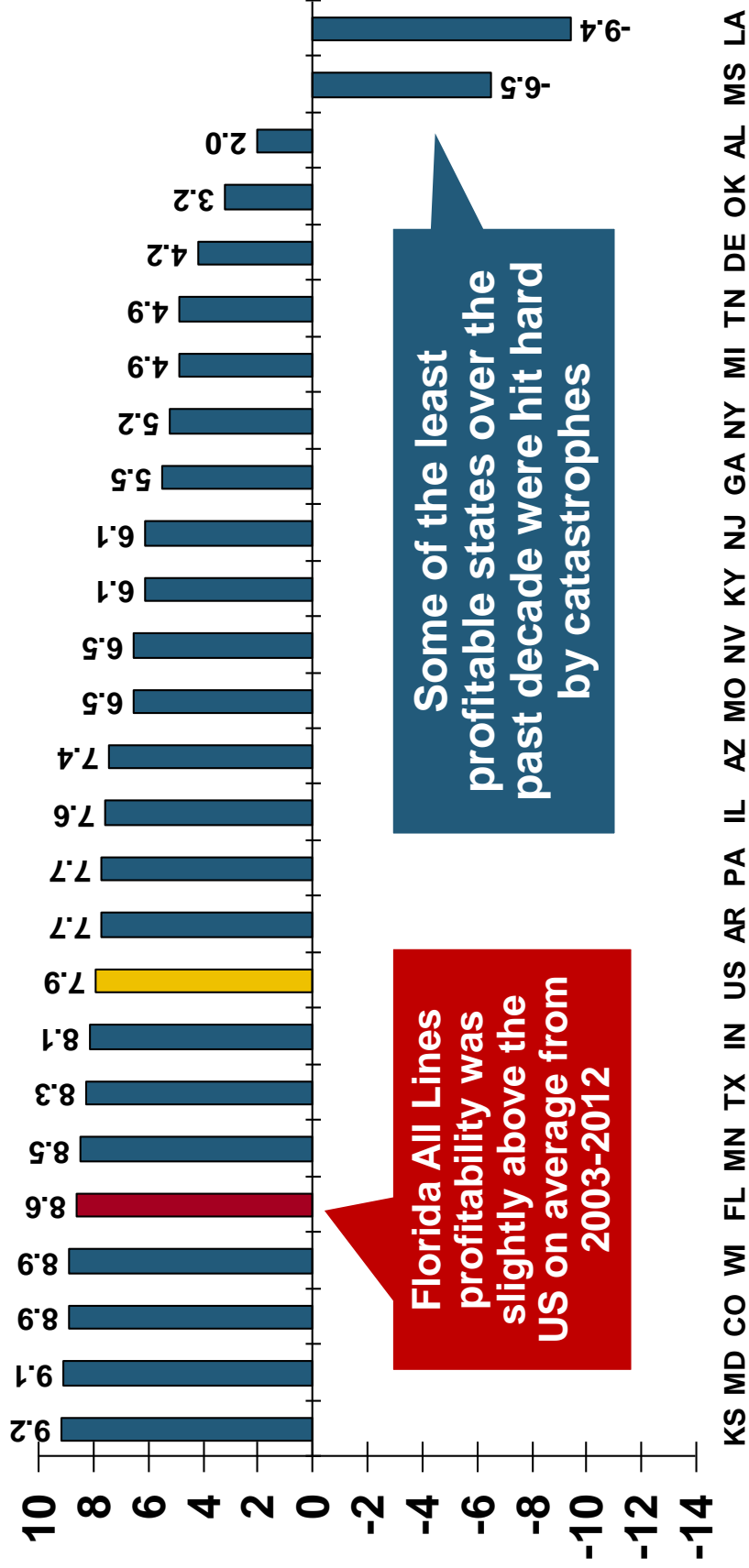
The most profitable states over the past decade are widely distributed geographically, though none are in the Gulf region



# Return on Net Worth: All Lines by State, 2003-2012 Average



## Lowest 25 States



Florida All Lines profitability was slightly above the US on average from 2003-2012

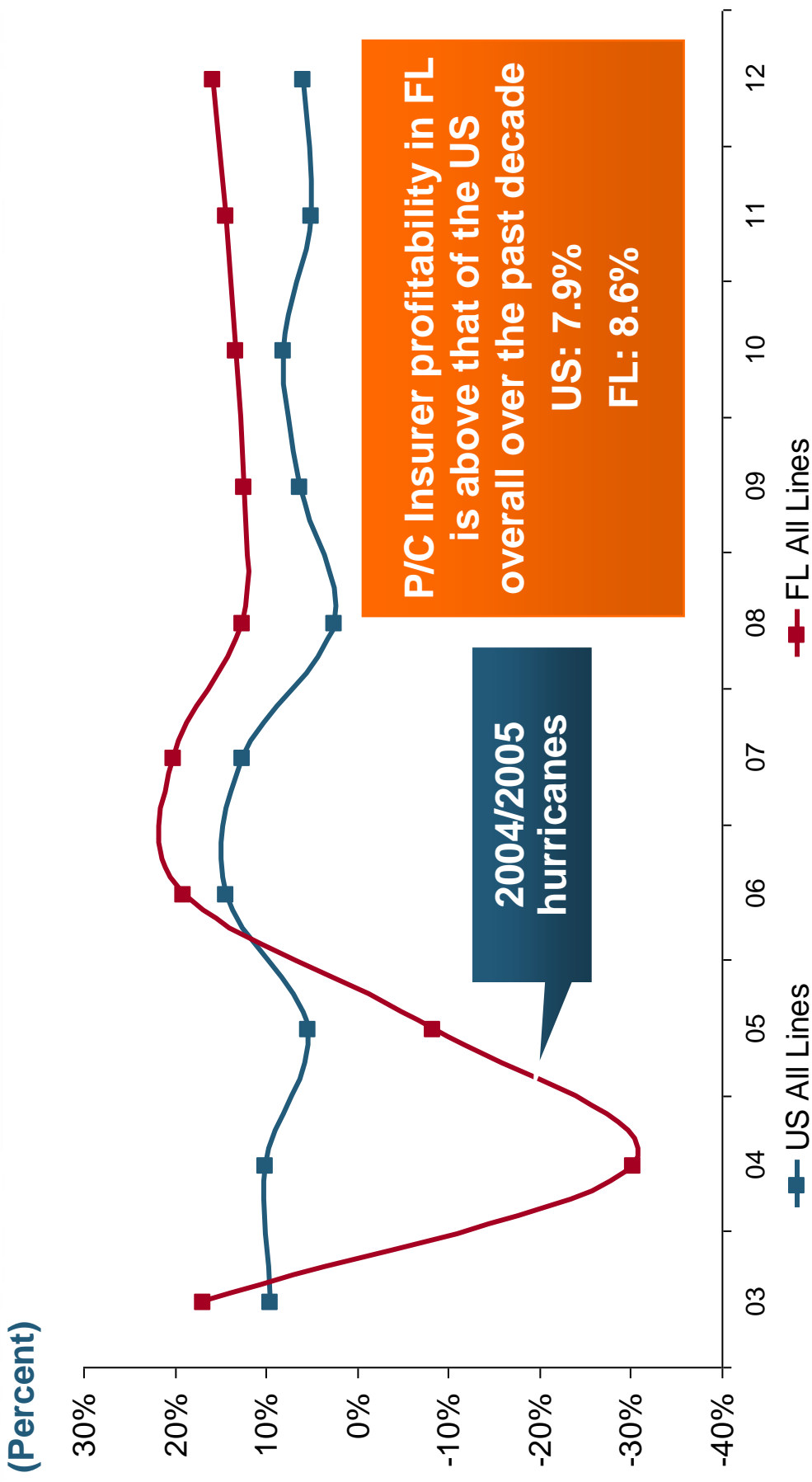
Some of the least profitable states over the past decade were hit hard by catastrophes



# Profitability and Growth in Florida P/C Insurance Markets

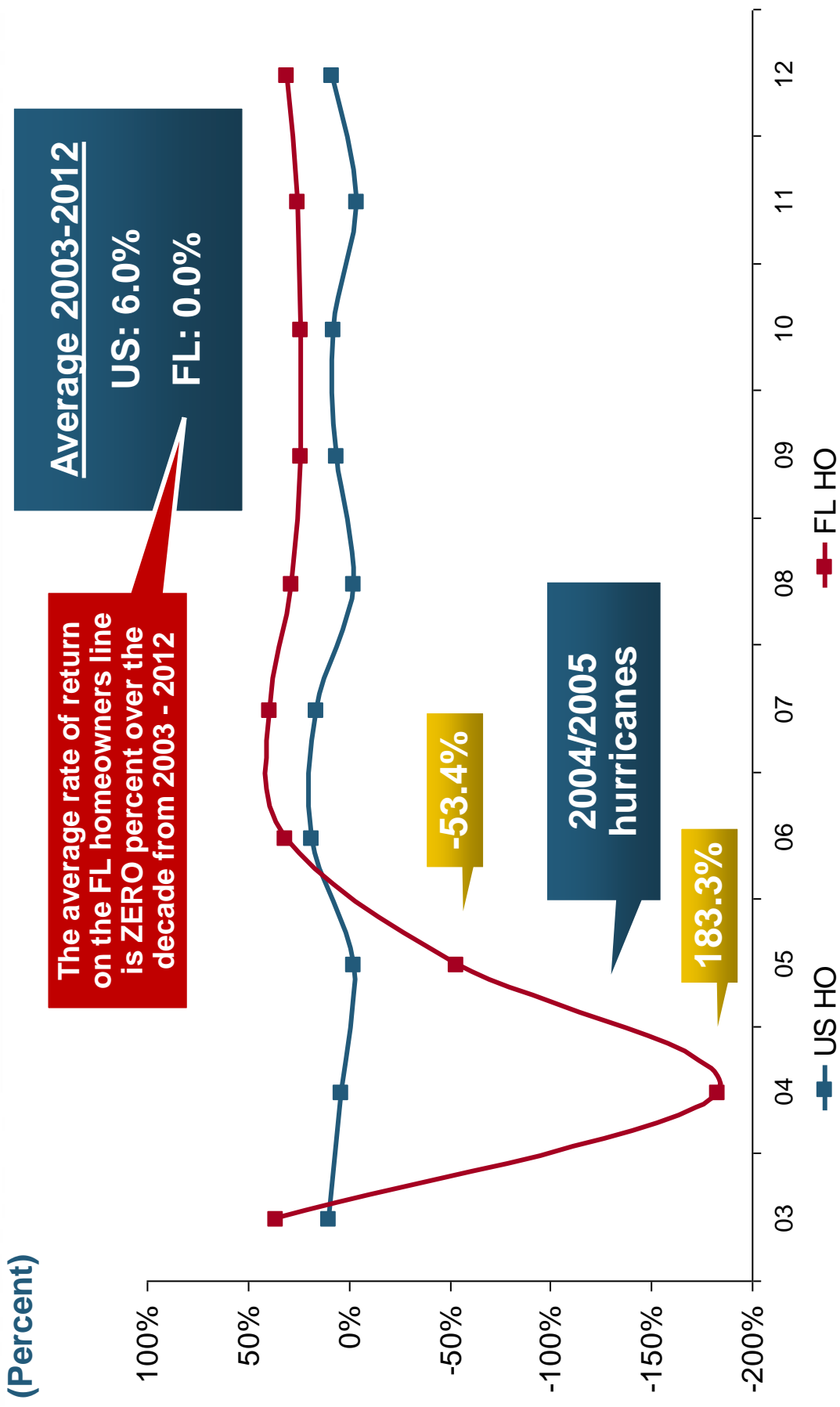
## Analysis by Line and Nearby State Comparisons

# Return on Net Worth All Lines: FL vs. U.S., 2003-2012



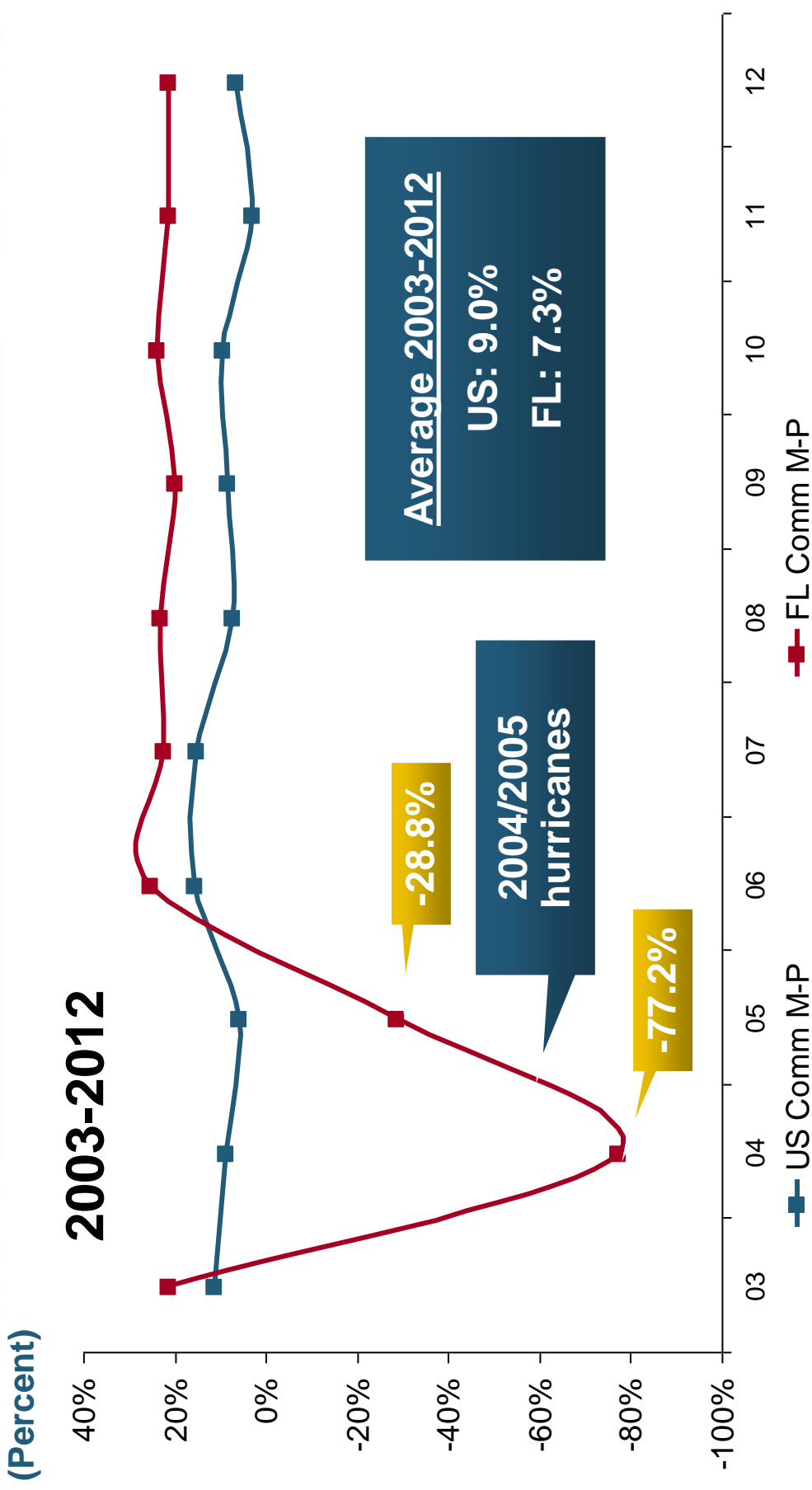
Sources: NAIC.

# Return on Net Worth Homeowners: FL vs. U.S., 2003-2012



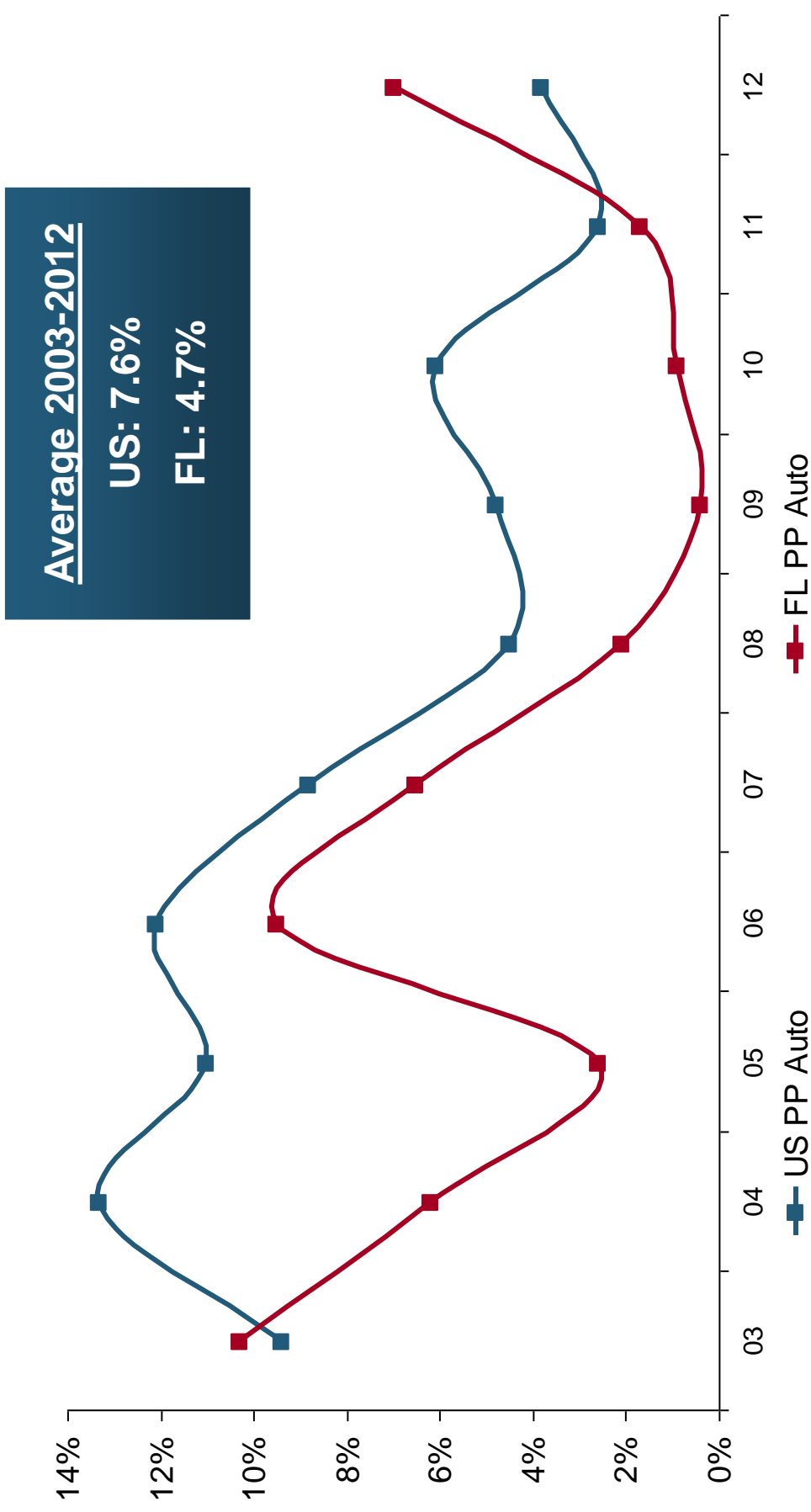
Sources: NAIC.

# Return on Net Worth Commercial Multi-Peril: FL vs. U.S.,

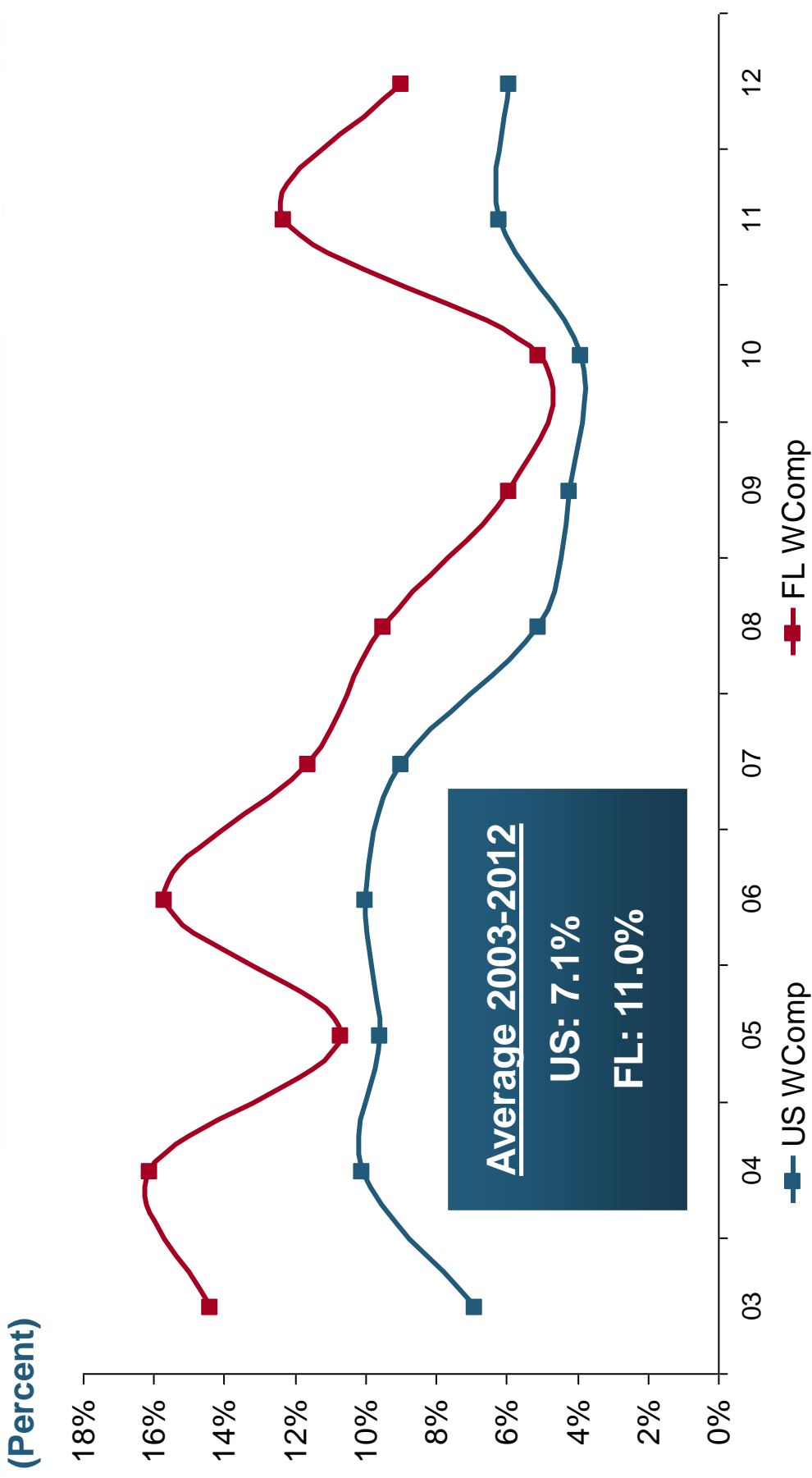


Sources: NAIC.

# Return on Net Worth Private Passenger Auto: FL vs. U.S.

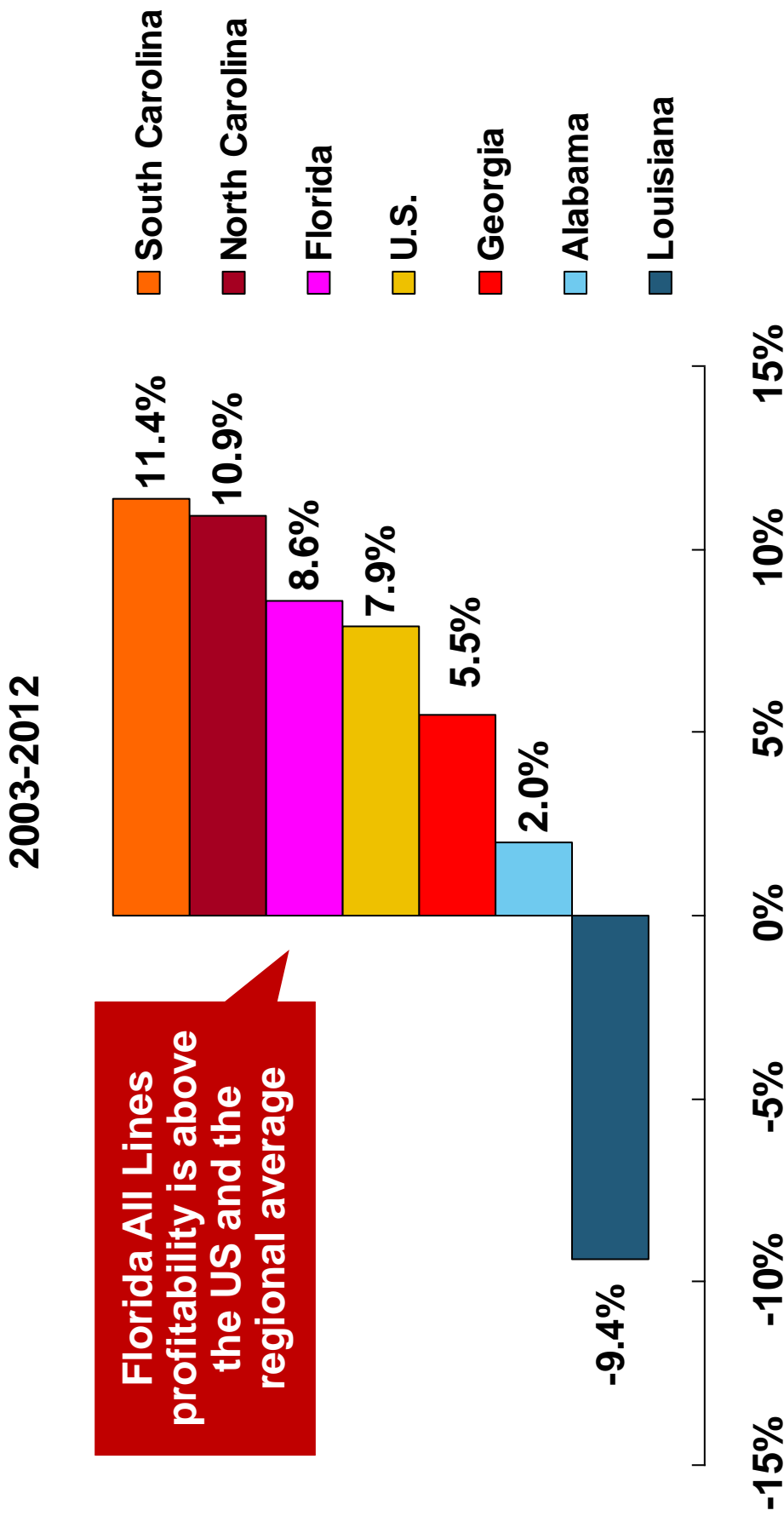


# Return on Net Worth Workers Comp: FL vs. U.S.





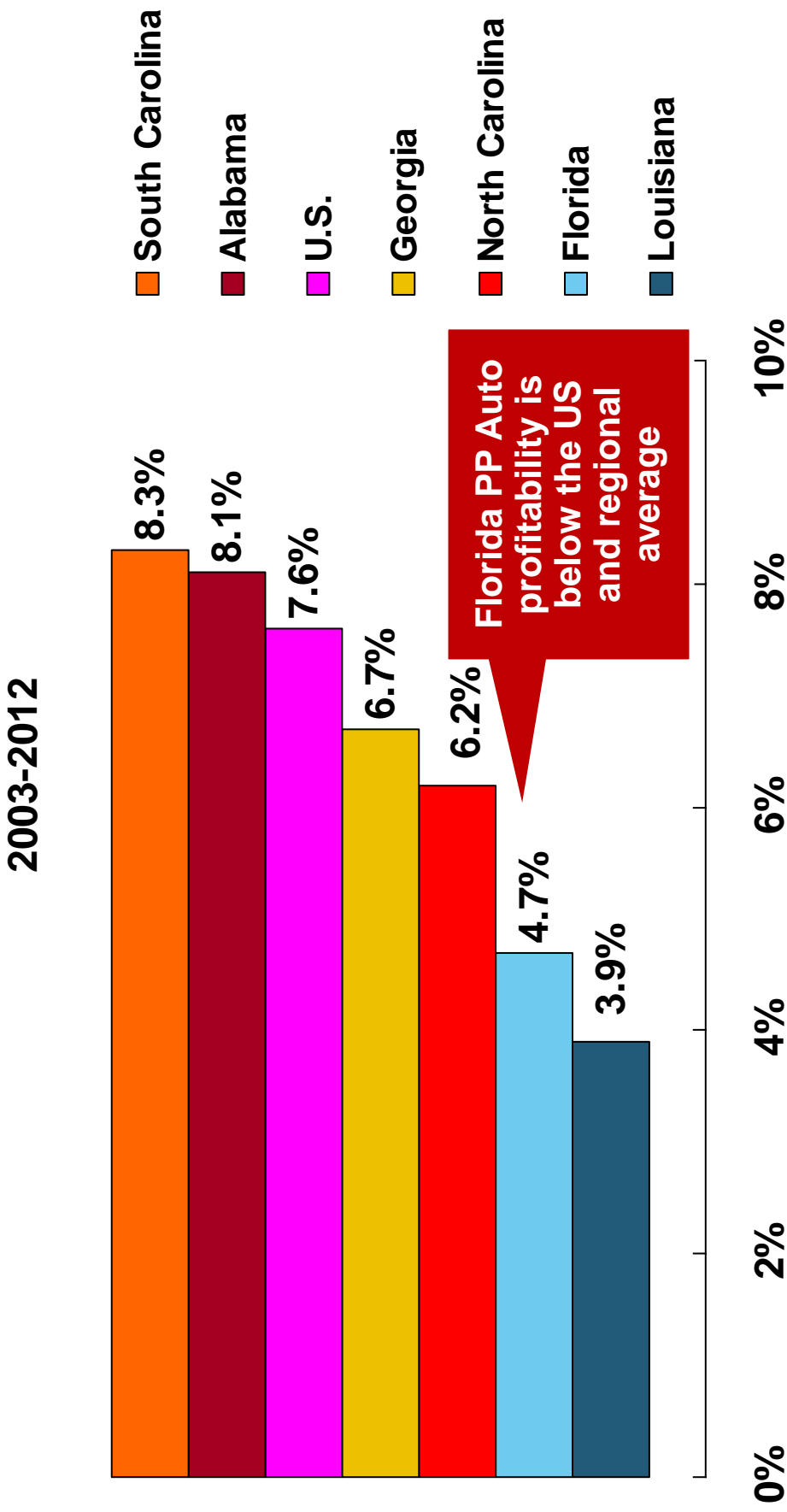
# All Lines: 10-Year Average Return on Net Worth: FL & Nearby States



Florida All Lines profitability is above the US and the regional average

Source: NAIC, Insurance Information Institute

# Private Passenger Auto: 10-Year Average Return on Net Worth: FL & Nearby States



Source: NAIC, Insurance Information Institute

# Top Ten Most Expensive And Least Expensive States For Automobile Insurance, 2011 (1)



Rank	Most expensive states	Average expenditure	Rank	Least expensive states	Average expenditure
1	New Jersey	\$1,183.95	1	Idaho	\$525.15
2	District of Columbia	1,138.03	2	South Dakota	540.04
3	Louisiana	1,110.68	3	North Dakota	549.81
4	New York	1,108.64	4	Iowa	552.54
5	<b>Florida</b>	1,090.65	5	Maine	577.38
6	Delaware	1,052.28	6	North Carolina	600.33
7	Rhode Island	1,004.14	7	Wisconsin	601.40
8	Michigan	983.60	8	Nebraska	602.57
9	Connecticut	970.22	9	Wyoming	619.88
10	Maryland	956.17	10	Ohio	619.96

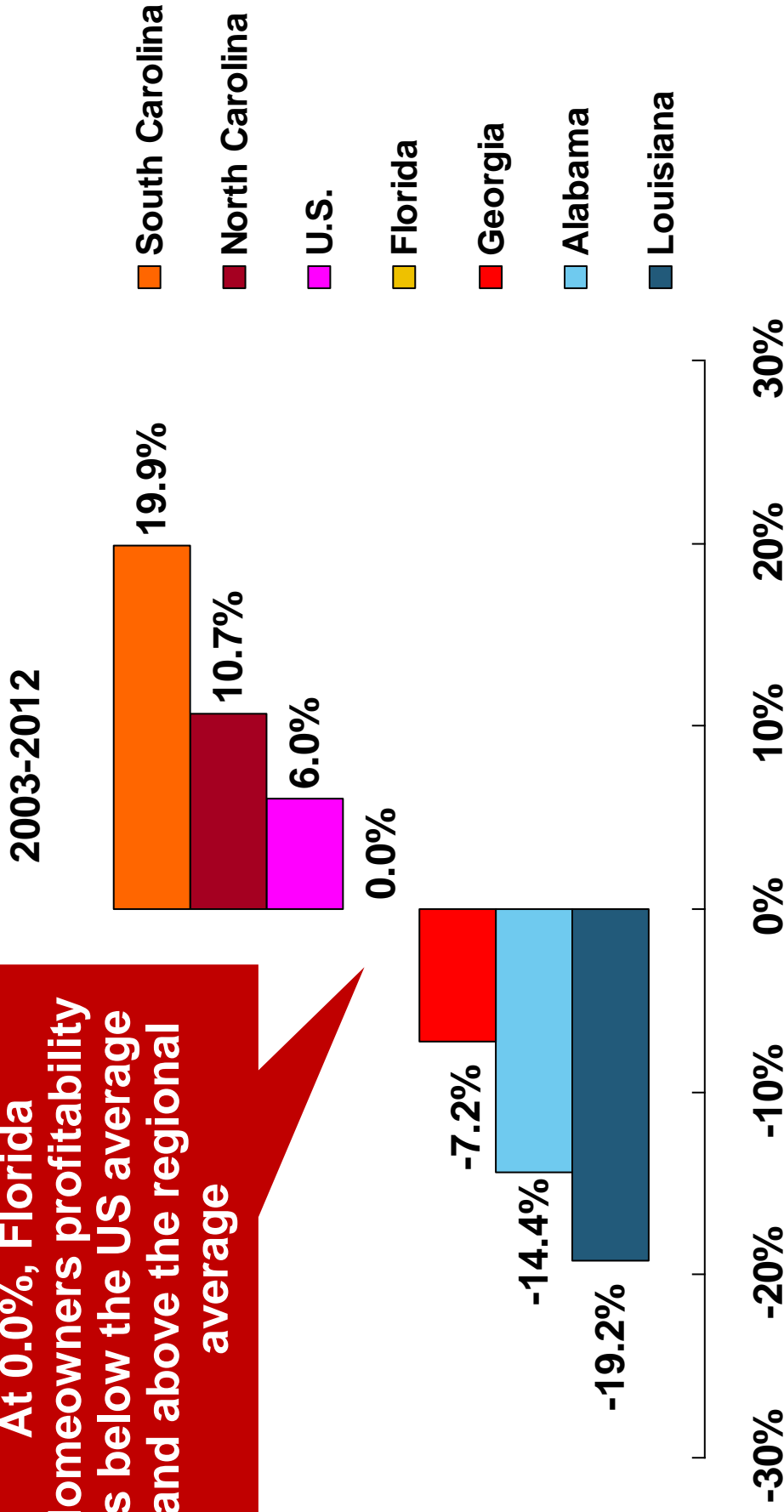
**Florida ranked 5th as the most expensive state in 2011, with an average expenditure for auto insurance of \$1,090.65.**

(1) Based on average automobile insurance expenditures.

# Homeowners: 10-Year Average Return on Net Worth: FL & Nearby States

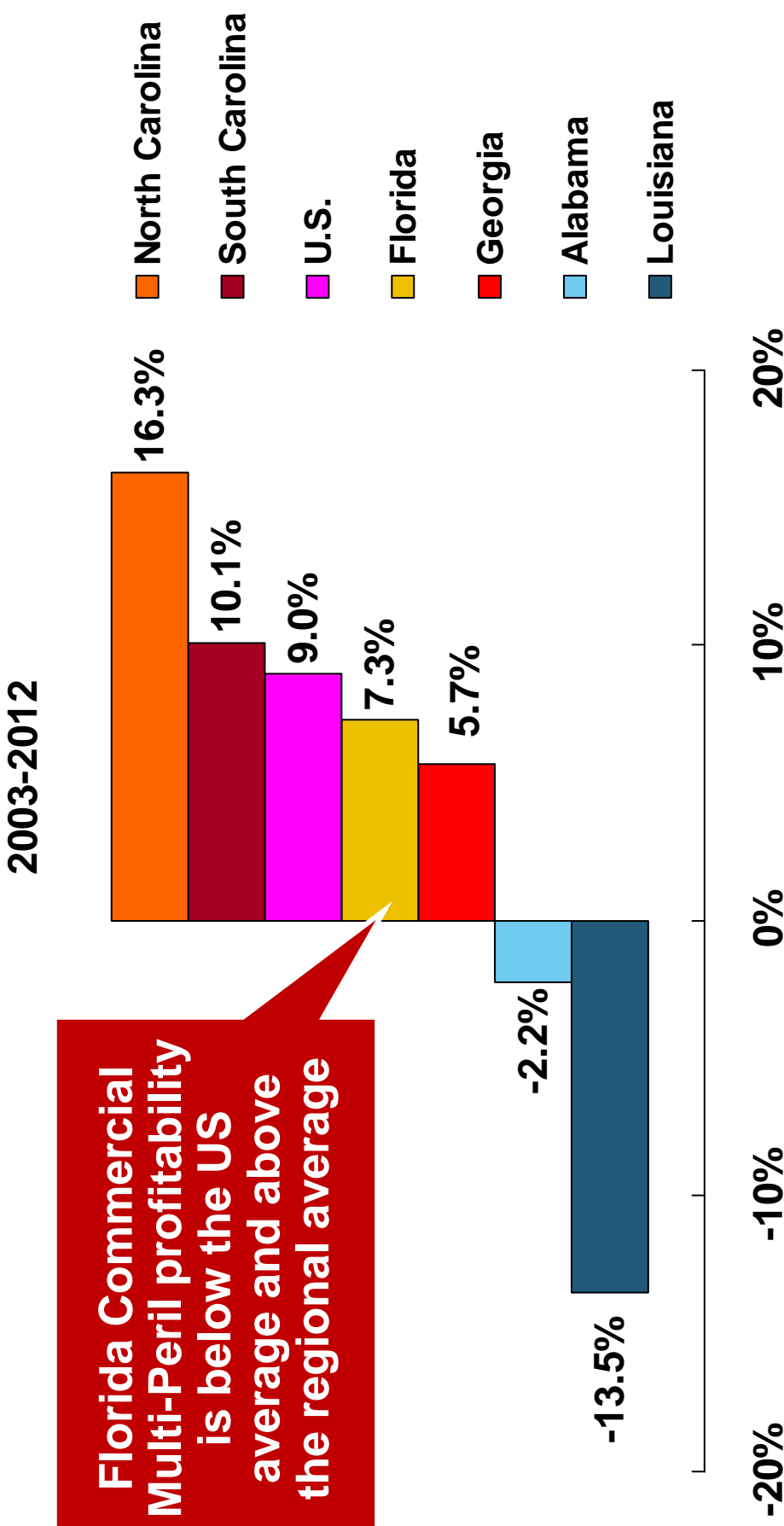


**At 0.0%, Florida Homeowners profitability is below the US average and above the regional average**



Source: NAIC, Insurance Information Institute

# Commercial Multi-Peril: 10-Year Average Return on Net Worth: FL & Nearby States



Florida Commercial Multi-Peril profitability is below the US average and above the regional average

Source: NAIC, Insurance Information Institute

# Top Ten Most Expensive And Least Expensive States For Homeowners Insurance, 2011 (1)



Florida ranked as the most expensive state for homeowners insurance in 2011, with an average expenditure of \$1,933.

Rank	Most expensive states	HO average premium	Rank	Least expensive states	HO average premium
1	<b>Florida</b>	<b>\$1,933</b>	1	Idaho	\$518
2	Louisiana	1,672	2	Oregon	559
3	Texas (2)	1,578	3	Utah	563
4	Mississippi	1,409	4	Wisconsin	592
5	Oklahoma	1,386	5	Washington	626
6	Alabama	1,163	6	Ohio	644
7	Rhode Island	1,139	7	Delaware	664
8	Kansas	1,103	8	Arizona	675
9	New York	1,097	9	Nevada	689
10	Connecticut	1,096	10	Iowa	713

- (1) Includes policies written by Citizens Property Insurance Corp. (Florida) and Citizens Property Insurance Corp. (Louisiana), Alabama Insurance Underwriting Association, Mississippi Windstorm Underwriting Association, North Carolina Joint Underwriting Association and South Carolina Wind and Hail Underwriting Association. Other southeastern states have wind pools in operation and their data may not be included in this chart. Based on the HO-3 homeowner package policy for owner-occupied dwellings, 1 to 4 family units. Provides “all risks” coverage (except those specifically excluded in the policy) on buildings and broad named-peril coverage on personal property, and is the most common package written.
- (2) The Texas Department of Insurance developed home insurance policy forms that are similar but not identical to the standard forms. In addition, due to the Texas Windstorm Association (which writes wind-only policies) classifying HO-1, 2 and 5 premiums as HO-3, the average premium for homeowners insurance is artificially high.
- Note: Average premium=Premiums/exposure per house years. A house year is equal to 365 days of insured coverage for a single dwelling. The NAIC does not rank state average expenditures and does not endorse any conclusions drawn from this data.
- Source: ©2013 National Association of Insurance Commissioners (NAIC). Reprinted with permission. Further reprint or distribution strictly prohibited without written permission of NAIC.



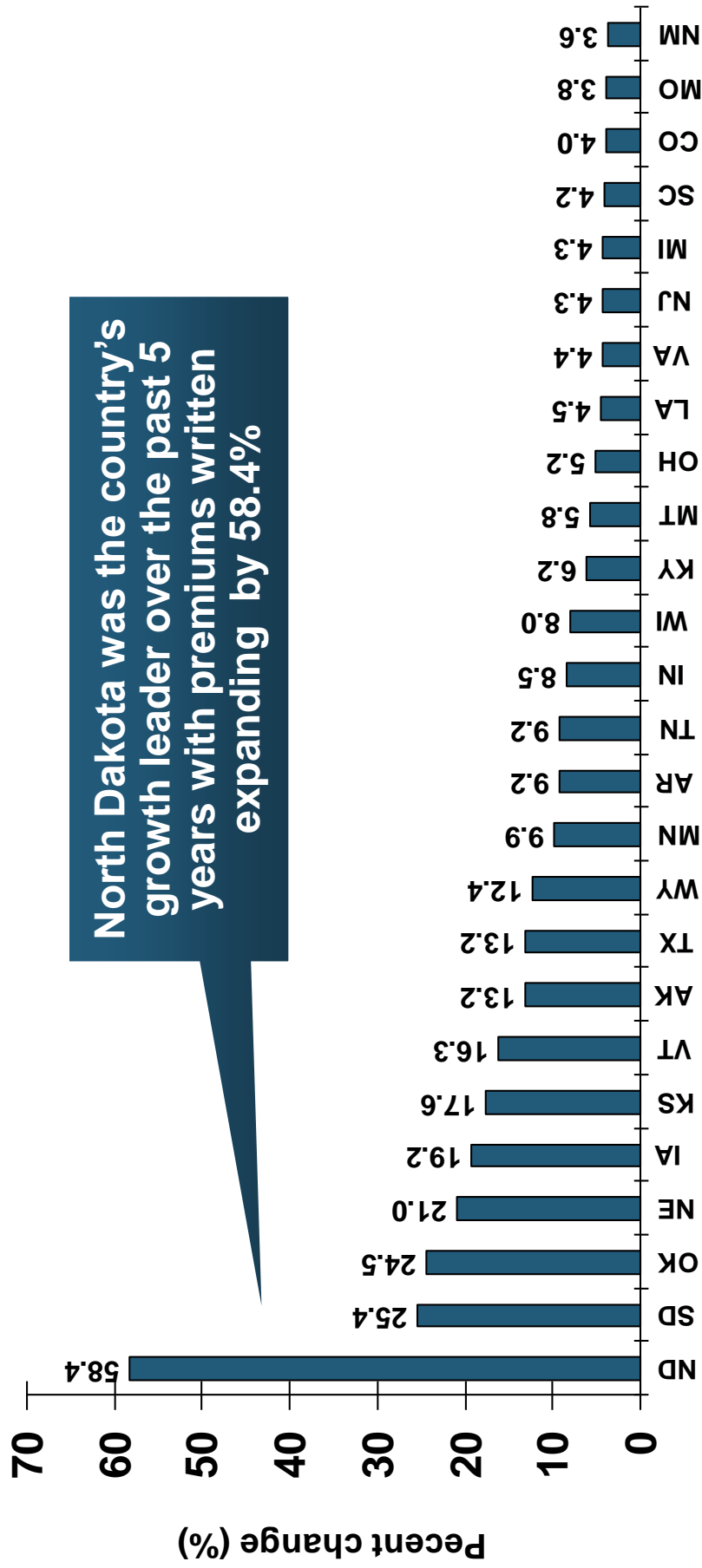
# Florida Premium Growth Analysis

**Premium Growth in Florida  
Have Been Very Volatile**

# Direct Premiums Written: Property/Casualty Change by State



## Percentage Change 2007-2012\* Top 25 States

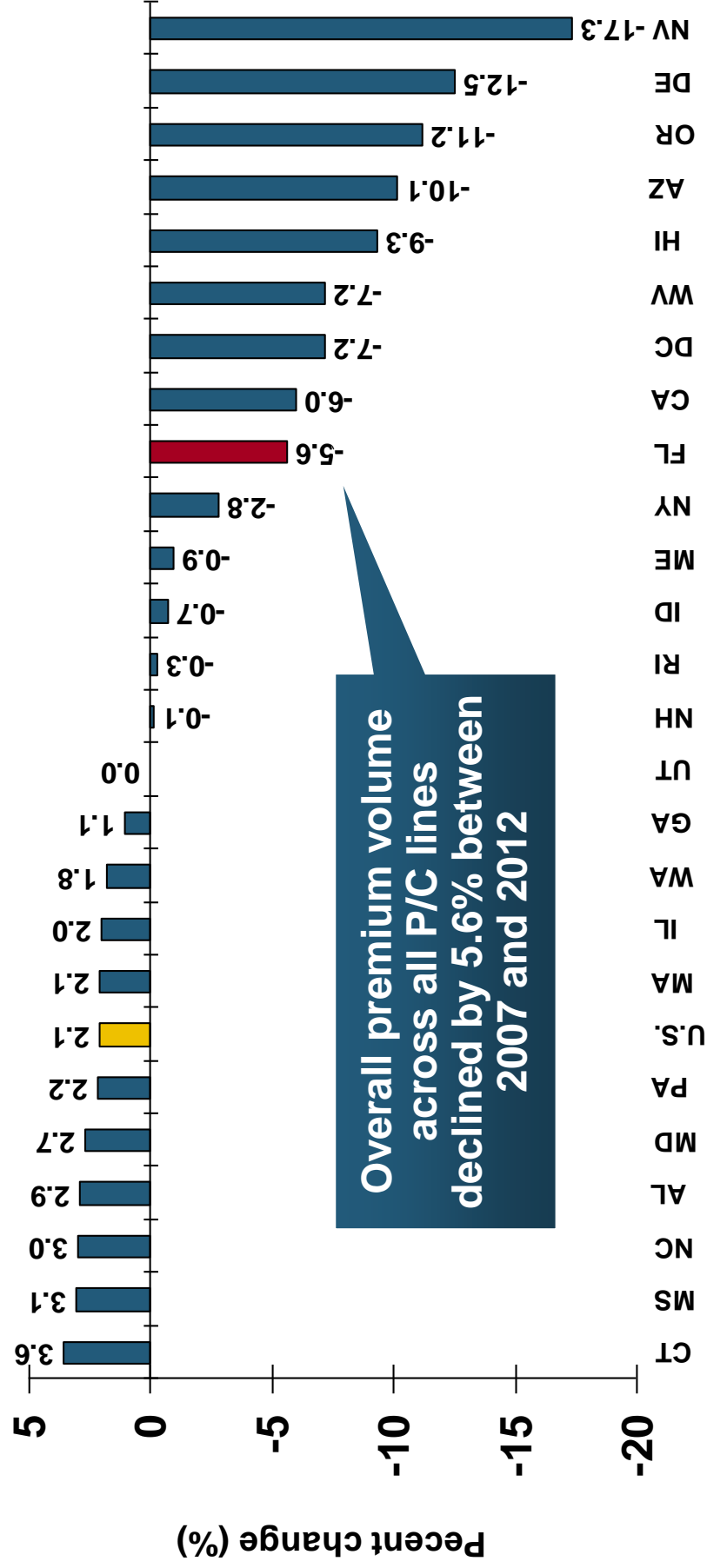




# Direct Premiums Written: Total P/C Percent Change by State, 2007-2012\*



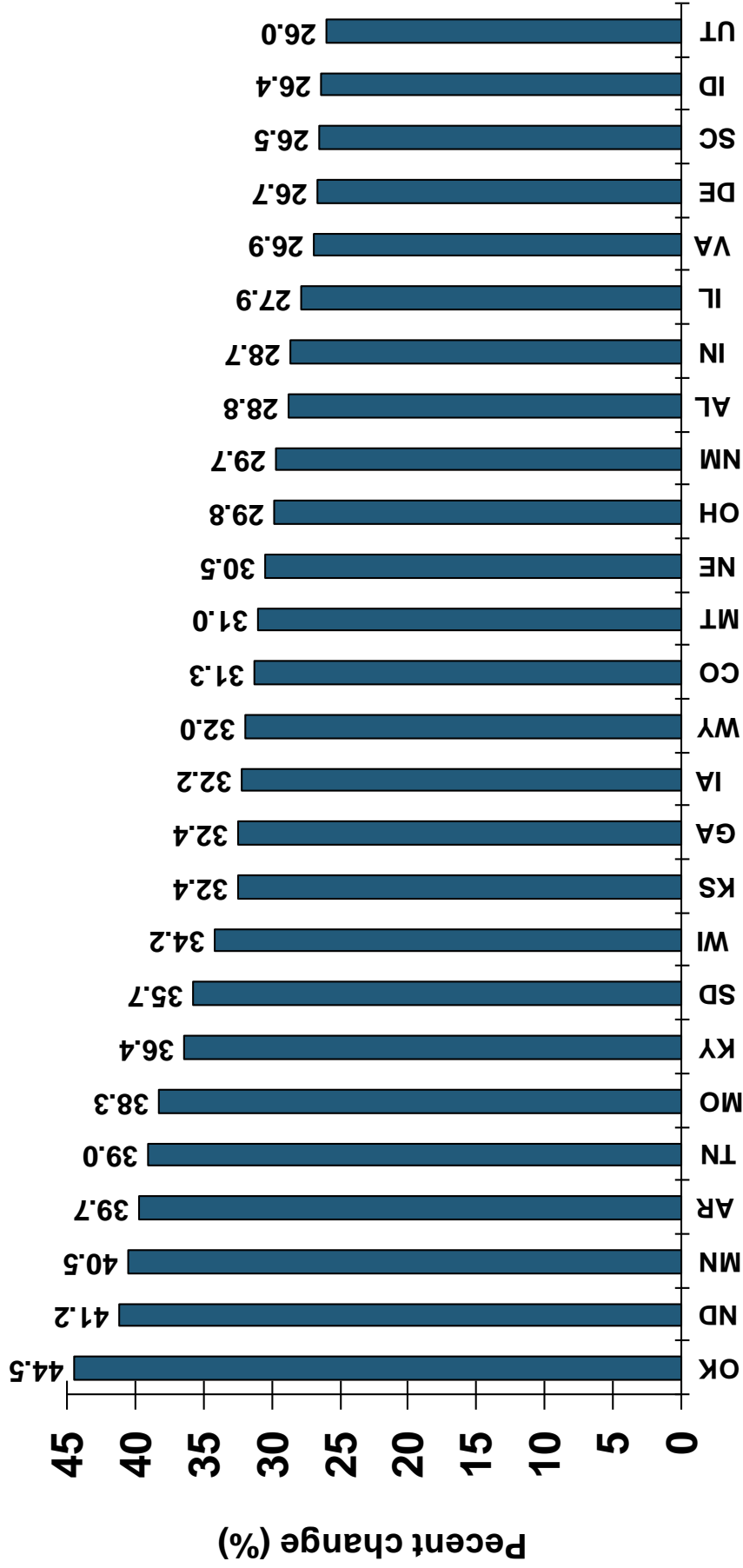
## Bottom 25 States



# Direct Premiums Written: Homeowners Percent Change by State, 2007-2012\*



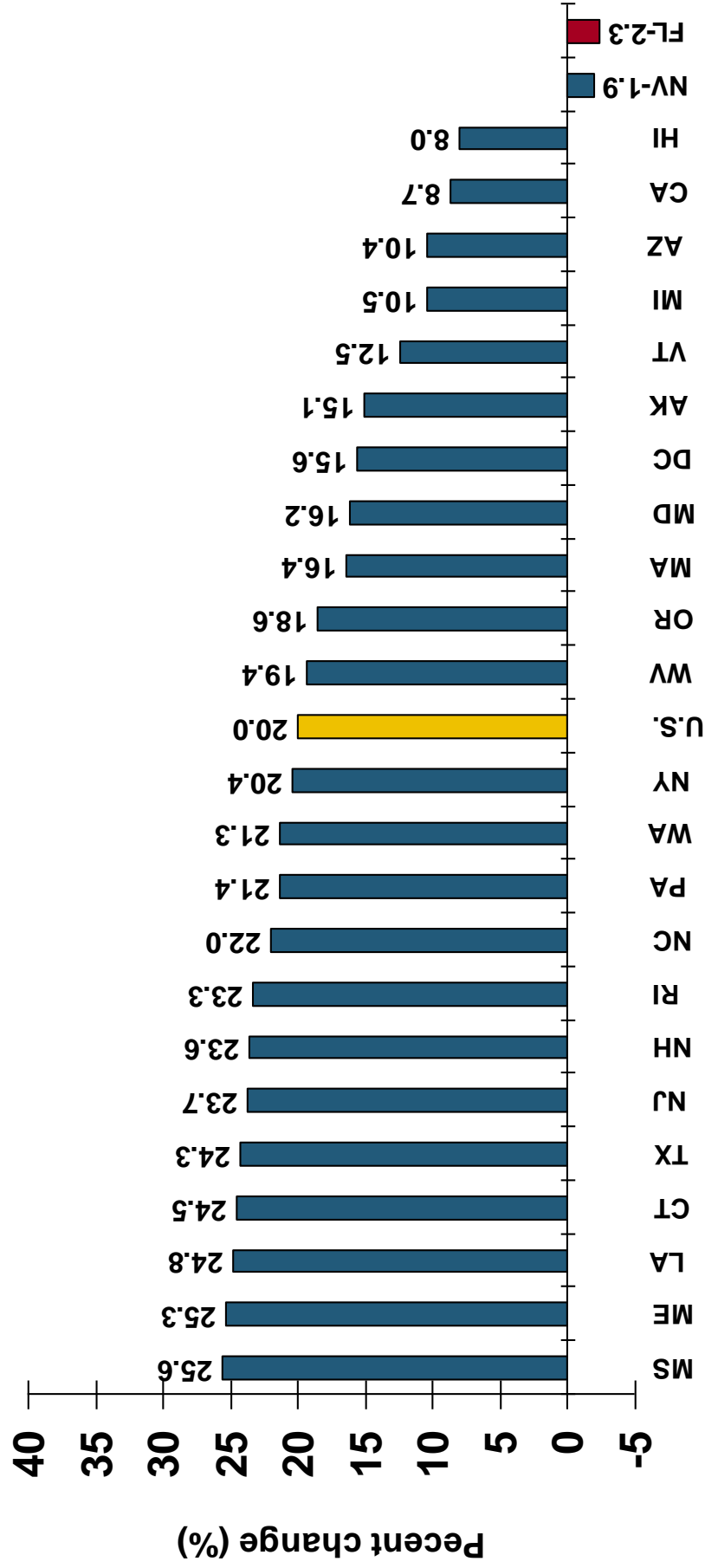
## Top 25 States



# Direct Premiums Written: Homeowners Percent Change by State, 2007-2012\*

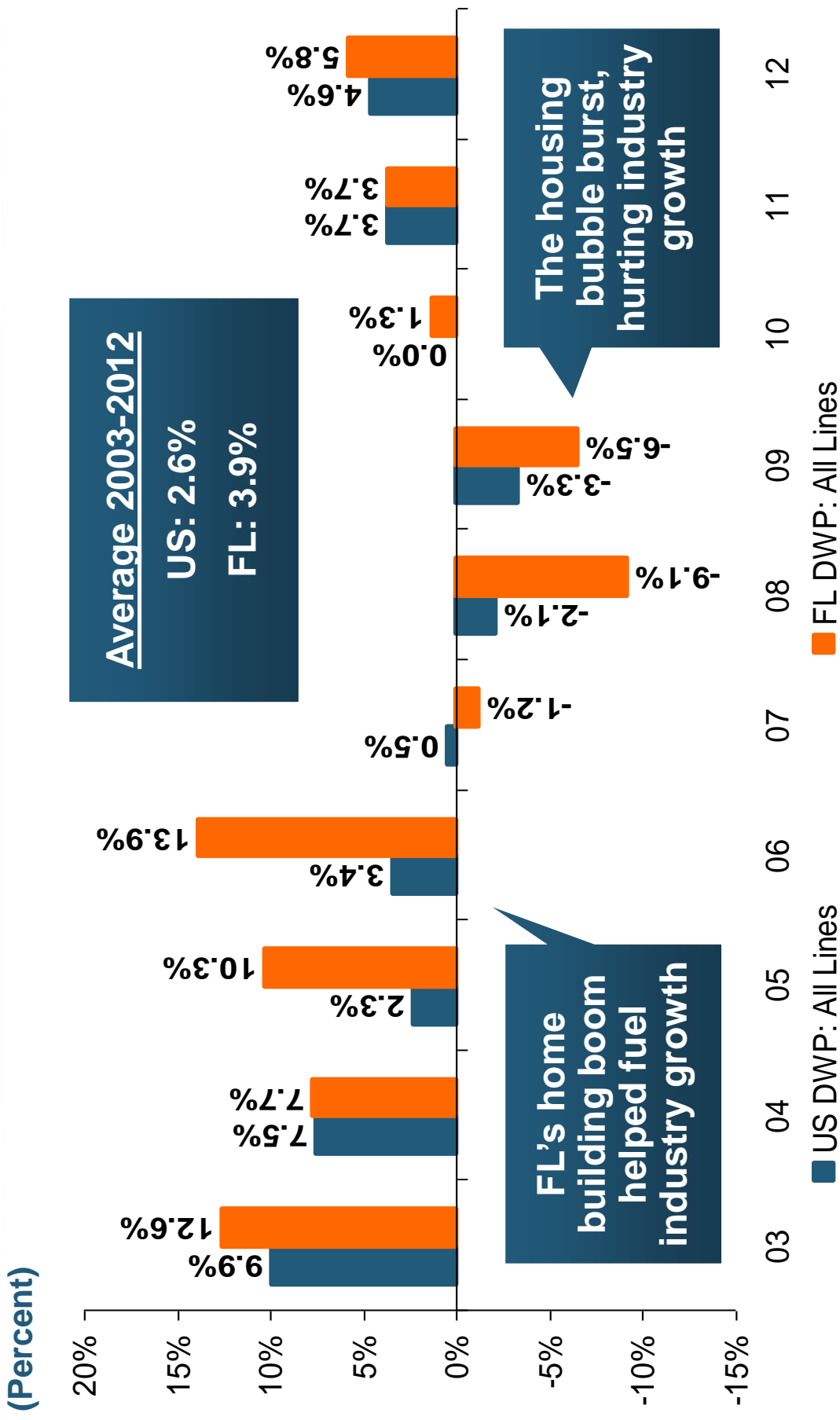


## Bottom 25 States

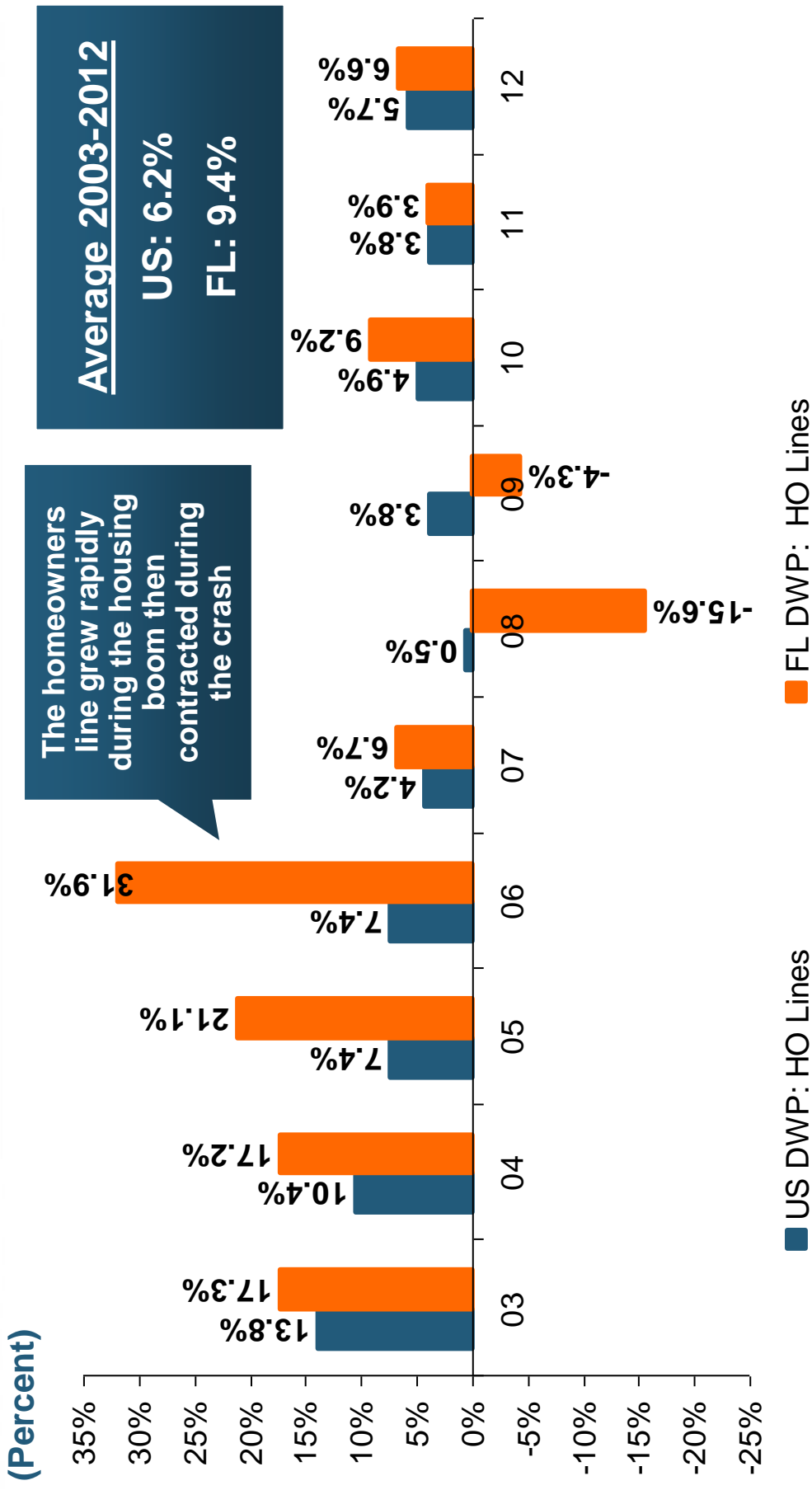


Sources: SNL Financial LLC.; Insurance Information Institute.

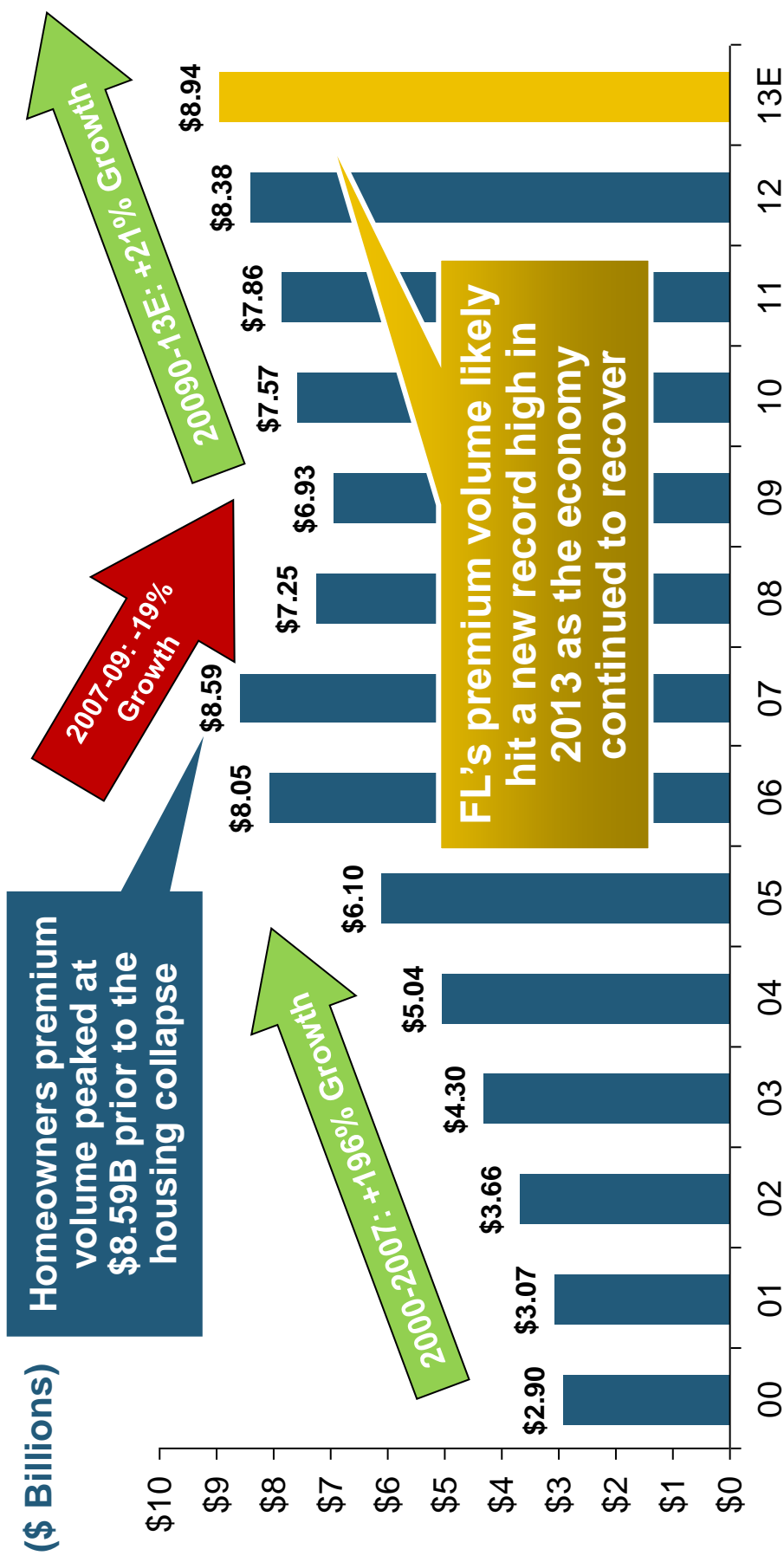
# All Lines Direct Written Premiums Growth: FL vs. U.S., 2003-2012



# Homeowner's Multi-Peril Direct Written Premium Growth: FL vs. U.S., 2003-2012



# Florida Homeowners Direct Written Premium, 2000-2013E\*



**Florida's homeowners insurance market has been on a 15-year rollercoaster ride in terms of both volume and performance**

\*2013 is an I.I.I. estimate and assumes a 6.6% growth rate (same as in 2012).

Sources: SNL Financial; Insurance Information Institute.



# The Strength of the Florida Economy Will Influence P/C Insurer Growth and Exposure

**Growth Will Expand Insurer  
Property Exposures**

# Florida' Economy: Primed for Growth; Hurricane Vulnerability Increases



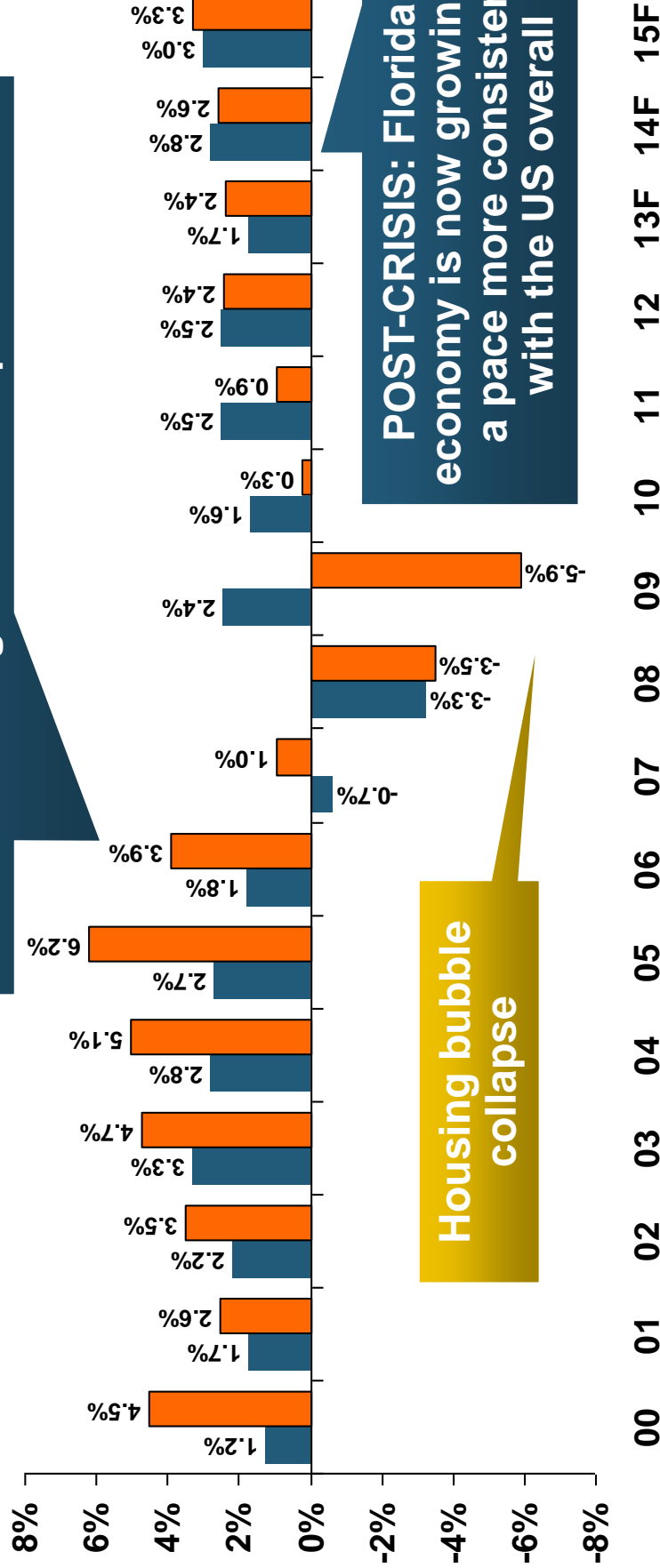
- **Home Construction in FL Will Rise Sharply**
  - ◆ 110,000 new homes are expected to be built in FL in 2014
  - ◆ 148,000 in 2015; 167,000 in 2016 and 168,000+ in 2017
  - ◆ Florida will account for 1-in-10 new homes built in the US
- **Real Economic Growth Average About 3% through 2017**
  - ◆ Will fuel commercial property exposures
- **Population Growth Will Greatly Exceed the US Overall**
  - ◆ 1.3% to 1.4% per year, almost double ~0.75% for the US
  - ◆ In 2013, FL likely overtook NY as the 3<sup>rd</sup> most populace state
  - ◆ More than 1 million increase through 2017
  - ◆ Will drive demand for housing, infrastructure, commercial prop.
  - ◆ Increase of about 600,000 jobs through 2017



# Florida vs. US Real GDP Growth

**PRE-CRISIS: Florida grew much faster than the US economy before the financial crisis but contracted more sharply when the housing bubble collapsed**

■ US ■ Florida

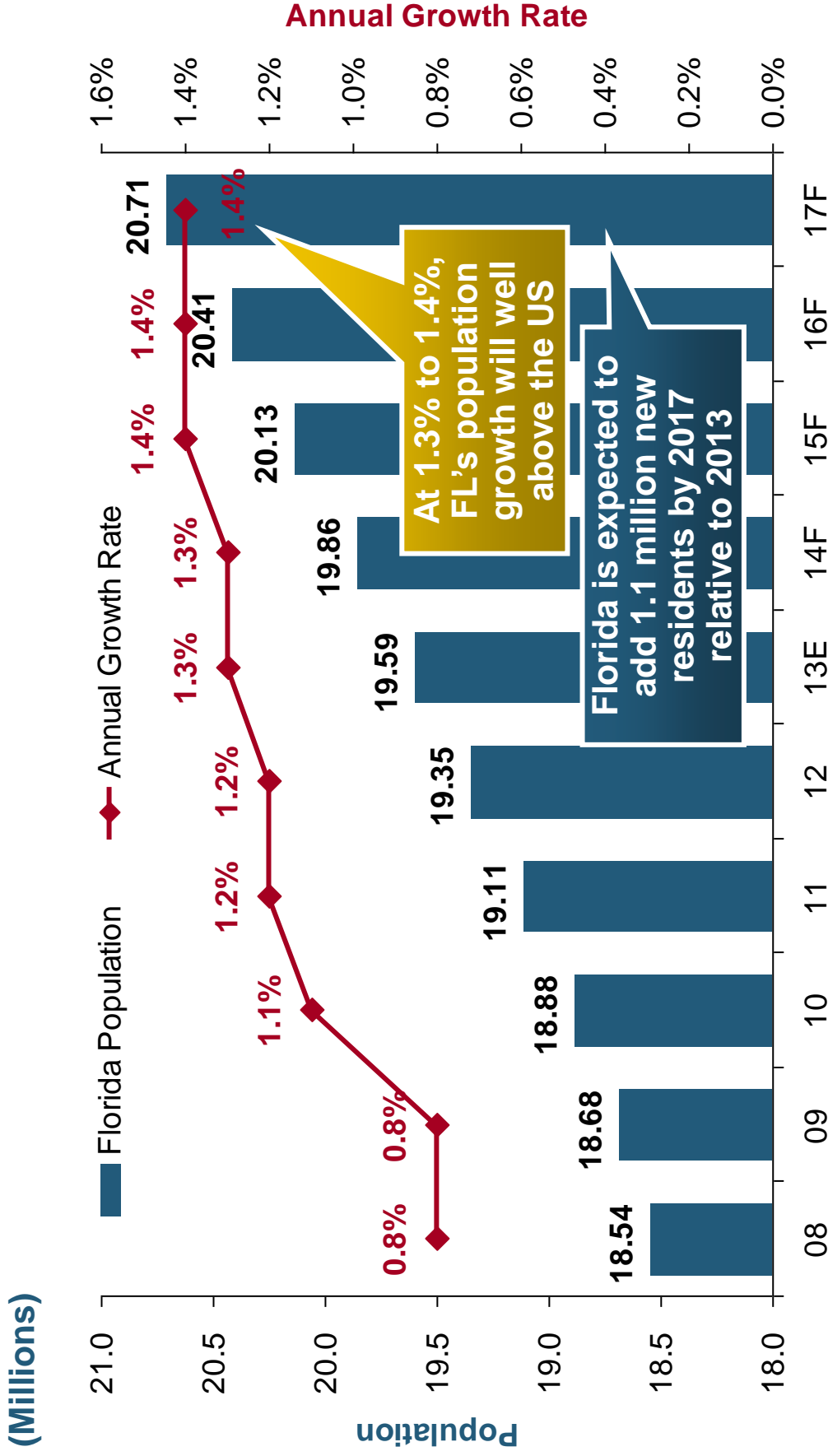


**POST-CRISIS: Florida's economy is now growing at a pace more consistent with the US overall**

**Housing bubble collapse**

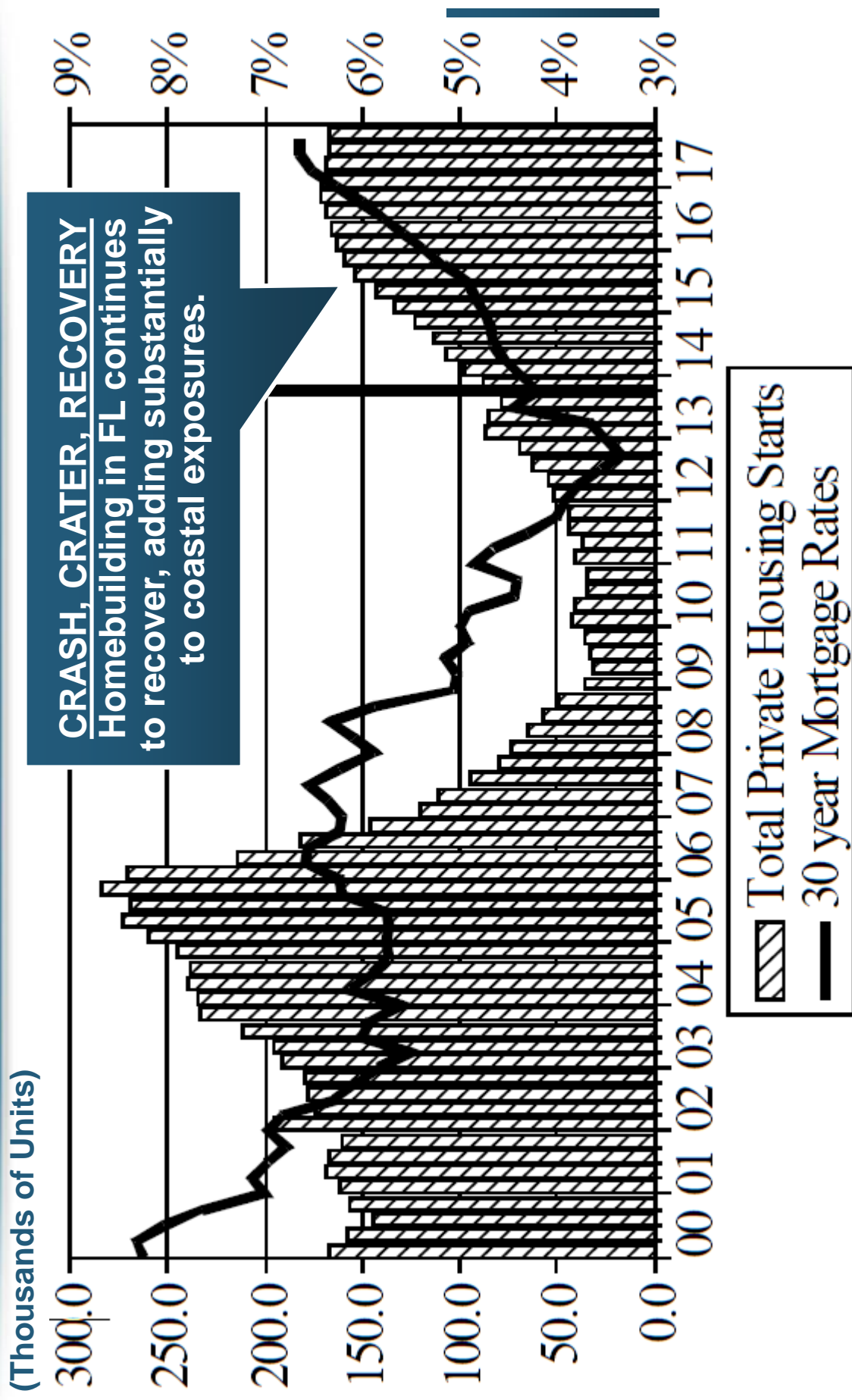
Source: US Department of Commerce; Blue Economic Indicators 1/14 (for US 2013-15 figures); University of Central Florida for 2013-2015 Florida figures: <http://fec.ucf.edu/post/2014/01/07/Florida-Metro-Forecast-December-2013.aspx>

# Strong Florida Population Growth Will Drive Coastal Exposure Sharply Upward



Source: US Census Bureau; University of Central Florida Institute for Economic Competitiveness: <http://iec.ucf.edu/post/2014/01/07/Florida-Metro-Forecast-December-2013.aspx>; Insurance Information Institute.

# Florida Total Private Housing Starts, 2000 – 2017F



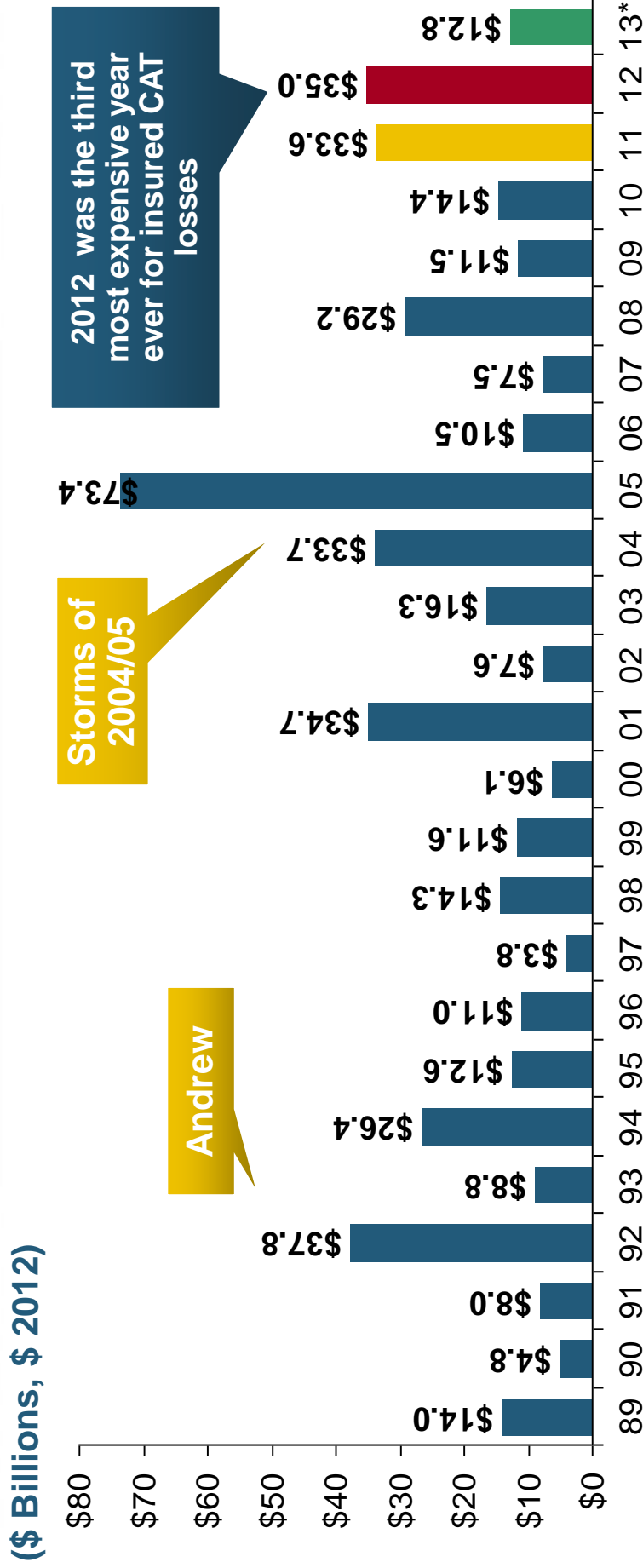


# Insured Catastrophe Loss Update

**Florida Has Played a Critical Role in the  
History of Catastrophe Losses in the U.S.**

***Relative Calm in Recent Years Is  
Unlikely to Endure***

# U.S. Insured Catastrophe Losses



2012 was the third most expensive year ever for insured CAT losses

Storms of 2004/05

Andrew

**2013 CATs Were Well Below Recent Years. 2012 Was the 3<sup>rd</sup> Highest Year on Record for Insured Losses in U.S. History on an Inflation-Adj. Basis. 2011 Losses Were the 6<sup>th</sup> Highest.**

Record tornado losses caused 2011 CAT losses to surge

\*Through 12/31/13.

Note: 2001 figure includes \$20.3B for 9/11 losses reported through 12/31/01 (\$25.9B 2011 dollars). Includes only business and personal property claims, business interruption and auto claims. Non-prop/BI losses = \$12.2B (\$15.6B in 2011 dollars.)

Sources: Property Claims Service/ISO; Insurance Information Institute.

# Combined Ratio Points Associated with Catastrophe Losses: 1960 – 2013\*

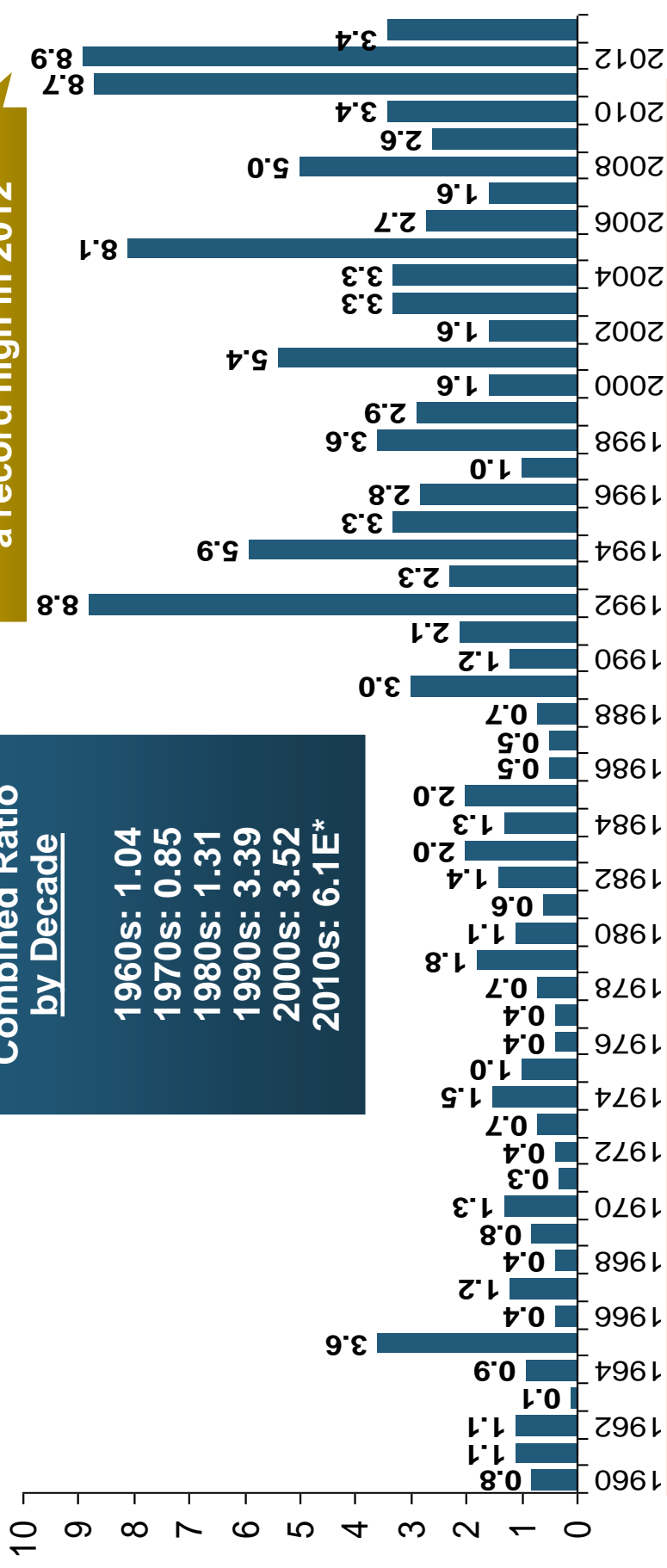


## Combined Ratio Points

**Avg. CAT Loss Component of the Combined Ratio by Decade**

1960s: 1.04  
 1970s: 0.85  
 1980s: 1.31  
 1990s: 3.39  
 2000s: 3.52  
 2010s: 6.1E\*

**Catastrophe losses as a share of all losses reached a record high in 2012**



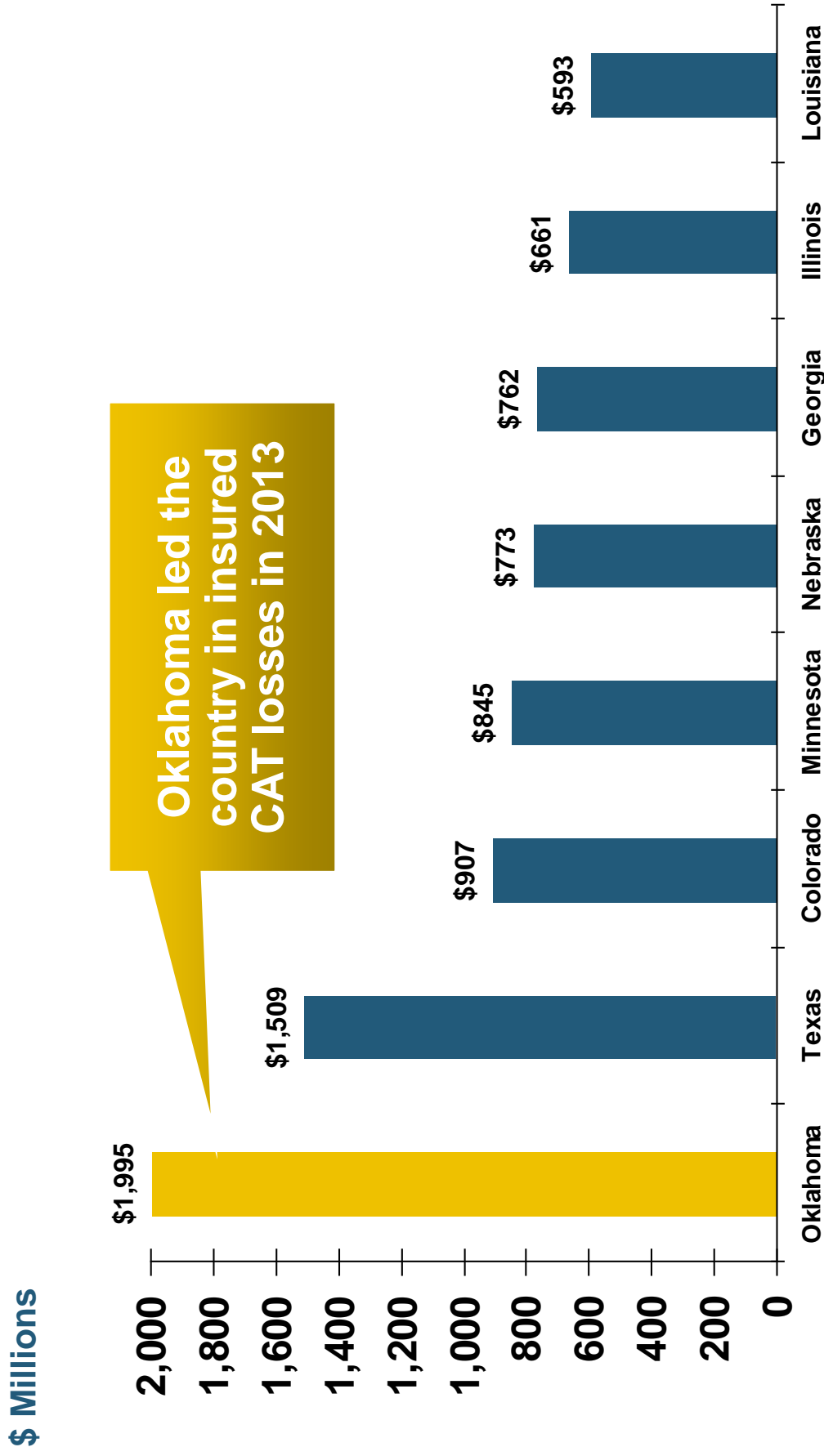
**The Catastrophe Loss Component of Private Insurer Losses Has Increased Sharply in Recent Decades**

\*2010s represent 2010-2013.

Notes: Private carrier losses only. Excludes loss adjustment expenses and reinsurance reinstatement premiums. Figures are adjusted for losses ultimately paid by foreign insurers and reinsurers.

Source: ISO (1960-2011); A.M. Best (2012E) Insurance Information Institute.

# Top 8 States for Insured Catastrophe Losses, 2013

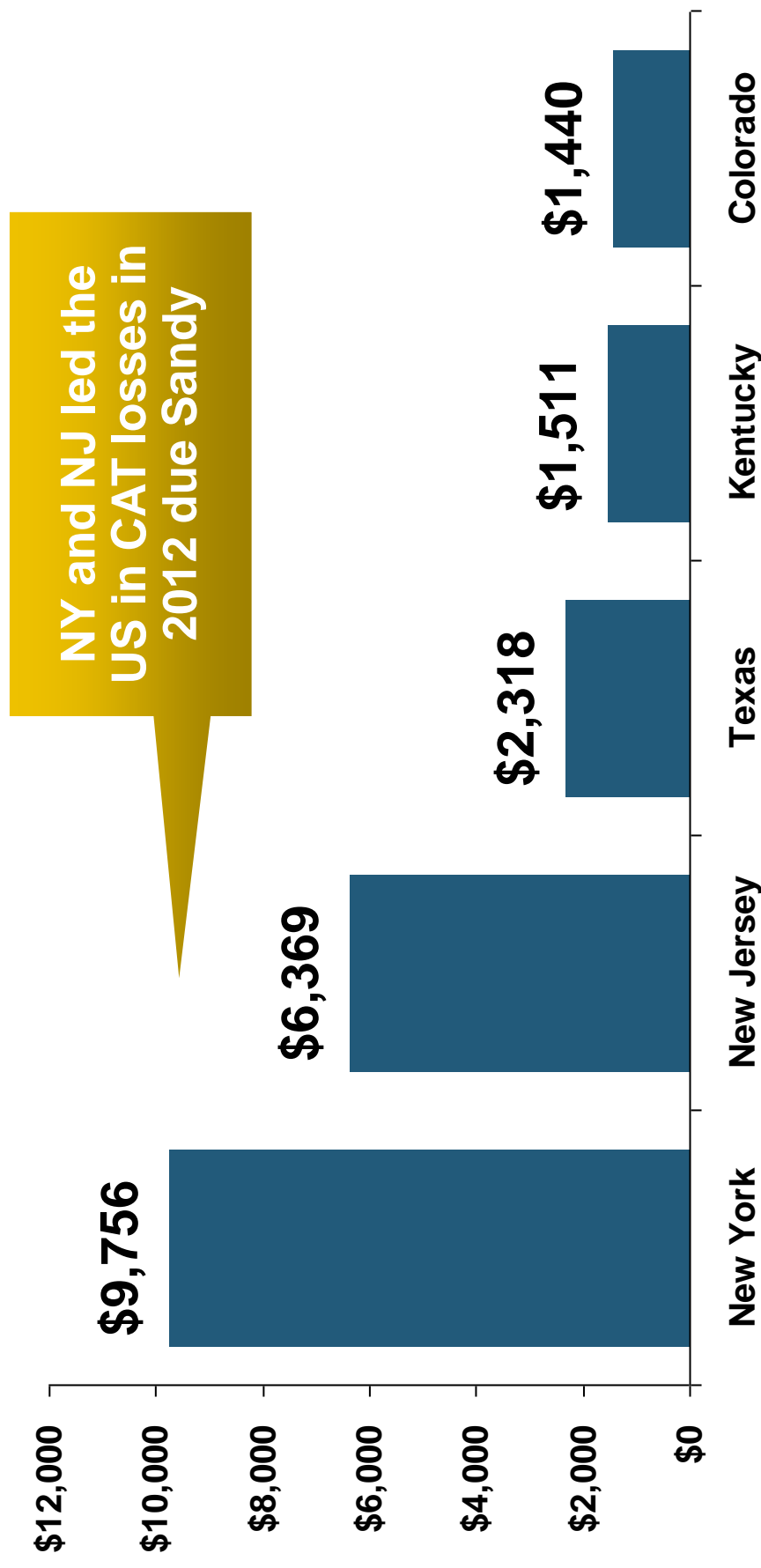


Source: The Property Claim Services (PCS) unit of ISO, a Verisk Analytics company.

# Top 5 States by Insured Catastrophe Losses in 2012\*



(2012, \$ Billions)



\*Includes catastrophe losses of at least \$25 million.

Sources: PCS unit of ISO; Insurance Information Institute.

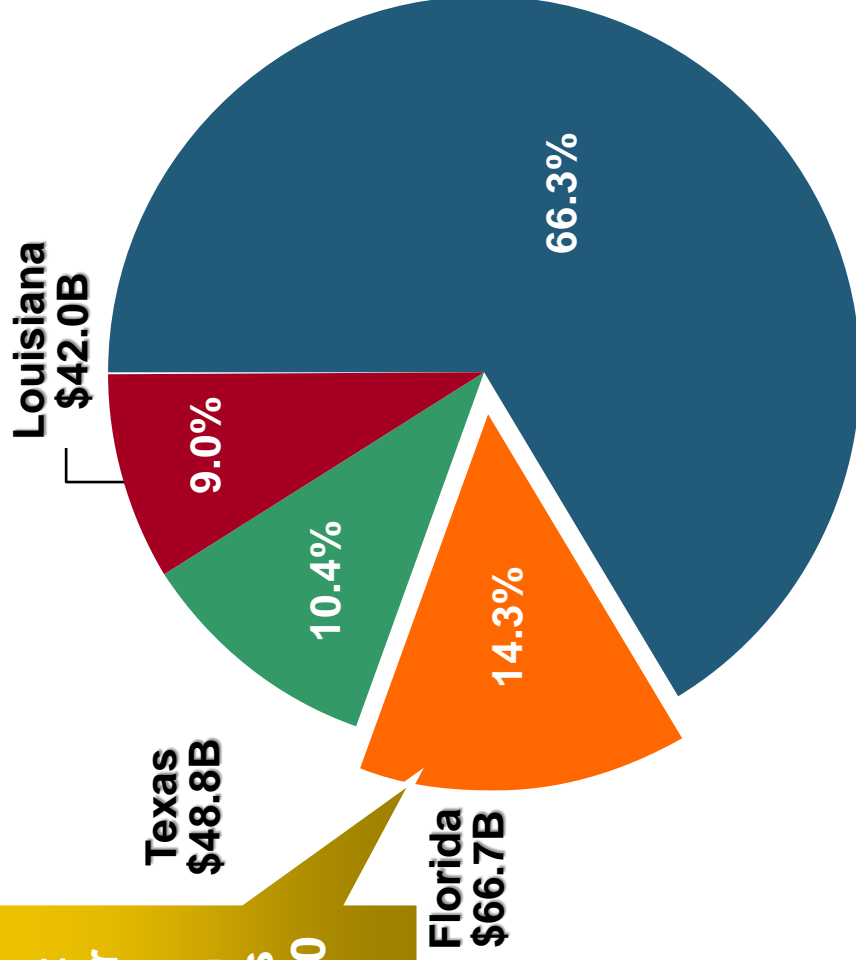


# Top States by Inflation-Adjusted Insured Catastrophe Losses, 1983–2012



Over the Past 30 Years Florida Has Accounted for the Largest Share of Catastrophe Losses in the U.S., Followed by Texas and Louisiana

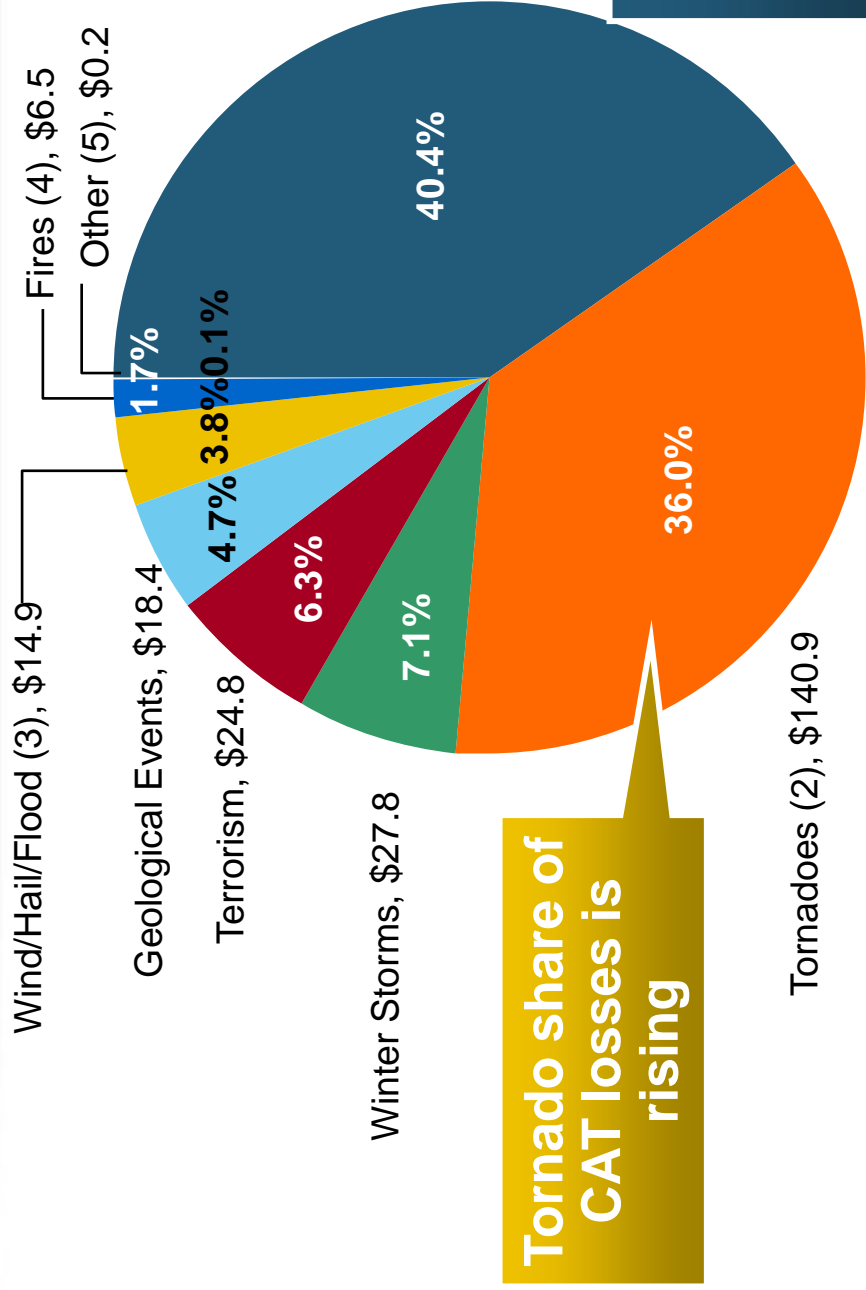
FL is the most costly state for CATs, with nearly \$67B in insured losses over the past 30 years



Rest of the U.S.  
\$309.9B

Total: \$467.5 Billion,  
an average of  
\$16.6B per year or  
\$1.3B per month

# Inflation Adjusted U.S. Catastrophe Losses by Cause of Loss, 1993–2012<sup>1</sup>



**Insured cat losses from 1993-2012 totaled \$391.7B, an average of \$19.6B per year or \$1.6B per month**

Hurricanes & Tropical Storms, \$158.2

**Wind losses are by far cause the most catastrophe losses, even if hurricanes/TS are excluded.**

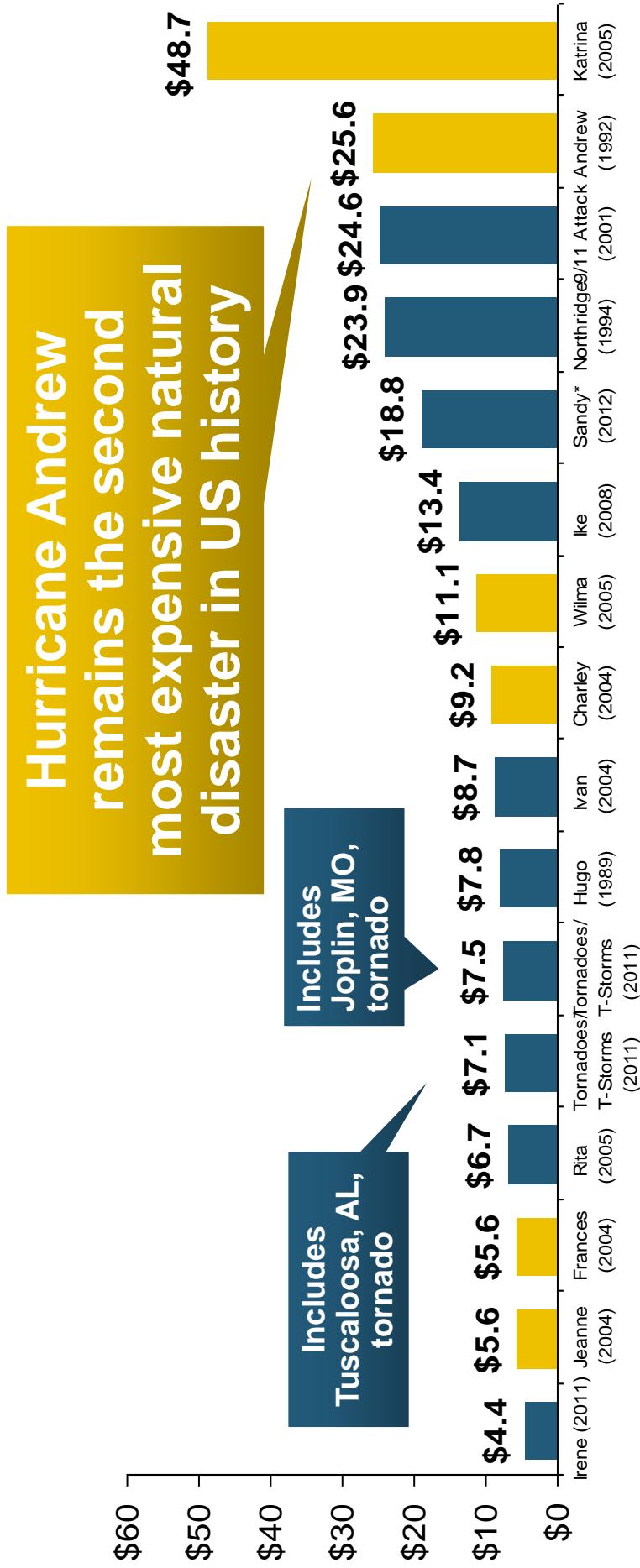
**Tornado share of CAT losses is rising**

1. Catastrophes are defined as events causing direct insured losses to property of \$25 million or more in 2012 dollars.
  2. Excludes snow.
  3. Does not include NFIP flood losses
  4. Includes wildland fires
  5. Includes civil disorders, water damage, utility disruptions and non-property losses such as those covered by workers compensation.
- Source: ISO's Property Claim Services Unit.

# Top 16 Most Costly Disasters in U.S. History



(Insured Losses, 2012 Dollars, \$ Billions)



Hurricane Andrew remains the second most expensive natural disaster in US history

Includes Joplin, MO, tornado

Includes Tuscaloosa, AL, tornado

12 of the 16 Most Expensive Events in US History Have Occurred Over the Past Decade

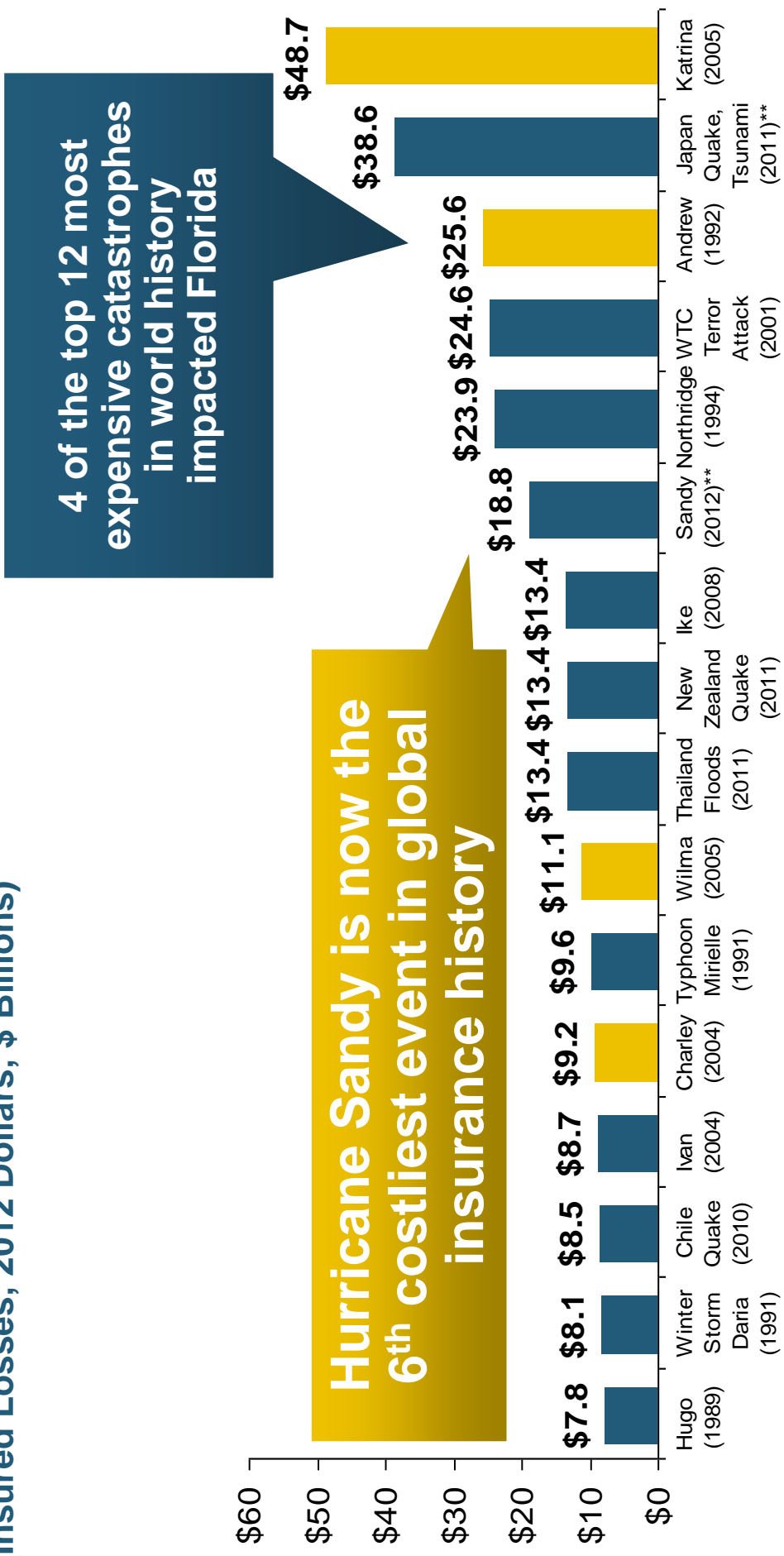
\*PCS estimate as of 4/12/13.

Sources: PCS; Insurance Information Institute inflation adjustments to 2012 dollars using the CPI.

# Top 16 Most Costly World Insurance Losses, 1970-2013\*



(Insured Losses, 2012 Dollars, \$ Billions)



\*Figures do not include federally insured flood losses.  
 \*\*Estimate based on PCS value of \$18.75B as of 4/12/13.  
 Sources: Munich Re; Swiss Re; Insurance Information Institute research.

# Top 12 Most Costly Hurricanes in U.S. History



(Insured Losses, 2012 Dollars, \$ Billions)

**6 of the 12 most costly hurricanes in insurance history impacted Florida**



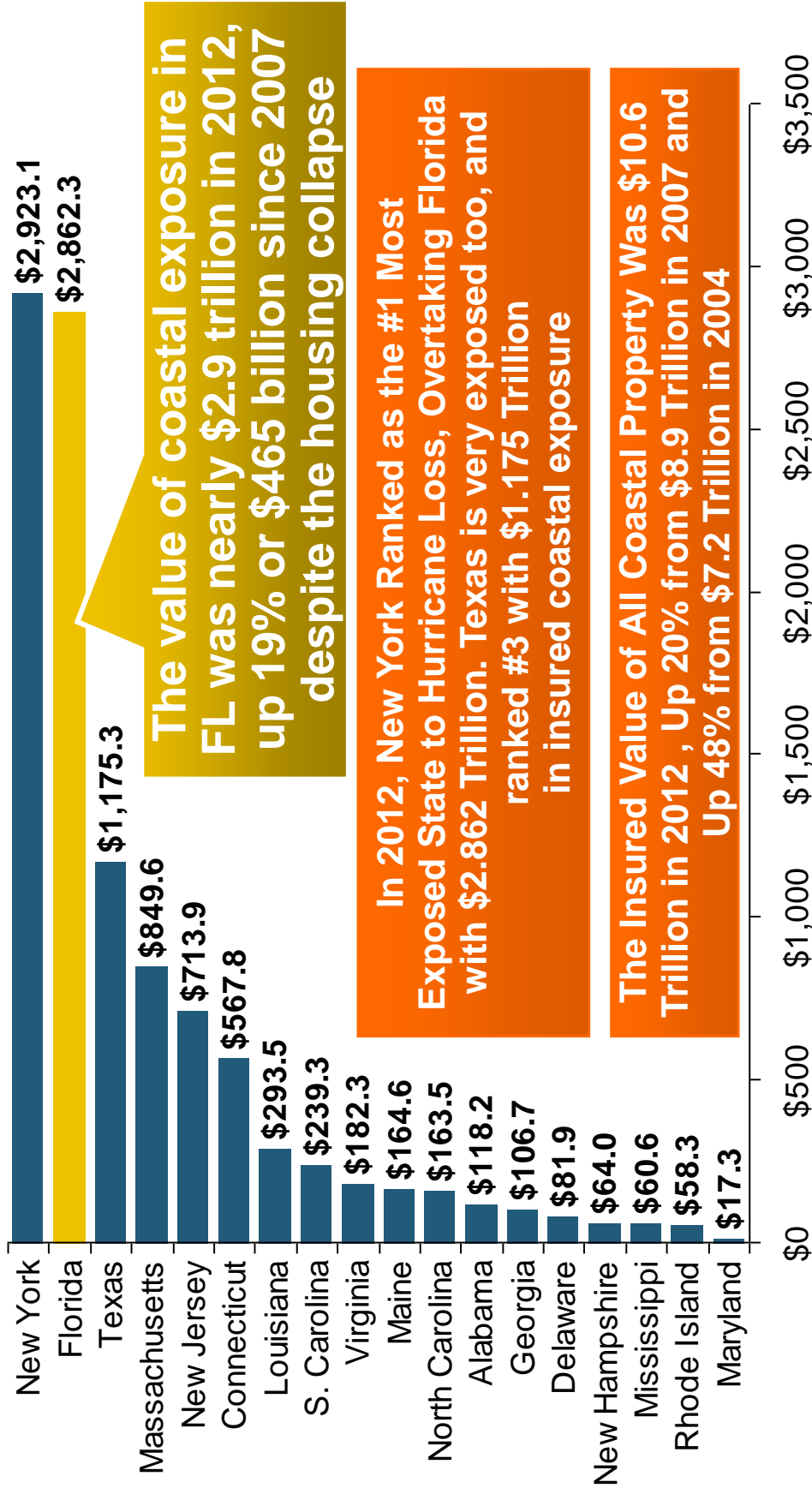
\*PCS estimate as of 4/12/13.

Sources: PCS; Insurance Information Institute inflation adjustments to 2012 dollars using the CPI.

# Total Value of Insured Coastal Exposure in 2012



(2012, \$ Billions)

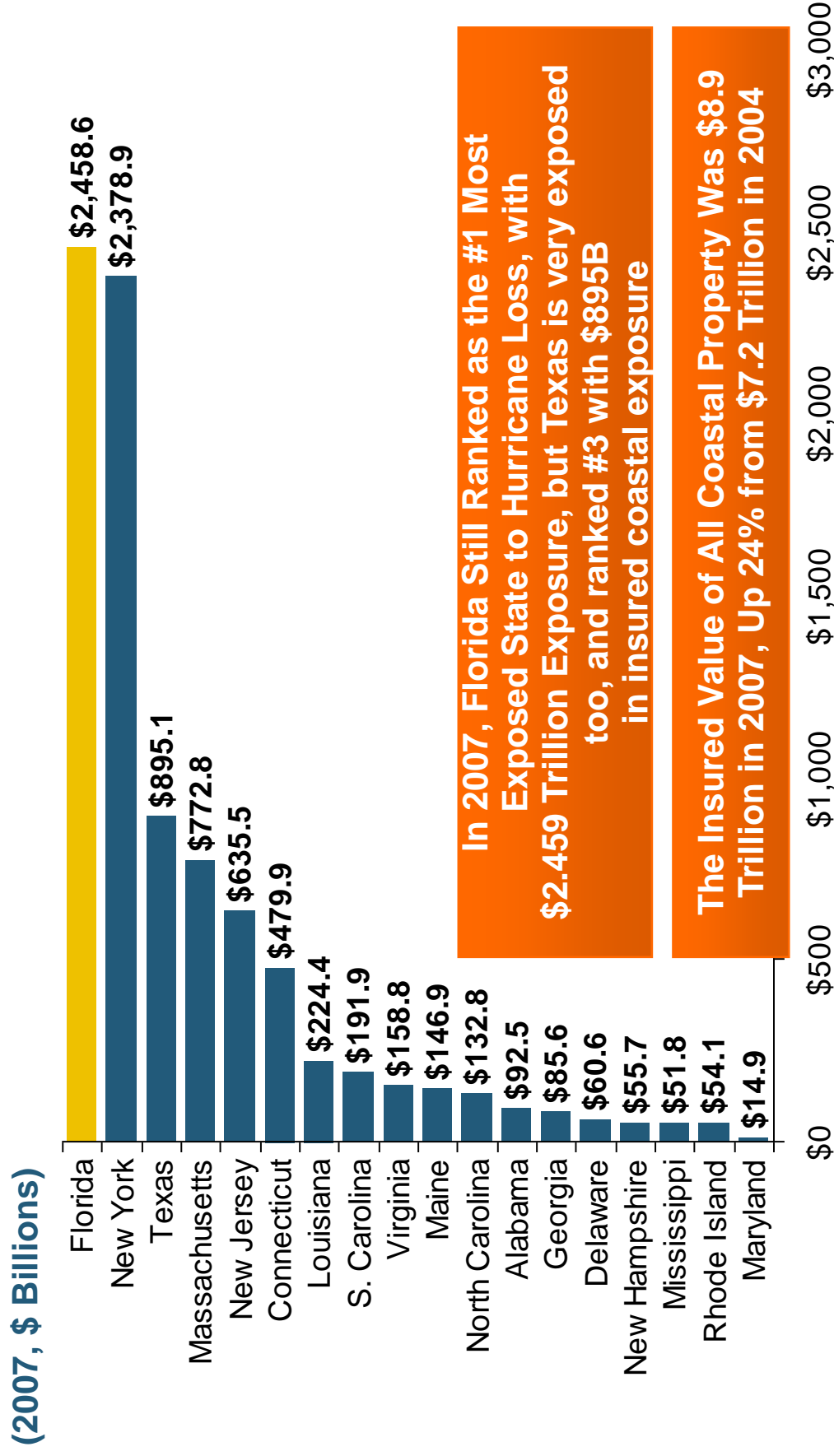


The value of coastal exposure in FL was nearly \$2.9 trillion in 2012, up 19% or \$465 billion since 2007 despite the housing collapse

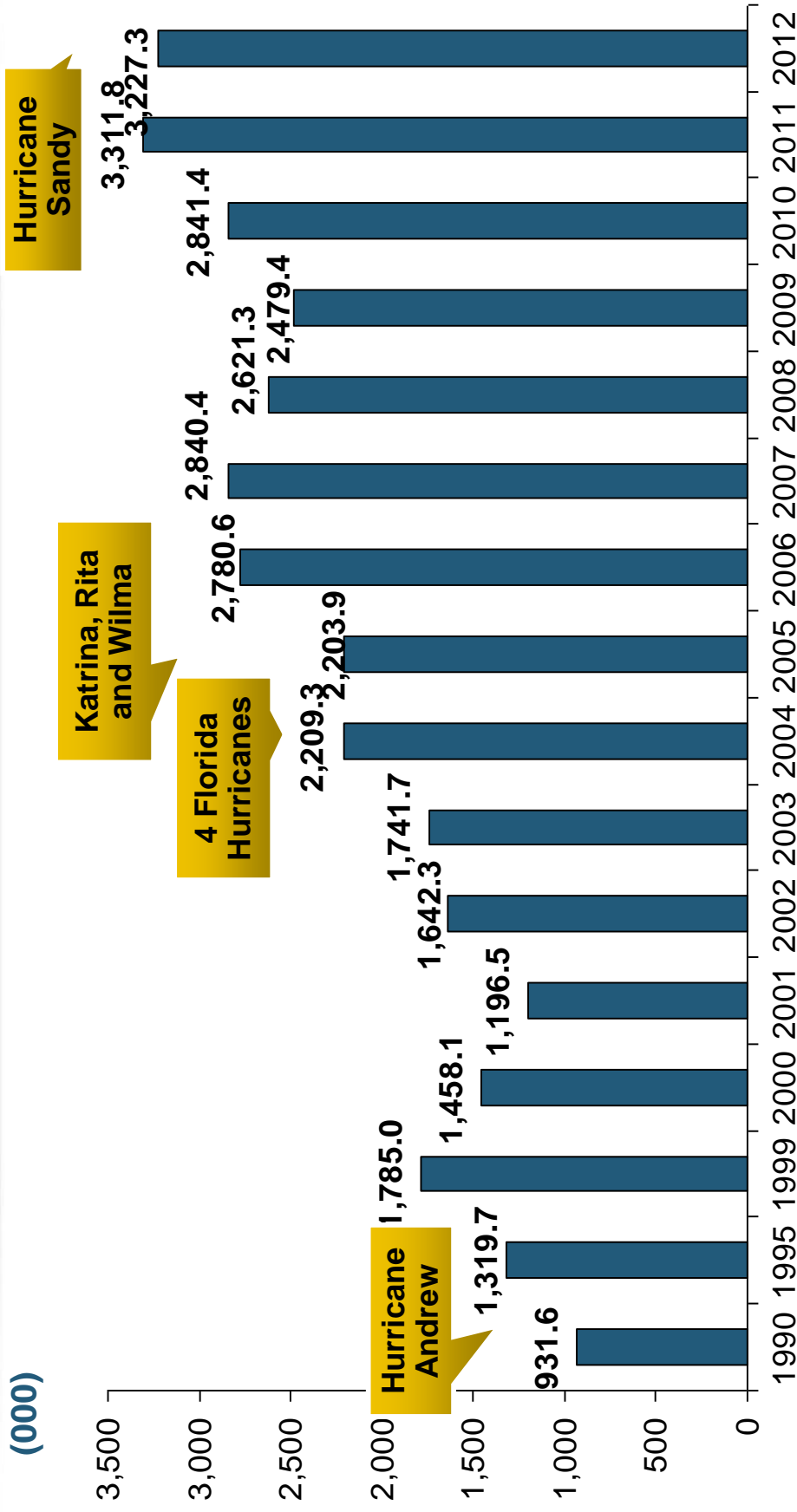
In 2012, New York Ranked as the #1 Most Exposed State to Hurricane Loss, Overtaking Florida with \$2.862 Trillion. Texas is very exposed too, and ranked #3 with \$1.175 Trillion in insured coastal exposure

The Insured Value of All Coastal Property Was \$10.6 Trillion in 2012, Up 20% from \$8.9 Trillion in 2007 and Up 48% from \$7.2 Trillion in 2004

# Total Value of Insured Coastal Exposure in 2007



# U.S. Residual Market: Total Policies In-Force (1990-2012) (000)

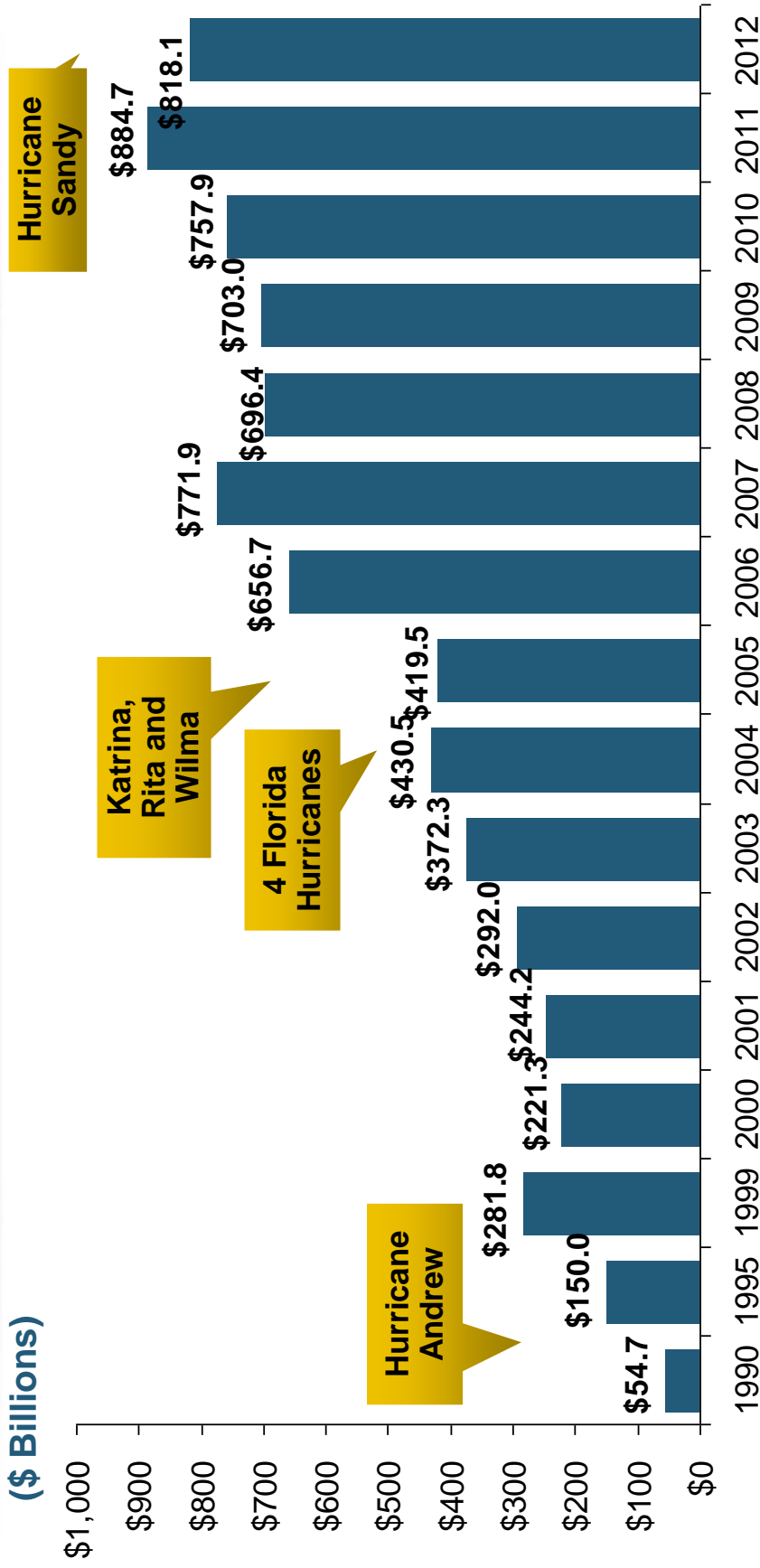


In the 23-year period between 1990 and 2012, the total number of policies in-force in the residual market (FAIR & Beach/Windstorm) Plans has more than tripled.

Source: PIPSO; Insurance Information Institute



# U.S. Residual Market Exposure to Loss (1990-2012) (\$ Billions)



In the 23-year period between 1990 and 2012, total exposure to loss in the residual market (FAIR & Beach/Windstorm) Plans has surged from \$54.7 billion in 1990 to \$818.1 billion in 2012.

Source: PIPSO; Insurance Information Institute (I.I.I.).

# Flood Insurance

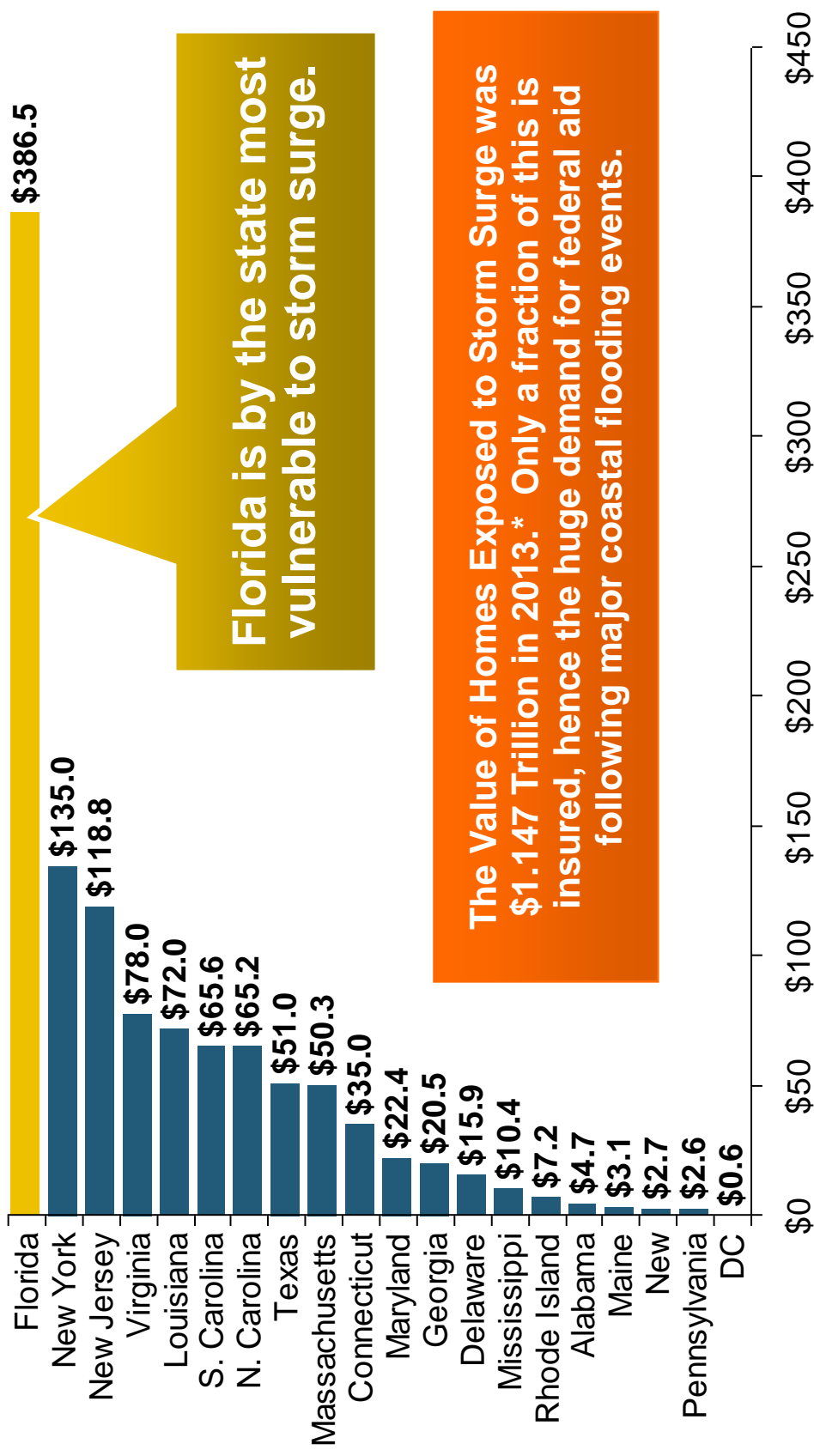
## Flood Exposure: Reforms in Danger?

- *Flood Should Reflect True Risk*
  - *Keep the Subsidies*
- *Would Prefer to Purchase from Private Insurers*

# Total Potential Home Value Exposure to Storm Surge Risk in 2013\*

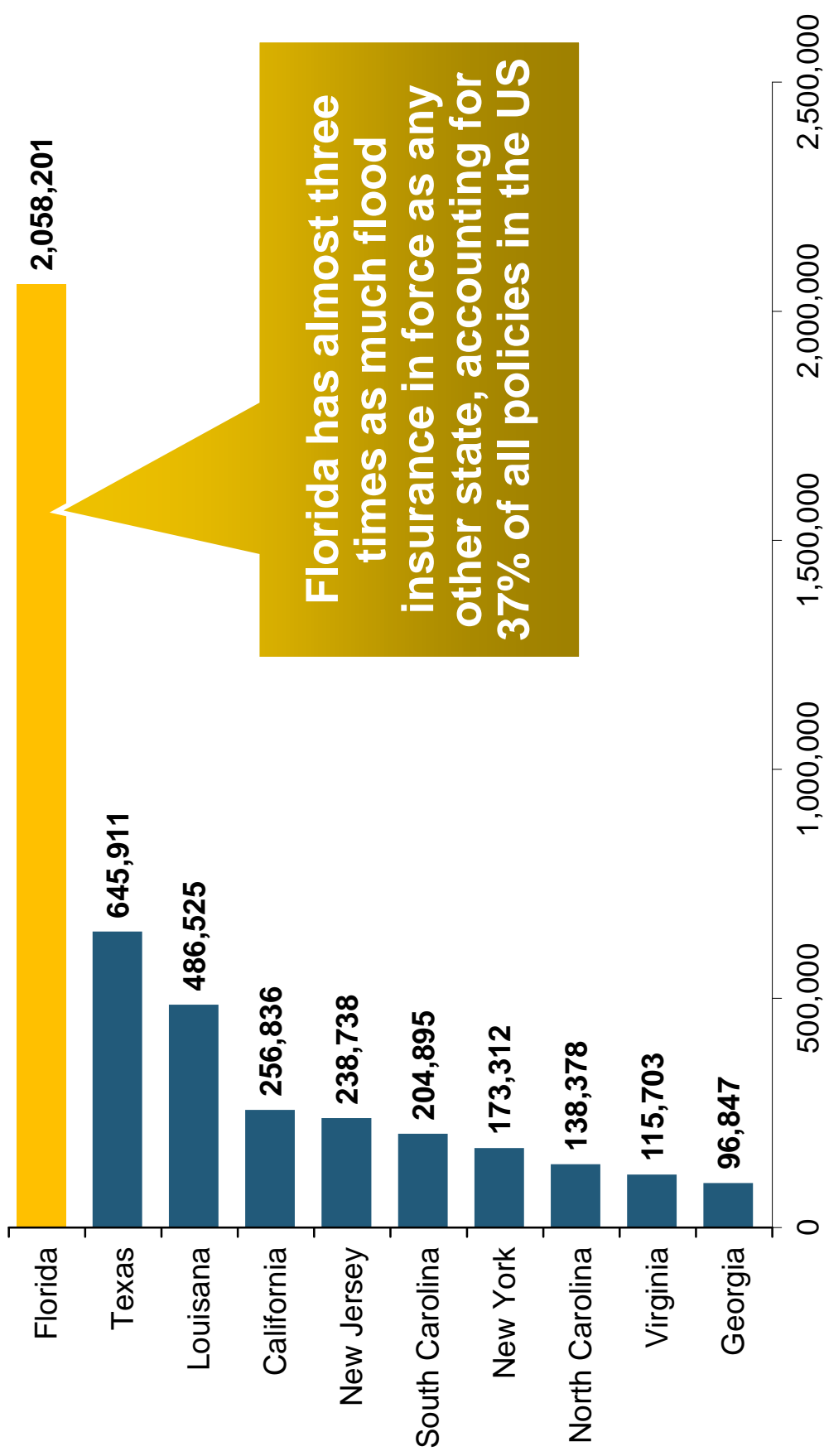


(\$ Billions)



\*Insured and uninsured property. Based on estimated property values as of April 2013. Source: Storm Surge Report 2013, CoreLogic.

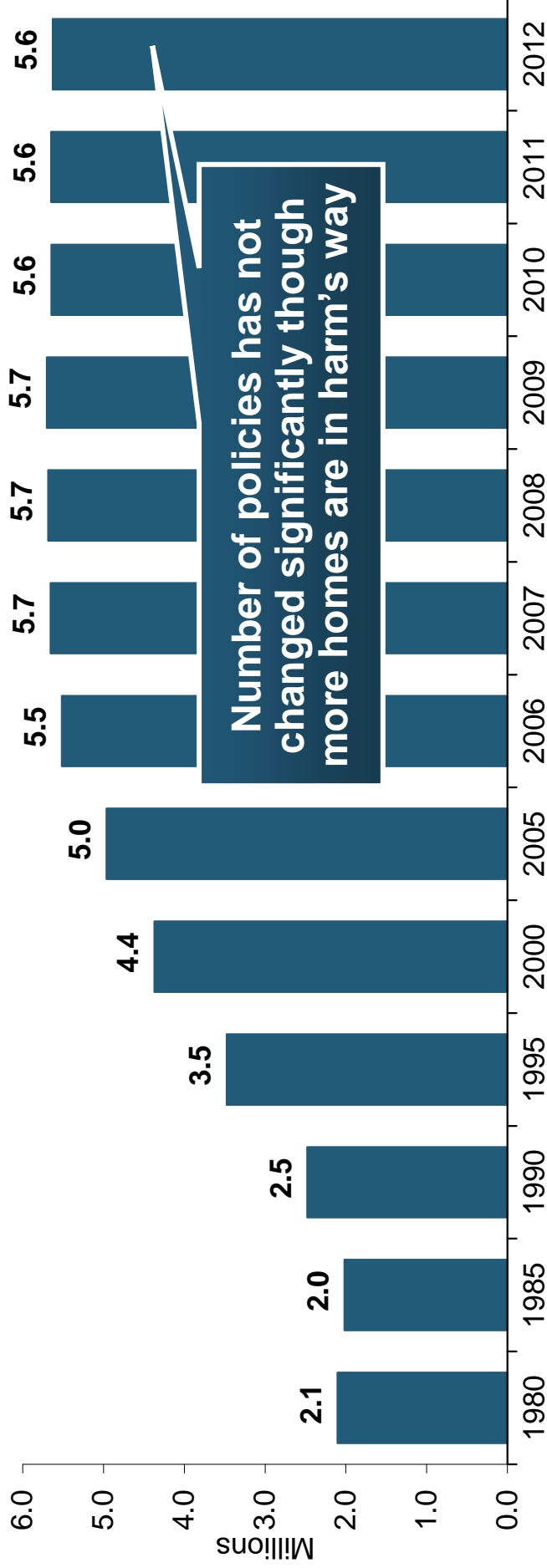
# Total NFIP Policies in Force, 2012



# Growth of NFIP program

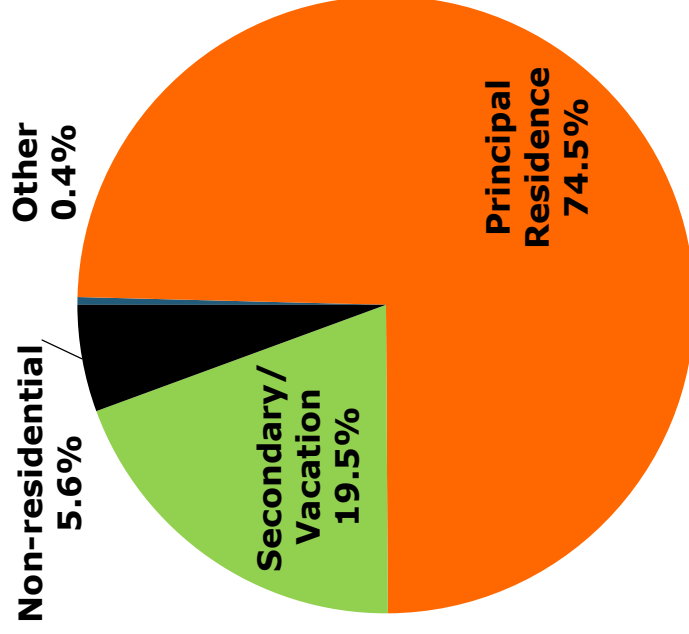


Policies in Force at Year-End



Despite the growth of the program, approximately half of all properties in a flood zone lack flood insurance.

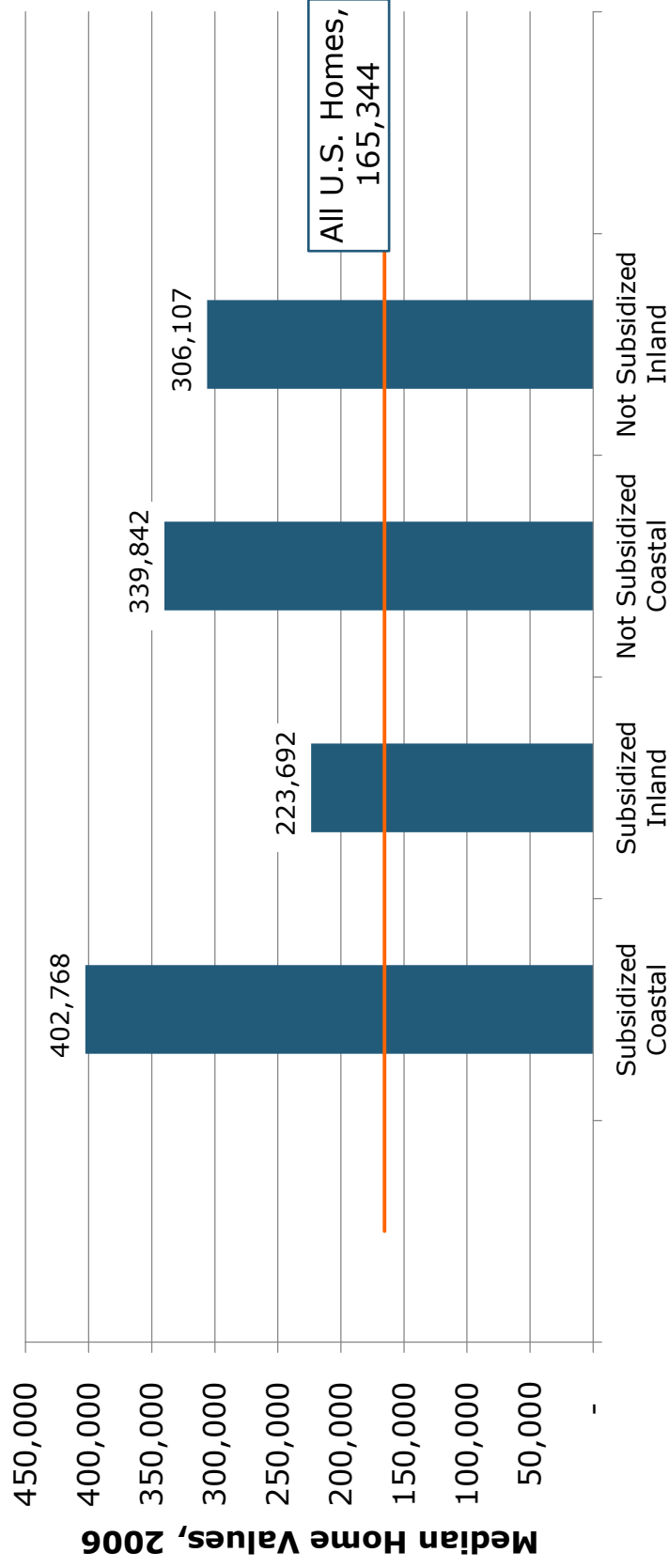
# What kind of Buildings Does Flood Insurance Protect?



**One-fourth of all flood policies are written on commercial (non-residential) risks or on secondary homes.**

Sources: Congressional Budget Office (2007), Insurance Information Institute.

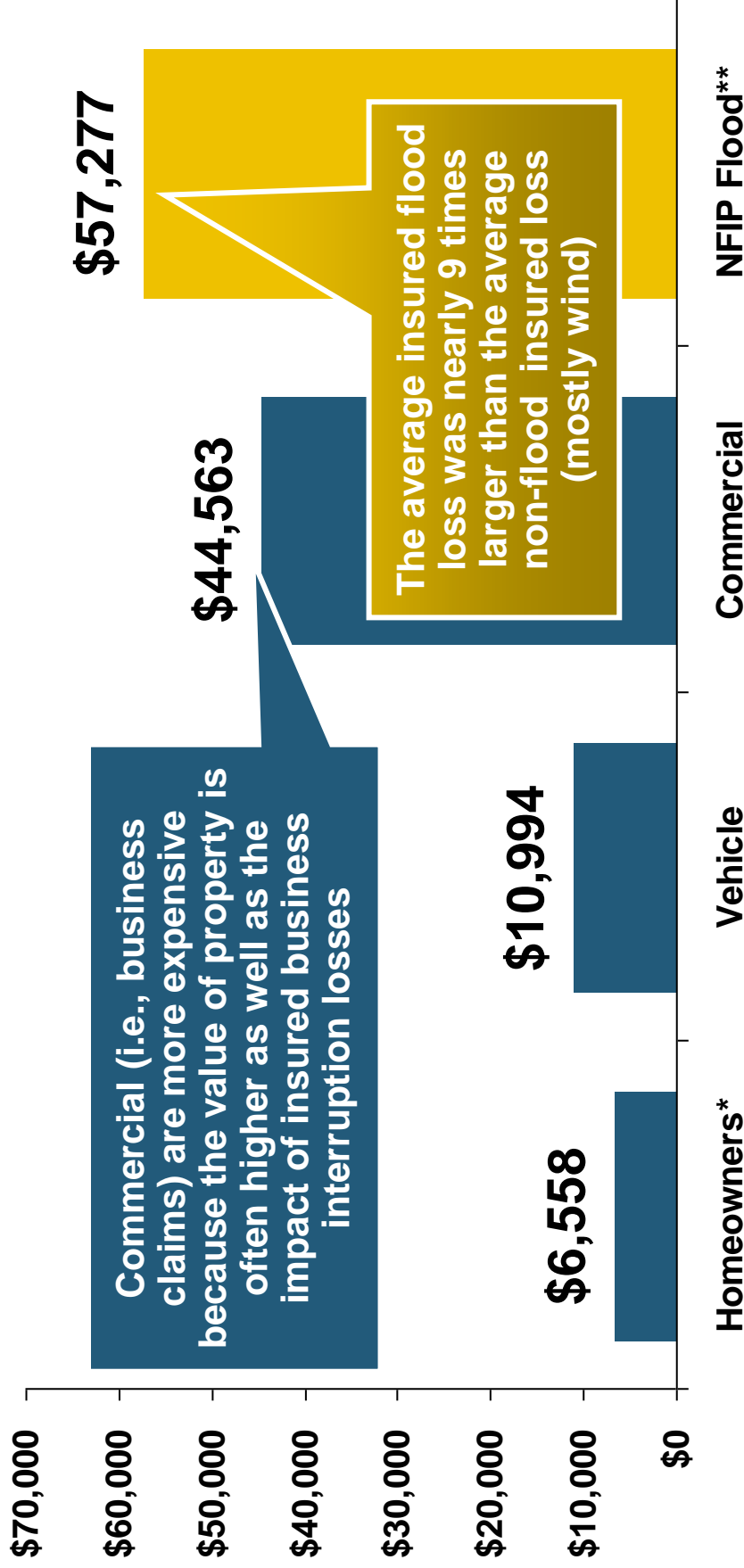
# Median Value of Flood Properties



**A CBO survey indicated the typical home with flood insurance is worth significantly more than the typical home. The typical subsidized coastal risk was worth more than unsubsidized risks.**

Congressional Budget Office 2007 survey of coastal risks, with U.S. owner-occupied home median from Bureau of Census, 2005 American Housing Survey, Insurance Information Institute.

# Hurricane Sandy: Average Claim Payment by Type of Claim



Post-Sandy, the I.I.I. worked very hard to make help media, consumers and regulators understand the distinction between a flood claim and a standard homeowners claim. *NFIP is \$24B in debt.*

\*Includes rental and condo policies (excludes NFIP flood). \*\*As of Oct. 31, 2013.

Sources: Catastrophe loss data is for Catastrophe Serial No. 90 (Oct. 28 – 31, 2012) from PCS as of March 2013; Insurance Information Institute.

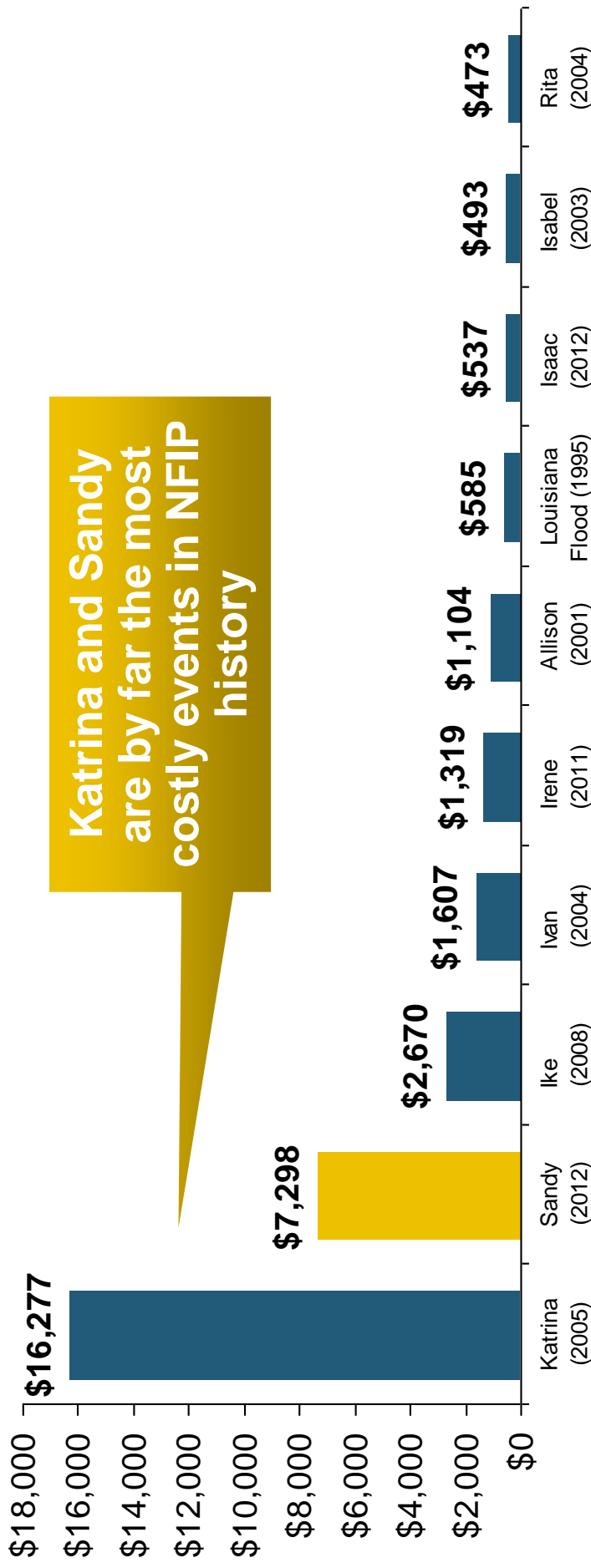


# Top 12 Most Costly Flood Events by NFIP Payout\*



(NFIP Insured Losses, \$ Millions)

**8 of the 10 most costly events in NFIP history occurred over the past decade (2004–2013); NFIP deficit now totals \$24 billion**



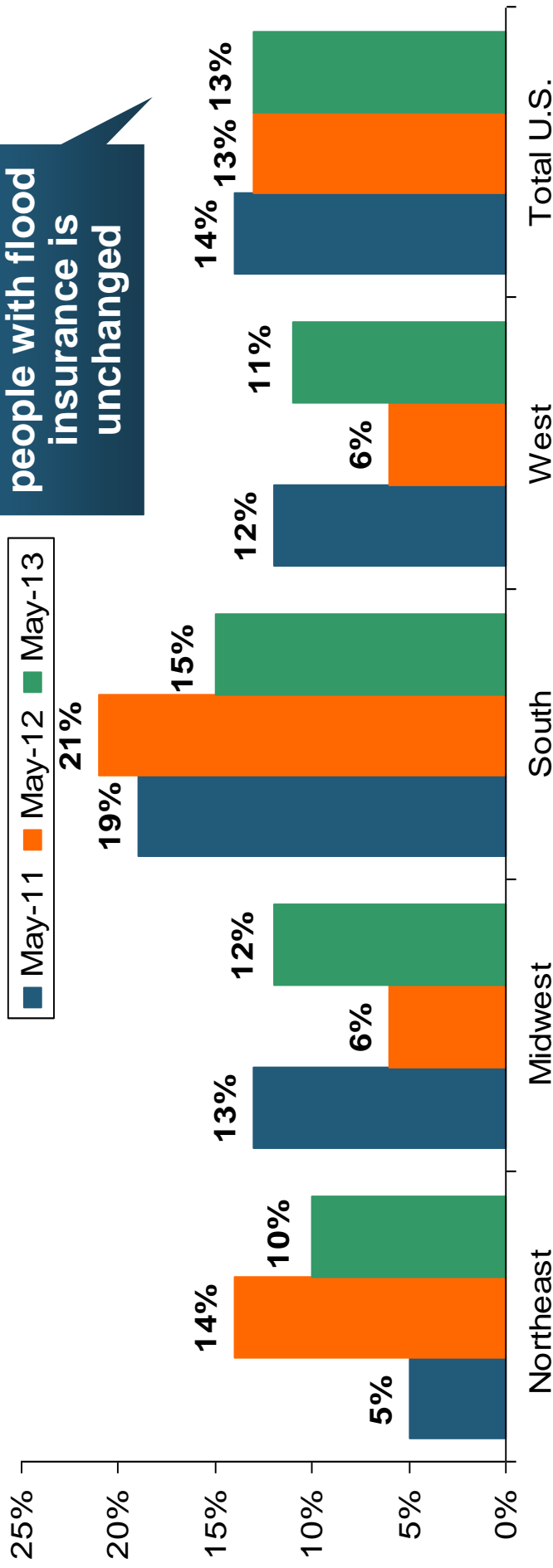
\*Expressed in original dollars (not inflation-adjusted).

Sources: PCS; Insurance Information Institute inflation adjustments to 2012 dollars using the CPI.

# I.I.I. Poll: Disaster Preparedness



Q. Do you have a separate flood insurance policy?<sup>1</sup>



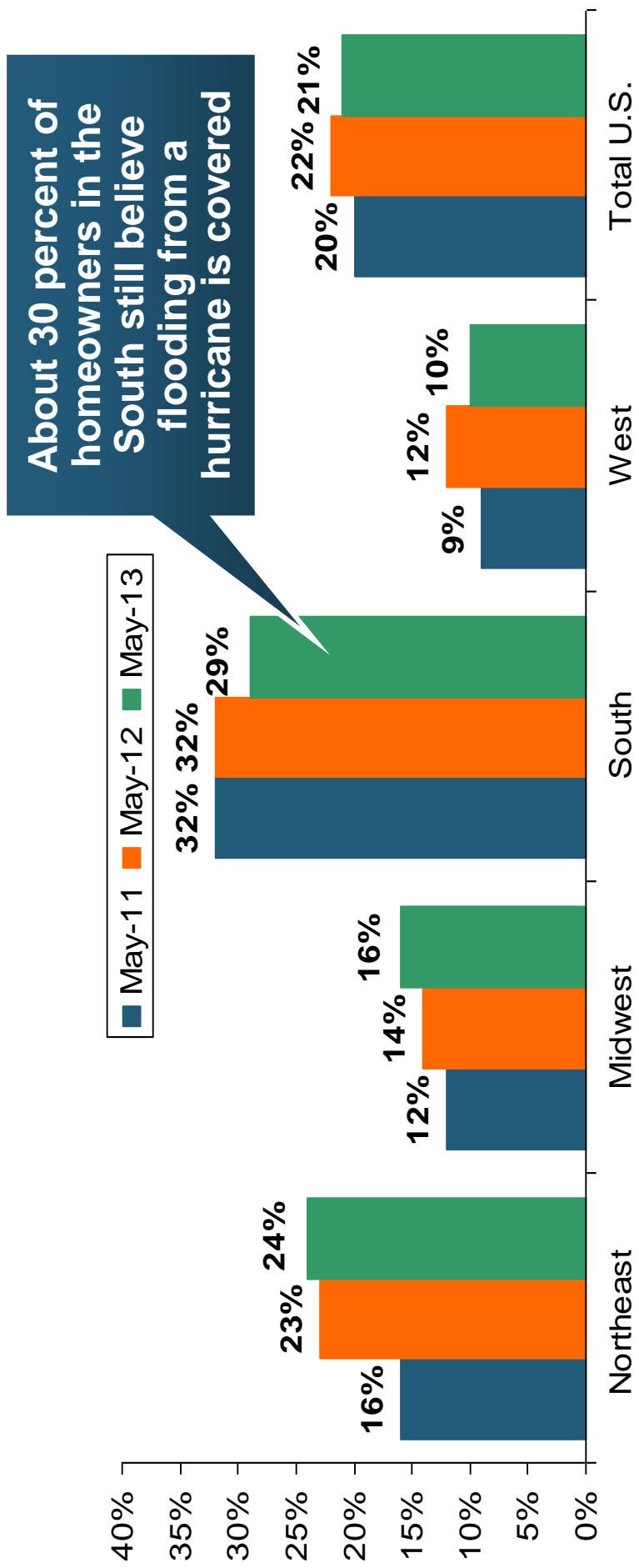
**Only 13 percent of American homeowners say they have a flood insurance policy; the percentage is lowest in the Northeast at 10 percent.**

<sup>1</sup>Asked of those who have homeowners insurance and who responded "yes".

# I.I.I. Poll: Disaster Preparedness



Q. Does your homeowners policy cover damage from flooding during a hurricane?<sup>1</sup>



The proportion of homeowners who believe their homeowners policy covers damage from flooding during a hurricane stands at 21 percent. This proportion rises eight percentage points in the South, to 29 percent.

<sup>1</sup>Asked of those who have homeowners insurance and who responded "yes".

# Biggert-Waters: Media and Congressional Maelstrom

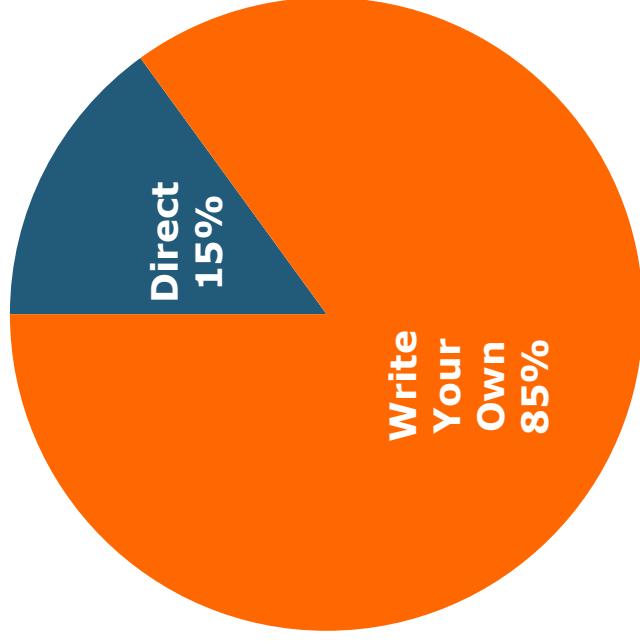


- **BW-12 Rate Increases to Phase Out Subsidies Began in 2013**
  - ◆ Note: Only 20% of NFIP policies are subsidized
- **Jan. 1, 2013: Non-Primary/Secondary Residences**
  - ◆ Increases of 25% per year until full-risk rate achieved
  - ◆ *Reaction: Very muted; Vacation homes/wealthier owners*
- **Oct. 1, 2013: Subsidized Severe or Repetitive Loss Policies and Owners of Business/Non-Residential Properties**
  - ◆ Increases of 25% per year until full-risk rate achieved
  - ◆ *Reaction: Huge consumer backlash, intense media coverage leading to a Congressional effort to delay BW-12 by 4 years (effectively killing it). Even Maxine Waters supports delay...*
- **Subsidy Lost if Policy Lapses, Severe Repeated, New Policy**
- **I.I.I. Is Explaining the Risks Associated with BW-12 Delay**
- **Future Pvt. Insurer Flood Participation Impacted by BW-12 Debate**
- **I.I.I. Research Report on Issue Due Soon Under BW-12 Section 236 Study Requirement (National Academy of Sciences)**

# Success of Write Your Own Program



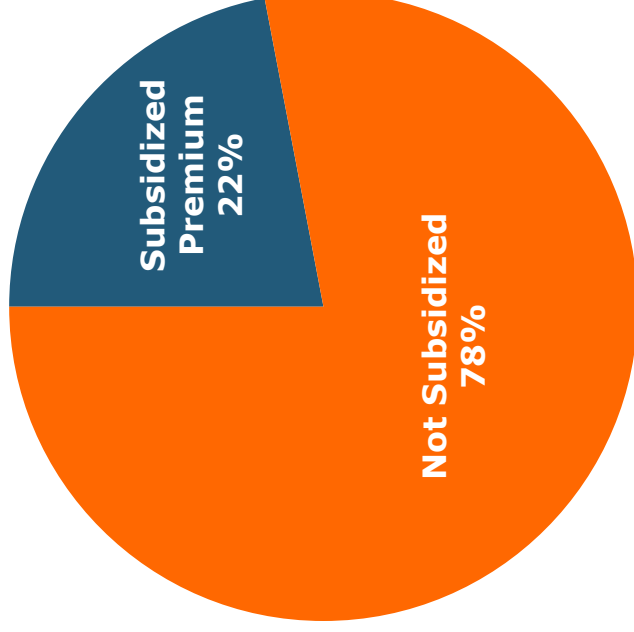
## Write Your Own Policies vs. Written Directly by NFIP



**More than 80% of flood policies in the NFIP are written through the Write Your Own program, a public-private partnership.**

Source: U.S. Department of Homeland Security, Federal Emergency Management Agency; Insurance Information Institute.

# Extent of Flood Insurance Subsidy



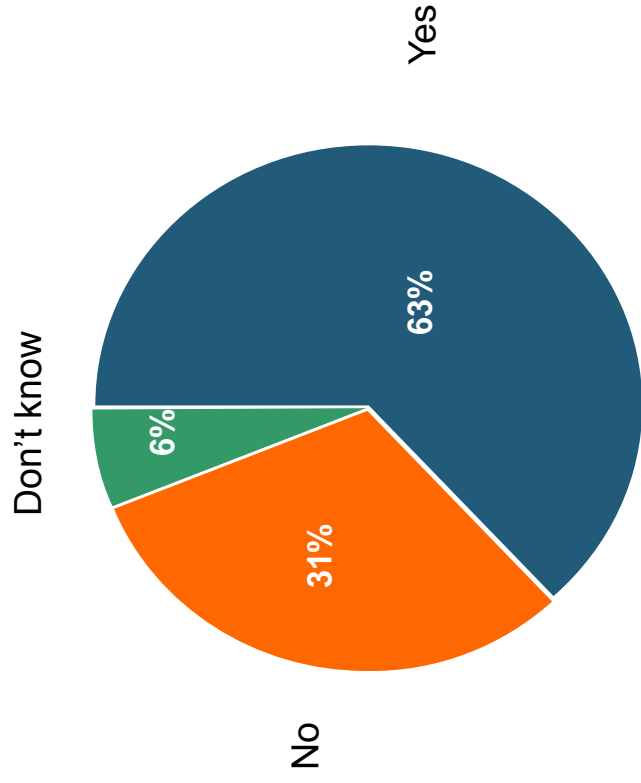
**The average subsidized policy pays about 40 percent of the full actuarial rate. Eliminating the subsidy would increase program premium by more than 50 percent.**

Sources: NFIP 2011 Actuarial Rate Review, Insurance Information Institute.

# I.I.I. Poll: Flood Insurance



**Q. Do you think it is fair that flood insurance premium increases are higher if people who live in high flood risk areas and rebuild their homes do not elevate them?**

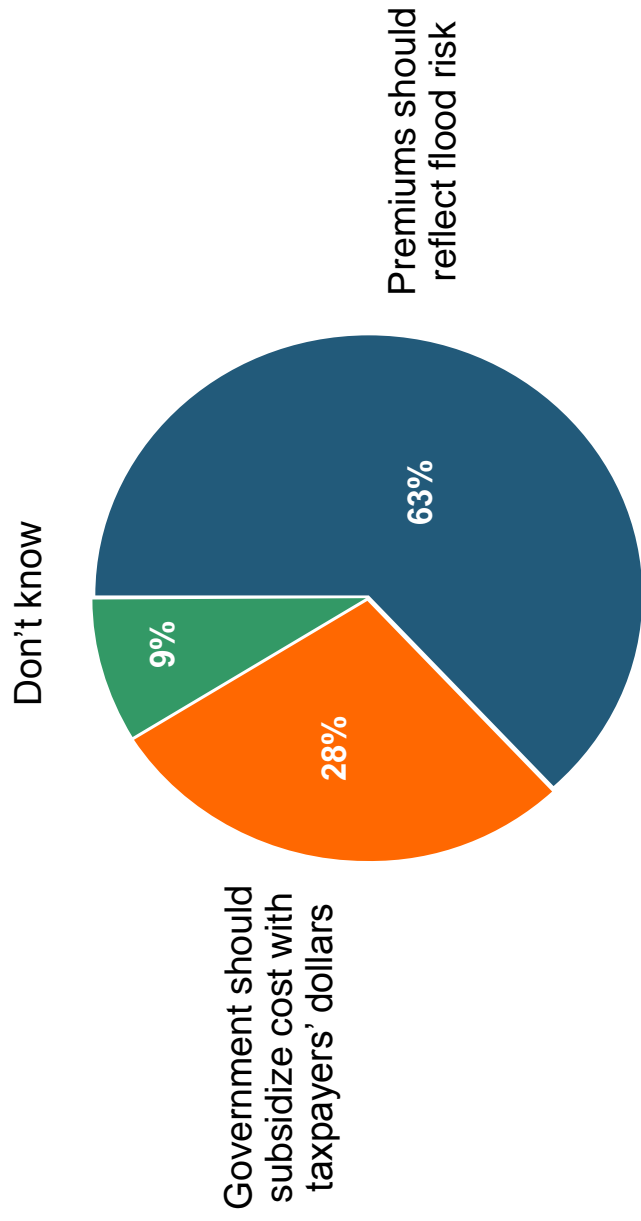


**Almost two-thirds of Americans think that it is fair that flood insurance premiums be raised for people who live in high flood risk areas and rebuild their homes after a flood but do not elevate them.**

# I.I.I. Poll: Flood Insurance



**Q. Do you think flood insurance premiums should reflect the risk of flooding no matter what the cost or do you think the government should subsidize the cost of flood insurance with taxpayers' dollars?**



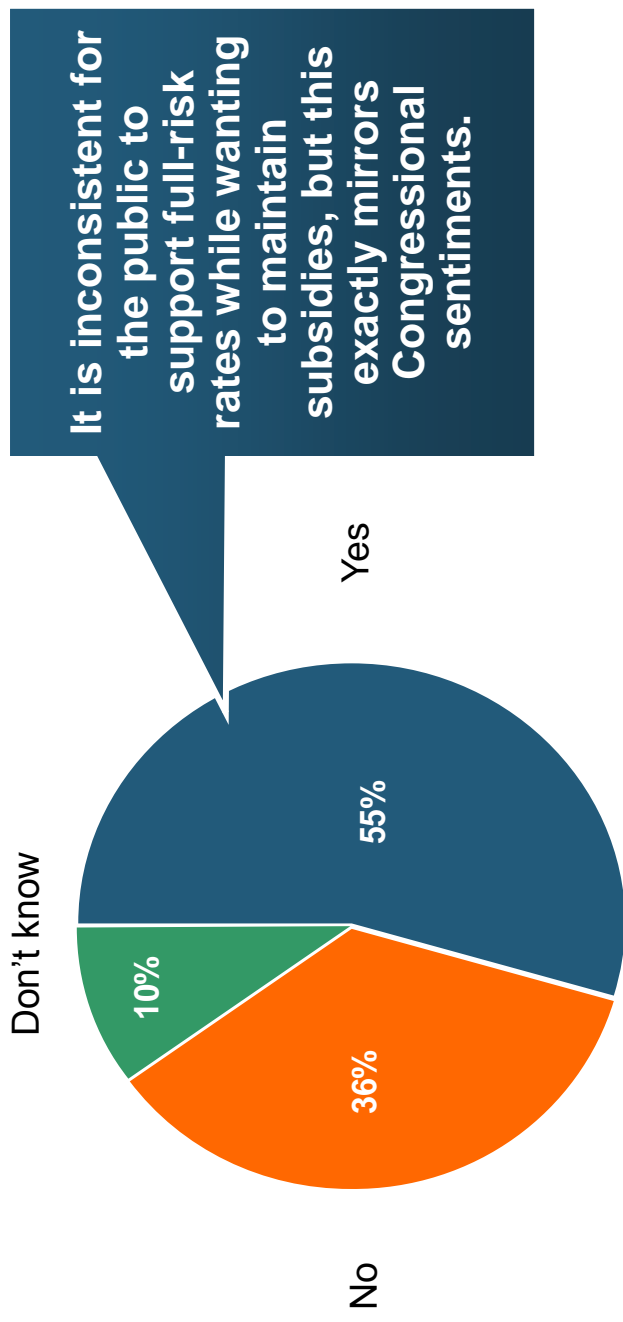
**Almost two-thirds of Americans think flood insurance premiums should be raised to reflect the risk of flooding.**



# I.I.I. Poll: Flood Insurance



**Q. The federal government provides insurance coverage at taxpayer-subsidized rates for damage from floods through the National Flood Insurance Plan. A new law eliminates the subsidy and raises rates. Do you think the rate increase should be repealed?**



**More than half of Americans polled for the November 2013 Pulse thought that hikes in National Flood Insurance premiums should be repealed.**



# Federal Disaster Declarations Patterns: 1953-2013

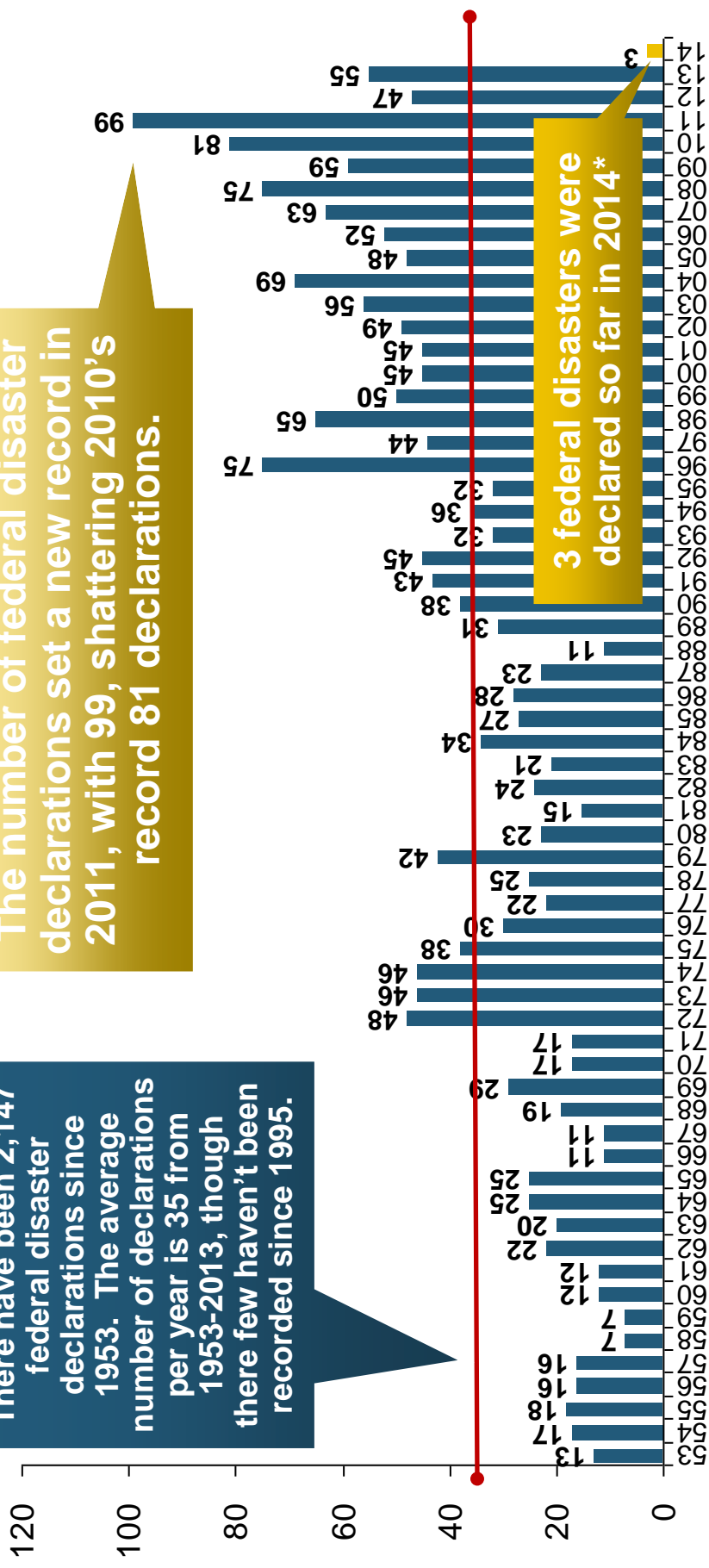
## Disaster Declarations Set New Records in Recent Years

# Number of Federal Major Disaster Declarations, 1953-2014\*



There have been 2,147 federal disaster declarations since 1953. The average number of declarations per year is 35 from 1953-2013, though there few haven't been recorded since 1995.

The number of federal disaster declarations set a new record in 2011, with 99, shattering 2010's record 81 declarations.



3 federal disasters were declared so far in 2014\*

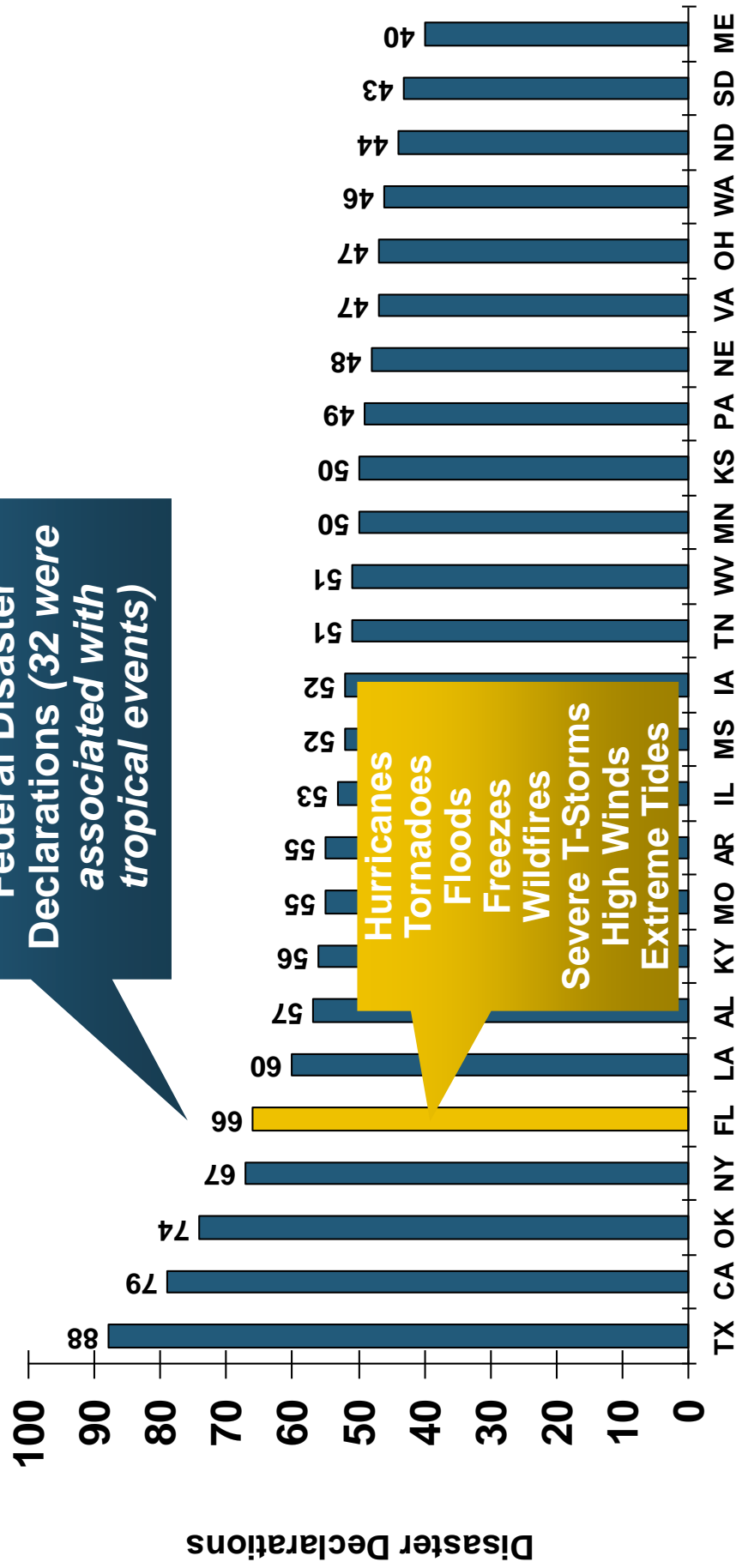
The Number of Federal Disaster Declarations Is Rising and Set New Records in 2010 and 2011 Before Dropping in 2012/13

\*Through January 25, 2014.  
Source: Federal Emergency Management Administration; <http://www.fema.gov/disasters>; Insurance Information Institute.

# Federal Disasters Declarations by State, 1953 – 2014: Highest 25 States\*



Over the past 60 years, Florida has had the 5<sup>th</sup> highest number of Federal Disaster Declarations (32 were associated with tropical events)



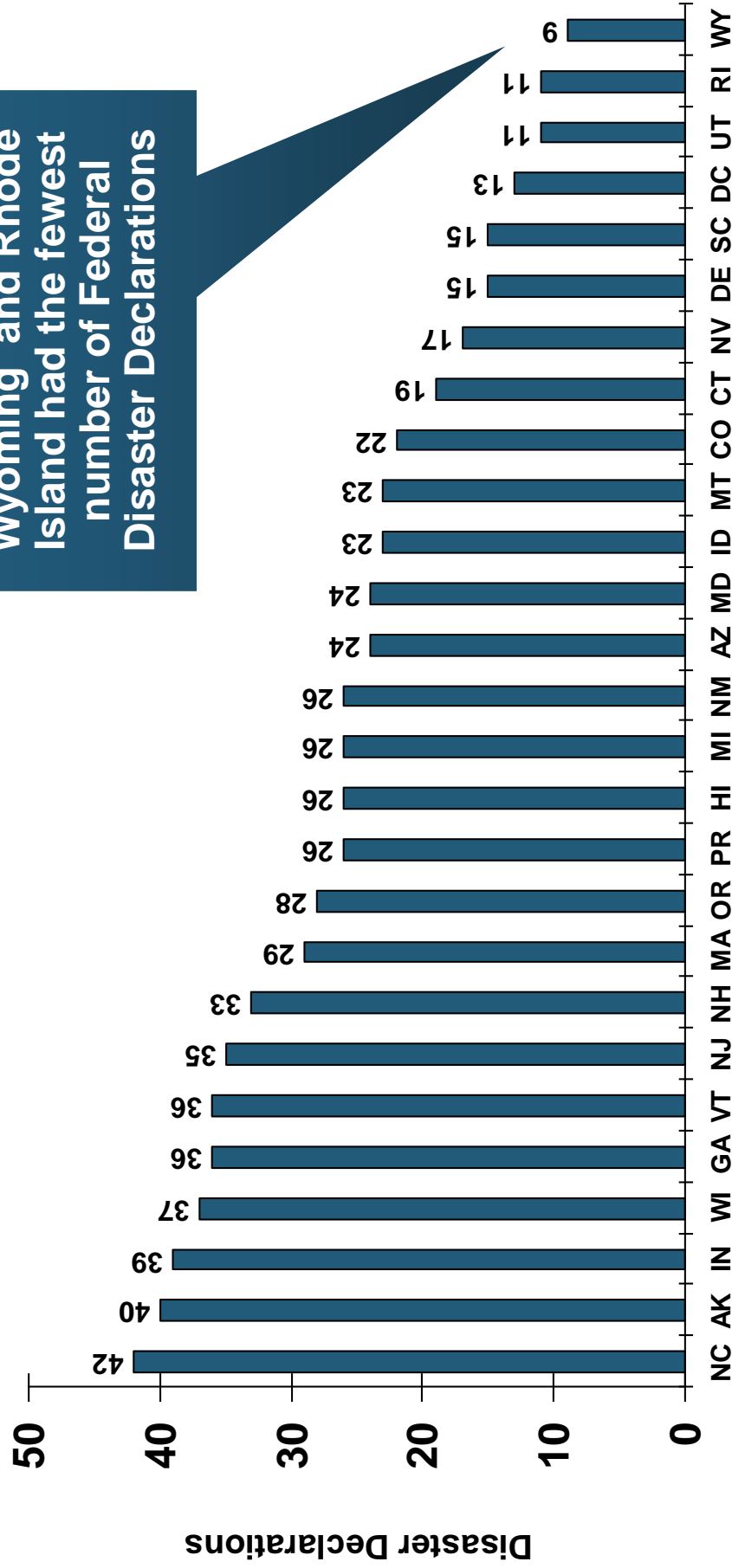
\*Through Jan. 25, 2014. Includes Puerto Rico and the District of Columbia.

Source: FEMA: [http://www.fema.gov/news/disaster\\_totals\\_annual.fema](http://www.fema.gov/news/disaster_totals_annual.fema); Insurance Information Institute.

# Federal Disasters Declarations by State, 1953 – 2014: Lowest 25 States\*



Over the past 60 years, Wyoming and Rhode Island had the fewest number of Federal Disaster Declarations



\*Through Jan. 25, 2014. Includes Puerto Rico and the District of Columbia.

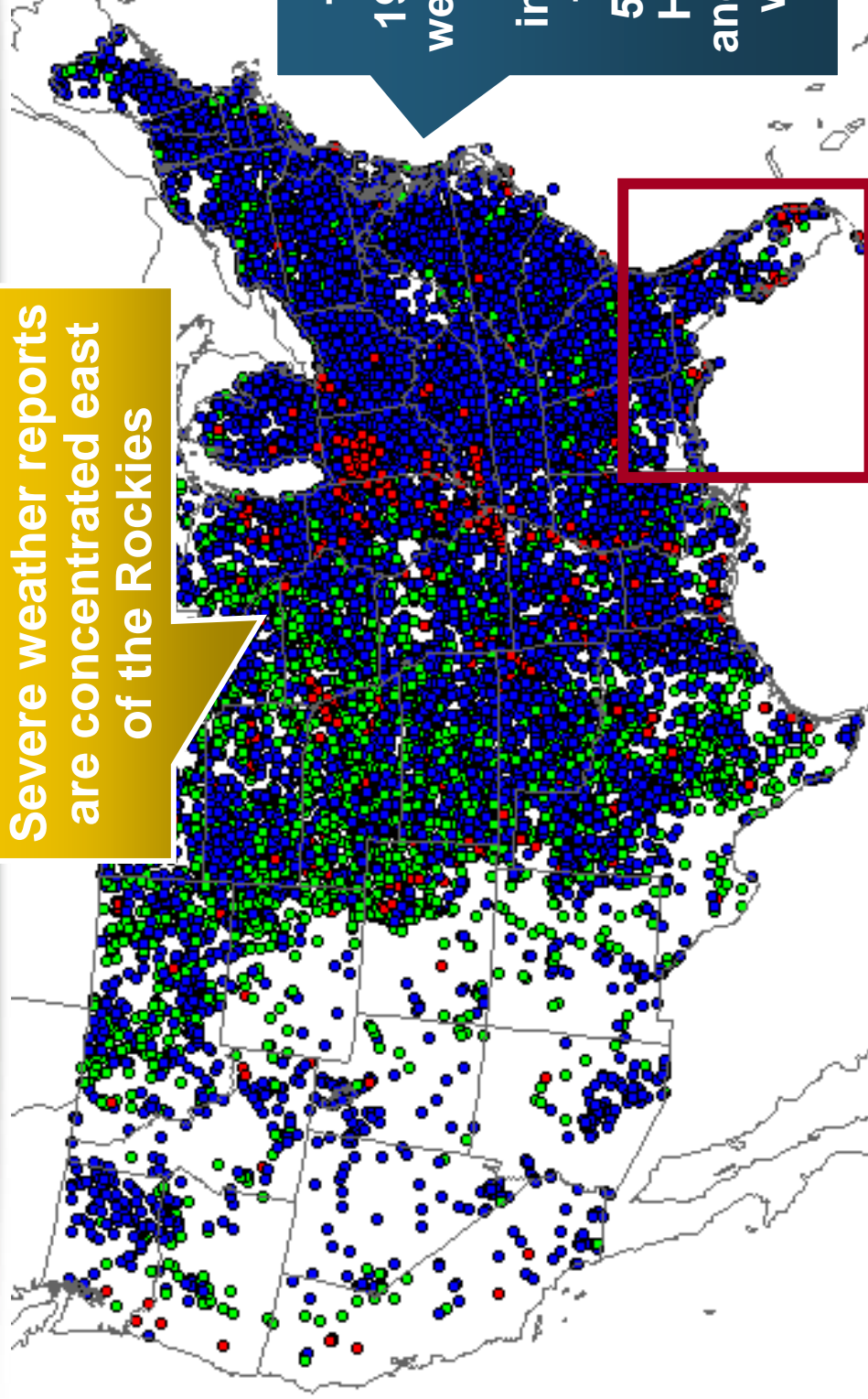
Source: FEMA: [http://www.fema.gov/news/disaster\\_totals\\_annual.fema](http://www.fema.gov/news/disaster_totals_annual.fema); Insurance Information Institute.



## SEVERE WEATHER REPORT UPDATE: 2013

*Damage from Tornadoes, Large Hail  
and High Winds Keep Insurers Busy  
in Every State—including Florida*

# Severe Weather Reports: 2013



Severe weather reports are concentrated east of the Rockies

There were 19,342 severe weather reports in 2013; including 942 tornadoes; 5,457 "Large Hail" reports and 12,942 high wind events



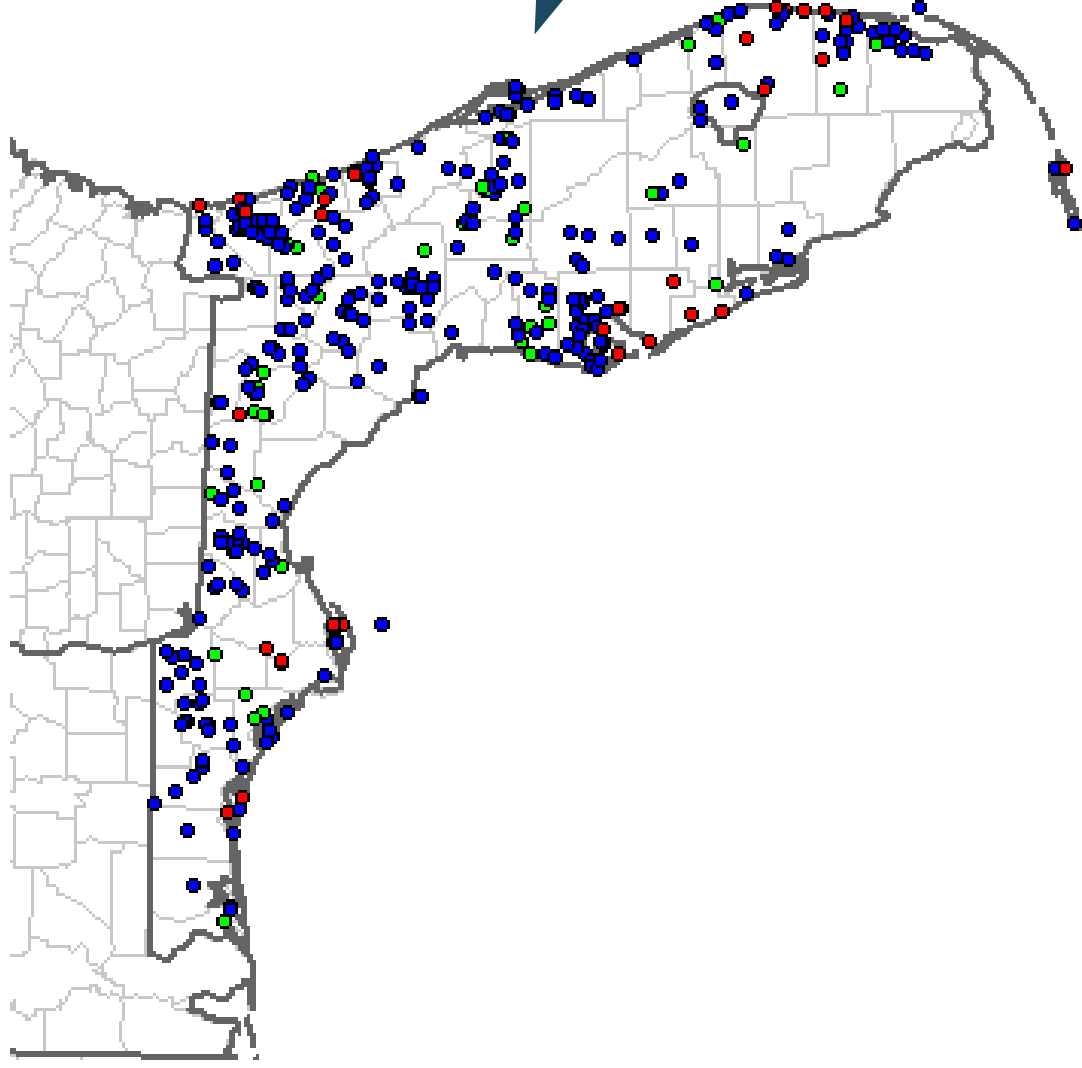
PRELIMINARY SEVERE WEATHER REPORT DATABASE (ROUGH LOG)

NOAA/Storm Prediction Center Norman, Oklahoma

Severe Weather Reports January 01, 2013 - December 31, 2013

Updated: Tuesday December 31, 2013 16:17 CT

# Severe Weather Reports in Florida: 2013



There were 400 severe weather reports in 2013

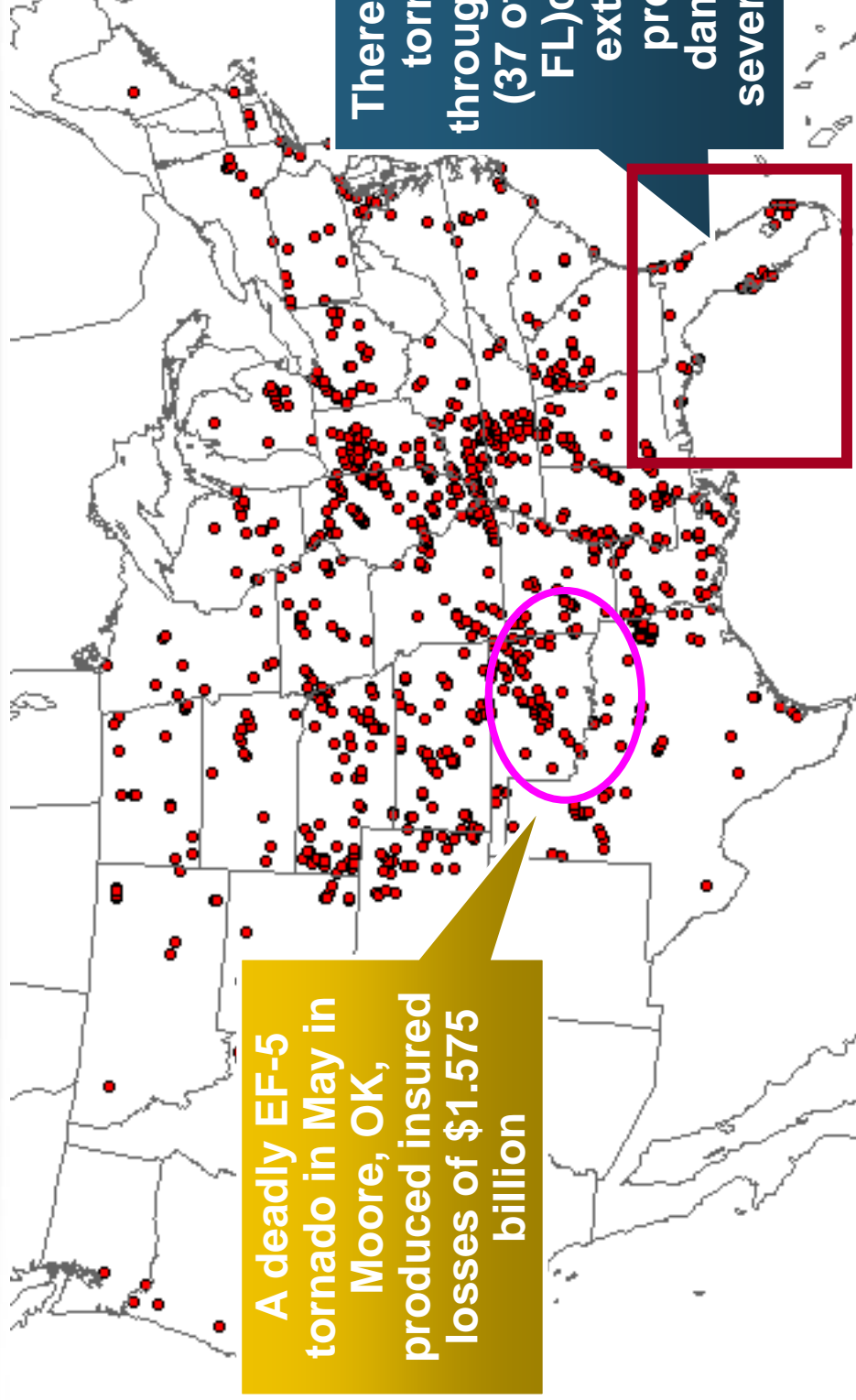
37 Tornadoes

47 Large Hail Reports

316 High Wind Events



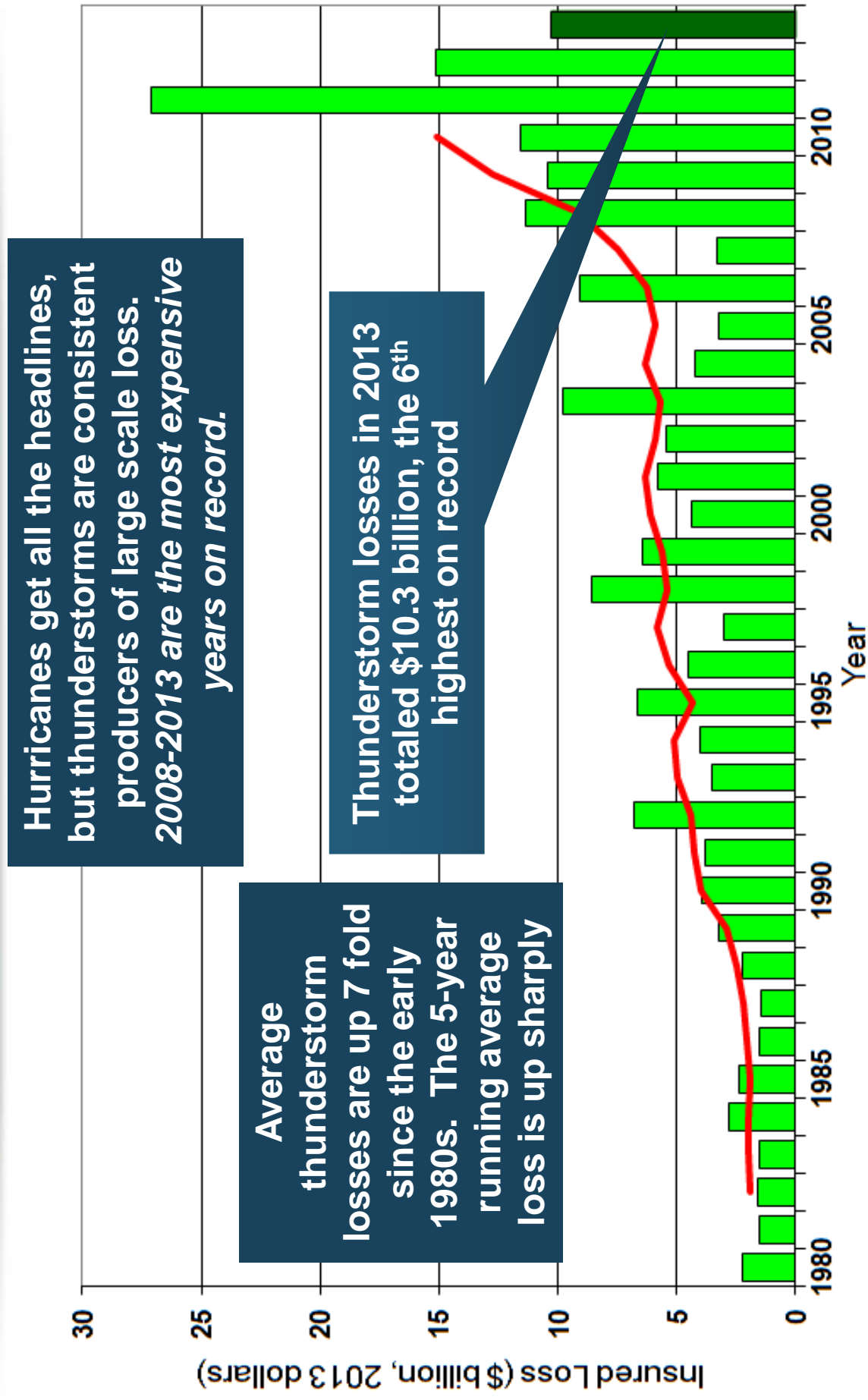
# Location of Tornado Reports in 2013



PRELIMINARY SEVERE WEATHER  
REPORT DATABASE (ROUGH LOG)  
NOAA/Storm Prediction Center Norman, Oklahoma

Tornado Reports  
January 01, 2013 - December 31, 2013  
Updated: Tuesday December 31, 2013 16:17 CT

# U.S. Thunderstorm Insured Loss Trends, 1980 – 2013

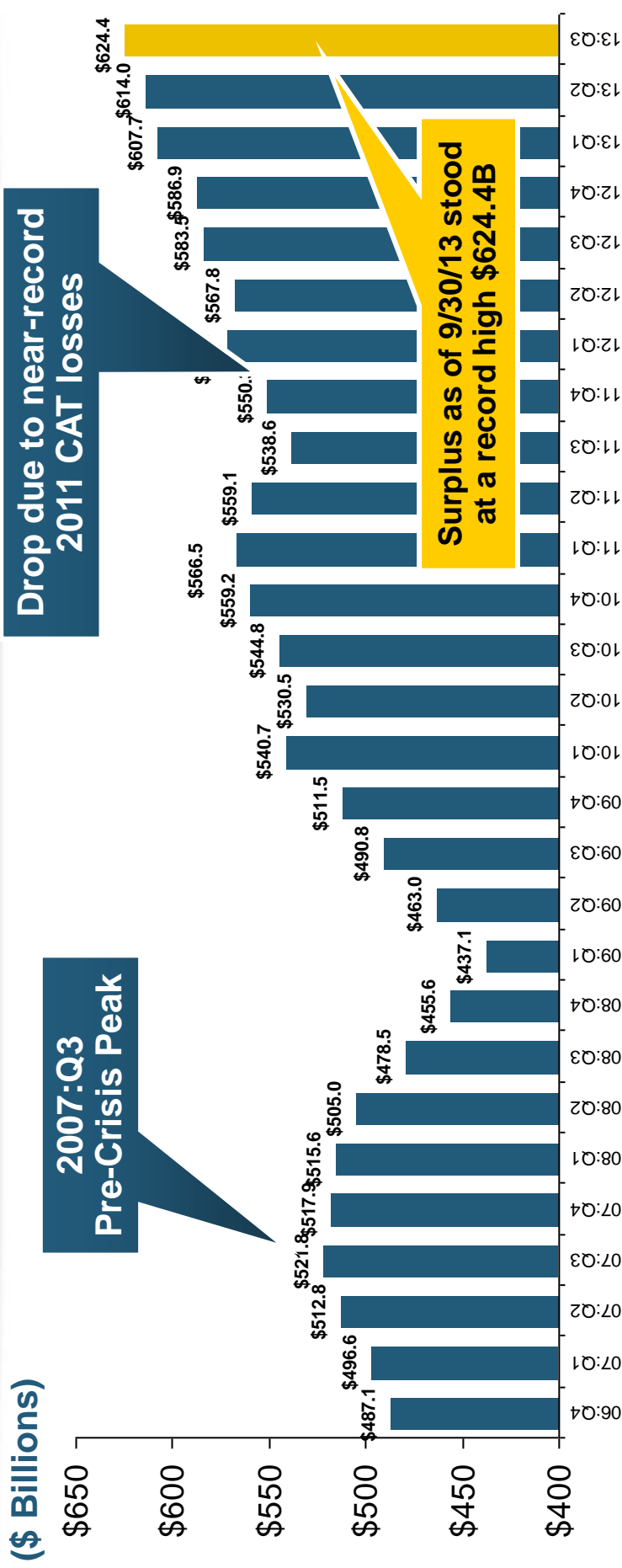




# SURPLUS/CAPITAL/CAPACITY

**2013 Recorded Yet Another  
Record High**

# Policyholder Surplus, 2006:Q4–2013:Q3



**The industry now has \$1 of surplus for every \$0.78 of NPW, close to the strongest claims-paying status in its history.**

2010:Q1 data includes \$22.5B of paid-in capital from a holding company parent for one insurer's investment in a non-insurance business.

**The P/C insurance industry entered 2014 in very strong financial condition.**

Sources: ISO, A.M. Best.

**Insurance Information Institute Online:**

**[www.iii.org](http://www.iii.org)**  
**[www.InsuringFlorida.org](http://www.InsuringFlorida.org)**

***Thank you for your time  
and your attention!***

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