

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 359 Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Lloyd	Cooper

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Motor Vehicle Salvage** – Electronic signatures on motor vehicle odometer disclosures must meet certain security requirements. Current Florida law exceeds the federal standard for these disclosures. The bill conforms the electronic signature security requirements to the federal requirements.
- **Civil Remedies Against Insurers** – Florida law requires a pre-suit notice 60 days prior to suing on a bad faith claim. The notice must go to both the Department of Financial Services (DFS) and the insurer, but no specific insurer address is specified. The bill establishes a specific insurer name and address for notice delivery and specifies that the 60 days starts from the day the insurer receives the notice. The bill also extends the statute of limitation to file a bad faith law suit for 60 days, if the property appraisal process is invoked in the claim.
- **Insurer Trade Secrets** – Insurer trade secrets filed with the Office of Insurance Regulation (OIR) are protected by law (but are not confidential and exempt public records). The bill prohibits DFS and OIR from publishing or disseminating aggregate information that contains protected trade secret information when the trade secret information can be extrapolated from the aggregate information.
- **Extension of Deadlines for Insurance Ratemaking and Form Filings** – Florida law provides certain requirements regarding OIR's review and approval of property and casualty insurance rate and form filings, but the law is presently silent on the applicable deadline should the closure of the review period fall on a weekend or a holiday. The bill extends the closure of OIR's review period for property and casualty rate and form filings to the close of the following business day if the deadline falls on a weekend or holiday.
- **Rate Disapprovals Based Upon Hurricane Modeling** – OIR may disapprove property and casualty insurance rate filings based on specified criteria. Current law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology (Commission) to consider and approve hurricane loss models and prescribes how approved models affect OIR's approval of rate filing. The bill establishes that OIR may not disapprove a homeowner's insurance rate filing solely because the rate filing uses an average of two or more hurricane models approved by the Commission.
- **Time for Filing Property Insurance Claims** – Generally, an insurer must receive a notice of a claim, supplemental claim, or reopened claim within five years of a loss (exceptions: windstorm/hurricane claims – three years; sinkhole loss claims – two years). The bill shortens the time to three years for all claims except sinkhole loss claims, which remains two years.
- **Property Insurance Mediation Notice Requirements** – Insurers are required to provide property insurance policyholders with notice of their right to participate in mediation administered by a DFS mediation program. The bill establishes that, in addition to existing timeframes for providing notice, property insurers have the option to provide a policyholder with notice of its right to mediate at the time the policyholder disputes a claim.
- **Residential Condominium Loss Assessments** – Property insurance policies held by condominium unit owners must include a minimum property losses assessment coverage. The bill clarifies that the amount of loss assessment coverage that can be assessed against a unit owner is based upon the coverage limit in effect one day before the date of the occurrence that resulted in a loss for which the unit owner is assessed.

The bill has no impact on state or local government revenues or expenditures. It has no known positive or negative economic impacts on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicles - Salvage Certificates of Title and Certificates of Destruction

The owner of a motor vehicle or mobile home that is considered to be salvage¹ is required to forward the title to the motor vehicle or mobile home to the Department of Highway Safety and Motor Vehicles (DHSMV) for processing within 72 hours after the motor vehicle or mobile home becomes salvage.² However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System,³ and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. The certificates of title may be forwarded to DHSMV via electronic means, the United States Postal Service, or other commercial delivery service (e.g., FedEx or UPS). The owner or insurance company may not dispose of a vehicle or mobile home that is a total loss before it obtains from DHSMV a salvage certificate of title or certificate of destruction.

To facilitate the issuance of salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured so that it may be surrendered to DHSMV, effective July 1, 2020:

- The insurer may receive a salvage certificate of title or certificate of destruction from DHSMV 30 days after paying the claim, if:
 - There is no electronic lien on the motor vehicle or mobile home; and
 - The insurer has:
 - Obtained a release of all liens;
 - Provided proof of payment of the total loss claim; and
 - Provided an affidavit⁴ on letterhead signed by the insurance company or its authorized agent stating the attempts⁵ that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.⁶

The “Electronic Signature Act of 1996”⁷ provides that unless otherwise provided by law, an electronic signature⁸ may be used to sign a writing and has the same force and effect as a written signature.

¹ “Salvage” is defined as a motor vehicle or mobile home that is a total loss. S. 319.30(1)(t), F.S. A motor vehicle is a “total loss:”

- When an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the owner upon the theft of the motor vehicle or mobile home; or
- When an uninsured motor vehicle or mobile home is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality.

S. 319.30(3)(a), F.S.

² S. 319.30(3)(b), F.S.

³ The National Motor Vehicle Title Information System (NMVTIS) is an electronic system that provides consumers with valuable information about a vehicle's condition and history. NMVTIS allows consumers to find information on a vehicle's title, most recent odometer reading, brand history, and, in some cases, historical theft data. https://www.vehiclehistory.gov/nmvtis_consumers.html (Last visited Dec. 18, 2019).

⁴ The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. S. 319.30(3)(b)1.c., F.S.

⁵ The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address. S. 319.30(3)(b)1.c., F.S. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title. S. 319.30(3)(b)1.c.2., F.S.

⁶ The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home. S. 319.30(3)(b)1.c.3., F.S.

⁷ Ch. 668, part I, F.S.

⁸ Section 668.003(4), F.S., defines “electronic signature” as any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

In 2019, the Legislature passed CS/CS/CS/HB 301, related to Insurance.⁹ Among other things, the bill addressed the use of electronic signatures for automotive title transactions. It authorized an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, to be used to satisfy any signature required related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective. However, it required an electronic signature on an odometer disclosure to meet specific security requirements.

For an odometer disclosure related to a certificate of destruction, the electronic signature must meet or exceed Level 2 requirements for Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017. For a salvage certificate of title, the electronic signature must meet or exceed Level 3 requirements of this standard. While there are several differences between Level 2 and Level 3 requirements that affect the relative security of the electronic signature, one difference limits the use of electronic signatures when executing electronic signatures for odometer disclosures related to salvage certificates of title. Level 3 requires in person identity proofing, while Level 2 allows remote or in person identity proofing.

The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however, the final federal regulation was published after the 2019 session with an unexpected change. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.¹⁰

Effect of the Bill

The bill allows electronic signatures on odometer disclosures related to salvage certificates of title to use Level 2 security requirements, consistent with the applicable federal standard. This applies the same security requirements to electronic signatures on odometer disclosures for both certificates of destruction and salvage certificates of title and allows certificate applicants to electronically sign odometer disclosures remotely in both instances, rather than remotely when applying for a certificate of destruction, but in person only for salvage certificates of title.

Civil Remedies against Insurers

Pre-Suit Notice and Tolling of the Statute of Limitation Following Issuance of Pre-Suit Notice

In 1982 the Legislature enacted s. 624.155, F.S., which provides that any person may bring a claim for "bad faith" against an insurer for "not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,"¹¹ the same as the common law standard.¹² Section 624.155, F.S., codifies third-party claims for "bad faith," but does not preempt the common law remedy.¹³

Additionally, s. 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party, but also for an insured seeking payment from his or her own insurance company. Although Florida courts recognized a bad faith cause of action in the context of liability policies at common law, they did not impose the same obligation in the context of first-party insurance contracts, when the injured party was also the insured under the insurance policy.¹⁴ At common law, first-party insurance policies were enforced solely through traditional contract remedies.¹⁵

⁹ Ch. 2019-108. Laws of Fla.

¹⁰ 84 Fed. Reg. 52664, at 52665 (Oct. 2, 2019).

¹¹ S. 624.155(1)(b), F.S.

¹² Fla. Standard Jury Instr. 404.4 (Civil).

¹³ S. 624.155(8), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

In a first-party action under s. 624.155, F.S., there is never a fiduciary relationship between the parties, but an arm's length contractual one based on the insurance contract. A first-party claim against the insurer does not accrue until the conclusion of the underlying litigation for contractual benefits or the insured prevails in the appraisal process and coverage is otherwise established by acceptance or court decision.¹⁶ The underlying action against the insurer must be resolved in favor of the insured, because the insured cannot allege bad faith if it is not shown that the insurer should have paid the claim.

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and the Department of Financial Services (DFS) 60 days' written notice of the alleged violation.¹⁷ The 60-day period begins on the date the notice is filed. While the notice is required to be provided to both DFS and the insurer,¹⁸ the statute is silent on what constitutes filing and whether the filing date is the date the notice is received by DFS or the date it was received by the insurer.¹⁹

The notice must include:

- The statutory provision which the insurer allegedly violated;
- The facts and circumstances giving rise to the violation;
- The name of any individual involved in the violation;
- Reference to specific policy language that is relevant to the violation, unless the person bringing the civil action is a third party claimant; and
- A statement that the notice is given to perfect the right to pursue a civil remedy.²⁰

The statute of limitation for the filing of a lawsuit under s. 624.155, F.S., is tolled for 65 days following the issuance of the notice described above. This extends the claimant's right to sue the insurer until after the conclusion of the 60-day period following the notice within which the insurer may respond to the notice by addressing the alleged violation.

In 2019, the Legislature revised s. 624.155, F.S., to prohibit the issuance of the notice when the insurer invokes the appraisal process. However, the appraisal process, which can be invoked for the first time following receipt of the pre-suit notice,²¹ is unlikely to be completed within the 60-day cure period or the 65-day tolling of the applicable statute of limitations. If the appraisal process extends beyond the date the statute of limitation expires following the current tolling period, then the right to sue the insurer in civil court is lost.

Property Appraisal Process

Insurance companies often include an appraisal clause in property insurance policies.²² The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

¹⁶ *Cammarata v. State Farm Florida Ins. Co.*, 152 So. 3d 606 (Fla. 4th DCA 2014).

¹⁷ S. 624.155(3)(a), F.S.

¹⁸ Filing of the notice with the correct insurer has been held to be a condition precedent to maintaining a bad faith suit against the insurer. *Lopez v. GEICO Casualty Co.*, 968 F.Supp. 2d 1202, at 1209 (S.D. Fla. 2013). In *Lopez*, the plaintiff filed the notice with Government Employees Insurance Company, a similarly named sister company instead of the actual insurer, GEICO Casualty Company. Because the statute of limitation had run out following the flawed delivery of the notice, the *Lopez* case was dismissed with prejudice. However, the Second District Court of Appeal

¹⁹ Filing of the notice with DFS has been held to establish the date that starts the 60-day cure period. *Harper v. GEICO Gen. Ins. Co.*, 272 So. 3d 448 (Fla. 2nd DCA 2019). In *Harper*, the plaintiff filed the notice with DFS electronically on Dec. 19, 2013, and mailed the notice to GEICO with it being received by GEICO on Dec. 26, 2013. When GEICO later paid the claim on Feb. 21, 2014, the payment was 65 days from the date DFS received the notice, but 57 days from the date GEICO received the notice. The trial court held that GEICO paid the claim within the 60-day cure period. On appeal, the Second DCA held that the 60-day cure period ran from the date DFS received the notice. The result allowed the plaintiff to pursue a bad faith claim against GEICO for untimely payment of the claim.

²⁰ S. 624.155(3)(b), F.S.

²¹ Invoking the appraisal process along with timely payment, if required, can be used by the insurer to cure its claims handling violations and prevent a bad faith claim. See *Effect of the Bill*, p. 5.

²² *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So. 3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So. 2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.²³

Effect of the Bill

The bill adds an additional tolling period to s. 624.155, F.S. It tolls the statute of limitation for 60 days following the date appraisal is invoked in a residential property insurance claim. In combination with the current 65-day tolling period resulting from the filing of the notice, the statute of limitation could be tolled for up to 125 days to allow the insurer the 60-day cure period and also allow the parties to pursue the appraisal process prior to expiration of the statute of limitation.

The bill also provides that the required pre-suit notice must be sent to the insurer at the insurer's name and address designated by the insurer pursuant to statute for the purposes of receiving legal process service via DFS. Additionally, the bill clarifies that the 60-day cure period runs from the date the insurer receives the notice at the designated name and address, rather than following "filing," which is not defined.

Insurer Trade Secrets

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.²⁴ The general law must state with specificity the public necessity justifying the exemption²⁵ and must be no more broad than necessary to accomplish its purpose.²⁶

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act²⁷ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:²⁸

²³ See s. 627.70151, F.S.

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ This portion of a public record exemption is commonly referred to as a "public necessity statement."

²⁶ FLA. CONST. art. I, s. 24(c).

²⁷ S. 119.15, F.S.

²⁸ S. 119.15(6)(b), F.S.

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.²⁹ Specified questions must be considered by the Legislature during the review process.³⁰

Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt³¹ from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets. Generally, trade secret³² information received by the Office of Insurance Regulation (OIR) or DFS is not protected as confidential and exempt public record information,³³ but the insurer is given the opportunity to receive notice of a public records request and a period of time to respond so that the insurer can move to protect the trade secret through an action in circuit court, if they so desire.³⁴ When an insurer submits trade secret information under the Florida Insurance Code³⁵ or OIR rules, the insurer may file a Notice of Trade Secret and mark and segregate the trade secret information provided to OIR.³⁶ This protection relates to public records requests from the public that would result in the publication of materials covered under a Notice of Trade Secret. It does not expressly extend to publication of aggregate information such as OIR's Annual Report or other OIR or DFS publications or reports that are not done in response to a public records request.

Effect of the Bill

The bill limits the release of aggregate information by OIR and DFS if protected trade secret information can be extrapolated from the aggregate information that OIR or DFS would otherwise release. This could occur where aggregate information is reported on a line of insurance in which a small number of companies participate such that one or more of the participating companies could back-out their own data from the reported aggregate information and discern the trade secret information of their competitor. The bill does not create a new public records exception, rather, it limits what OIR and DFS may do with public record information that is protected as a trade secret, but is not confidential and exempt public record information.

²⁹ S. 119.15(3), F.S.

³⁰ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

³² "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S. 626.002(4), F.S.

³³ Trade secret information contained in an insurance administrator's records that is obtained by OIR is confidential and exempt. S. 626.884(2), F.S.,

³⁴ S. 624.4213(2), F.S.

³⁵ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

³⁶ S. 624.4213(1), F.S.

Extension of Deadlines in Insurance Rate and Form Filings

Florida law provides certain requirements regarding OIR's review and approval of property and casualty insurance rate and form filings, including timeframes within which OIR must review these filings.³⁷ However, the law is presently silent on the applicable deadline should the closure of the review period fall on a weekend or a holiday.

Effect of the Bill

The bill establishes that if the last day of the timeframe for OIR to review and approve or disapprove a rate filing for property, casualty, or surety insurance, including motor vehicle insurance, or to review an insurer's form filing, falls on a weekend or holiday recognized by Florida governmental agencies or branches, then the closure of OIR's review period shall be extended until the conclusion of the next business day.

Rate Disapprovals Based Upon Hurricane Modeling

The law governing OIR's review and approval of residential property insurance rate filings requires that a rate filing account for mitigation measures that policyholders undertake to reduce hurricane losses.³⁸ It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that are determined to be excessive, inadequate, or unfairly discriminatory.³⁹ Florida law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology's (Commission) consideration and approval of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.⁴⁰

Effect of the Bill

The bill provides parameters for OIR's approval or disapproval of rate filings by establishing that OIR may not disapprove a homeowner's insurance rate filing solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models currently found to be accurate or reliable by the Commission.

Time for Filing Property Insurance Claims

Since an insurance policy is a contract and no limitations on insurance claims existed in the Florida Insurance Code, the five-year statute of limitation for a contract dispute was applied to insurance disputes.⁴¹ However, in 2011 two types of claims were given a shorter statute of limitation. A notice of any claim, supplemental claim, or reopened claim resulting from windstorm or a hurricane must be provided to the policyholder's insurance company within three years after the windstorm caused the covered damage or the hurricane first made landfall otherwise the claim is barred.⁴² Additionally, those claims related to a sinkhole loss are barred unless the notice of claim, including initial, supplemental, and reopened claims, is properly filed within two years after the policyholder knew or should have known about the sinkhole loss.⁴³

³⁷ S. 627.062, F.S. (which controls rating requirements for property and casualty insurance in general), s. 627.0651, F.S. (which controls rating requirements for motor vehicle insurance), and s. 627.410 (which controls form filings in general). While the statutes differentiate between issuance of a notice of intent to approve or disapprove a property and casualty rate filing, other than a motor vehicle rate filing, and simply approving or disapproving a motor vehicle rate filing following review, the practical effect of the review process is the same.

³⁸ S. 627.062(2)(j), F.S.

³⁹ S. 627.062, F.S.

⁴⁰ Ss. 627.0628–627.06281, F.S.

⁴¹ S. 95.11, F.S.

⁴² Ch. 2011-39, Laws of Fla. Current law also specifies that the three-year notice requirement does not affect any applicable limitations on civil actions provided for claims, supplemental claims, or reopened claims timely filed. S. 627.70132, F.S. For example, policyholders still have five year after breach of an insurance contract by an insurer, which may include claim denial, to file suit for the breach.

⁴³ S. 627.706(5), F.S.

Effect of the Bill

The bill modifies the property insurance claim notice requirements to make them applicable to all property insurance claims with the exception of sinkhole loss as defined in s. 627.706(2), F.S. Upon passage of the bill, notice of all property insurance claims, supplemental claims, or reopened claims must be provided to an insurer within three years after the date of loss or such claims will be barred.

Property Insurance Mediation Notice Requirements

DFS administers alternative dispute resolution programs for various types of insurance, including a mediation program for property insurance claims.⁴⁴ For property insurance claims involving personal lines and commercial residential claims, the policyholder, as a first-party claimant, a third-party, as an assignee, or the insurer may request mediation under the DFS program; however, the insurer is not required to participate in mediation requested by a third-party assignee.⁴⁵ Florida law requires that, at either issuance or renewal of a property insurance policy, or at the time a first-party property insurance claim is made, an insurer must provide a policyholder with notice of its right to participate in mediation.⁴⁶

Effect of the Bill

The bill establishes that, in addition to having the option to provide a policyholder with notice of its right to participate in mediation at policy issuance or renewal or at the filing of a first-party claim, an insurer also has the option to provide a policyholder with such notice at the time that the policyholder disputes a claim.

Residential Condominium Loss Assessments

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for: deductibles owed when a claim is made under a condominium association's property insurance policy; damage that occurs to the condominium building or the common areas of a condominium property; or injuries that occur in the common areas of a condominium property.⁴⁷ Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2000 for all assessments made as a result of the same direct loss to the condominium property.⁴⁸ The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.⁴⁹

Effect of the Bill

The bill clarifies that the amount of loss assessment coverage that can be assessed against a unit owner is based upon the coverage limit for loss assessment that was in effect in the unit owner's policy one day before the date of an occurrence that resulted in a loss for which the unit owner is being assessed. Further, the bill establishes that the coverage in place at that time applies regardless of the date on which the condominium association assesses the unit owner.

B. SECTION DIRECTORY:

⁴⁴ S. 627.7015, F.S.

⁴⁵ S. 627.7015(1), F.S.

⁴⁶ S. 627.7015(2), F.S.

⁴⁷ The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 8, 2020).

⁴⁸ S. 627.714(1), F.S.

⁴⁹ S. 627.714(2), F.S.

Section 1: Amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

Section 2: Amends s. 624.155, F.S., relating to civil remedy.

Section 3: Creating s. 624.307, F.S., relating to general powers; duties.

Section 4: Amends s. 624.315, F.S., relating to department; annual report.

Section 5: Amends s. 627.062, F.S., relating to rate standards.

Section 6: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 7: Amends s. 627.410, F.S., relating to filing, approval of forms.

Section 8: Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

Section 9: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 10: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 11: Provides an effective date of upon becoming law.

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:

None known.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES