

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-04 Insurer Accountability

SPONSOR(S): Commerce Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes various changes designed to increase insurer accountability in the following ways:

- **Agent Licensing:** allows the Department of Financial Services (DFS) to deny licensure to an applicant who violated of the Florida Insurance Code (Insurance Code).
- **Examination of Insurers:** requires a risk-based assessment for scheduling Office of Insurance Regulation (OIR) financial examinations and of market conduct examinations of insurers following a hurricane.
- **Insurance Policy/Claims Handling:** identifies two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent; prohibits Citizens Property Insurance Corporation from declaring a property ineligible if the property has unrepaired damage that is the subject of a claim being serviced by the Florida Insurance Guaranty Association; clarifies that if a roof deductible is applied to a loss under a residential property insurance policy, no other deductible may be applied; provides a tolling of time applicable to a servicemember who is deployed to a combat zone or combat support posting; clarifies that nothing in the Bill SB 2A (2022A) impairs insurance contract rights in existence when the bill became law.
- **Fines:** increases the maximum fines for failure to timely respond to consumer complaints; increases the maximum fines that OIR may assess if an insurer violates the Insurance Code; creates fines for insurer violations of the Insurance Code related to a declared state of emergency; increases the maximum fines that may be assessed for unfair methods of competition or unfair or deceptive acts or practices by any individual or company engaged in the transaction of insurance.
- **Reporting:** requires OIR to create annual and quarterly reports of its actions to enforce insurer compliance with the Insurance Code; requires DFS Division of Investigative and Forensic Services to create an annual report regarding investigations and prosecutions of insurance fraud.
- **Rates/Premiums:** requires residential property insurers to post hurricane mitigation discount information on their websites; requires OIR to reevaluate fixtures or construction techniques demonstrated to reduce windstorm losses, and associated insurance premium discounts every five years.
- **Agency Staffing:** appropriates positions to DFS and OIR to implement the bill.

The bill has no impact on local government revenues and expenditures. It may have a positive impact on state revenues and a negative impact on state expenditures. It has an indeterminate negative direct economic impact on the private sector.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Agent Licensing

Background

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.¹ DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Division of Consumer Services (Consumer Services). The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,² administration of workers' compensation health care delivery system,³ data collection,⁴ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.⁵ DFS also administers the rehabilitation and liquidation of insolvent insurers.

Effect of the Bill – Licensure

The bill provides that DFS may deny licensure to an applicant who, within seven years of application, has been found guilty of, or pleaded guilty or nolo contendere to a misdemeanor that is also a violation of the Florida Insurance Code (Insurance Code).

Examination of Insurers

Background

The Office of Insurance Regulation (OIR) provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.⁶ The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.

As part of their regulatory oversight, OIR may suspend or revoke an insurer's certificate of authority under certain conditions.⁷ OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.⁸ As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.⁹ OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.¹⁰

¹ See, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, <https://oppaga.fl.gov/> (last visited Apr. 2, 2023).

² S. 440.107(3), F.S.

³ S. 440.13, F.S.

⁴ Ss. 440.185 and 440.593, F.S.

⁵ S. 440.191, F.S.

⁶ S. 20.121(3)(a), F.S.

⁷ S. 624.418, F.S.

⁸ S. 624.316(1)(a), F.S.

⁹ S. 624.318(2), F.S.

¹⁰ S. 624.3161, F.S.

Financial Examinations

OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms. The law requires OIR to conduct financial examinations of insurers. The scope of the financial examination includes a review of the affairs, records, transactions, accounting procedures and financial condition of an insurer.¹¹ OIR is charged with conducting an exam once every five years, with the exception of domestic insurers that have held a certificate of authority for less than three years, which are required to be examined on an annual basis.¹² OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.¹³

Effect of the Bill – Financial Examinations

The bill changes OIR's mandatory financial examination schedule to the following risk-based schedule:

- High-risk insurers must be examined at least once every three years.
- Average-risk insurers must be examined at least once every five years.
- Low-risk insurers must be examined at least once every seven years.

Financial examinations must cover the preceding fiscal years since the last examination, except for examinations of low-risk insurers, in which case the examination must cover the preceding five fiscal years. The bill requires that OIR create, and that FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting financial exams, which must include:

- Use of required risk-based capital reports to prioritize financial examinations.¹⁴
- Consideration of financial strength ratings, downgrades, or threatened downgrades.
- Prioritization of property insurers for which OIR identifies significant solvency concerns.
- Any other conditions OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must include a plan to implement the risk-based examination schedule. OIR must present the proposed rule to the FSC no later than October 1, 2023.

Market Conduct Exams

OIR is authorized to perform a market conduct examination of insurers and other related entities.¹⁵ The purpose of the examination is to determine the entity's compliance with Florida law.¹⁶ The costs of the examination are paid by the subject entity.¹⁷ OIR may conduct a market conduct of any authorized insurer after a hurricane, if the insurer:

- Is among the top 20 percent of insurers based upon the ratio of hurricane-related claims to the property insurance policies in force;
- Is among the top 20 percent of insurers based upon the ratio of consumer complaints to hurricane-related claims;
- Has made significant payments to its managing general agent since the hurricane; or
- As determined by OIR for any other reason.

During a market conduct examination, OIR may examine the affairs, records, transactions, accounting procedures and financial condition of an insurer as relevant to the actions that gave rise to the examination.¹⁸ The market conduct examination, when conducted post hurricane, must be started

¹¹ S. 624.316, F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Risk-based capital is a statutory minimum level of capital that is based on an insurance company's size and the inherent riskiness of its financial assets and operations. NAIC, *Risk-based Capital*, <https://content.naic.org/cipr-topics/risk-based-capital> (last visited Apr. 7, 2023).

¹⁵ S. 624.3161(1), F.S.

¹⁶ *Id.*

¹⁷ S. 624.3161(4), F.S.

¹⁸ See ss. 624.316 and 624.3161, F.S.

within 18 months after the storm's landfall. The insurer's managing general agent must be included in the market conduct examination, as if it were the insurer.

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," OIR may order the insurer to file its claims-handling practices and procedures with OIR for review and inspection.¹⁹ The practices and procedures are to be held by OIR for 36 months and are considered public records, not trade secrets, during such period.²⁰ The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."²¹

Effect of the Bill – Market Conduct Examinations

The bill removes OIR's discretion to conduct post-hurricane market conduct examinations that was established in SB 2A (2022A). Instead, OIR must conduct post-hurricane market conduct examinations if, at any time more than 90 days after the end of a hurricane, an insurer meets the post-hurricane examination criteria.

The office must create, and the FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting market conduct examinations. Under this methodology, OIR must initiate a market conduct examination against an insurer if the following conditions exist:

- An insurance regulator in another state has initiated or taken regulatory action against the insurer or entity.
- DFS and OIR have received a disproportionate number of certain claims-handling complaints against the insurer based on its market share.
- The results of a National Association of Insurance Commissioners (NAIC) Market Conduct Annual Statement indicate the insurer is a negative outlier with regard to particular metrics.²²
- There is evidence the insurer is engaged in a pattern or practice of violations of the Unfair Insurance Trade Practices Act.
- Any other conditions that OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must provide criteria for how OIR will determine that it has received a disproportionate number of claims-handling complaints. OIR must present the proposed rules to the FSC no later than October 1, 2023.

Insurance Policy/Claims Handling

Background

Florida law prohibits a person from engaging in an unfair or deceptive act or practice involving the business of insurance.²³ The definition of unfair or deceptive acts or practices includes, in part, the following unfair claim settlement practices:

- Attempting to settle claims on the basis of a document that was altered without knowledge or consent of the insured;
- A material misrepresentation made to an insured for the purpose and with the intent of effecting settlement on less favorable terms than provided under the contract or policy;
- Committing or performing with such frequency as to indicate a general business practice certain acts, such as failing to adopt and implement standards for the proper investigation of claims;
- Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer received notice of a residential property

¹⁹ S. 624.3161(6), F.S.

²⁰ *Id.*

²¹ *Id.*

²² See drafting comment.

²³ S. 626.9521(1), F.S.

insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by “an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed.”²⁴

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.²⁵ Citizens is not a private insurance company.²⁶ It was statutorily created in 2002 when the Florida Legislature combined the state’s two property insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).²⁷ Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine-member Board of Governors (Board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.²⁸ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the Board.²⁹ Citizens is subject to regulation by OIR in the same fashion as other insurers.

Under federal law, insurance companies cannot file for bankruptcy.³⁰ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers³¹ in Florida and sets up guaranty payments where necessary.³² Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.³³

A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.³⁴ Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)³⁵ and the Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA).³⁶

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.³⁷ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.³⁸ When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left

²⁴ S. 626.9541(1)(i), F.S.

²⁵ The term “admitted market” means insurance companies licensed to transact insurance in Florida.

²⁶ S. 627.351(6)(a)1., F.S.

²⁷ S. 2, ch. 2002-240, Laws of Fla.

²⁸ S. 627.351(6)(a)2., F.S.

²⁹ S. 627.351(6)(c)4.a., F.S.

³⁰ 11 U.S.C. § 109(b)(2).

³¹ An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.

³² Ch. 631, F.S.

³³ *Id.*

³⁴ See e.g., ss. 631.51 and 631.902, F.S.

³⁵ Ch. 631, part II, F.S.

³⁶ Ch. 631, part V, F.S.

³⁷ S. 631.51, F.S.

³⁸ S. 631.52, F.S.

with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation within DFS and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.³⁹ If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.⁴⁰

An insurer issuing a personal lines residential property insurance policy may include in such policy a separate roof deductible that meets all of the following requirements:⁴¹

- Allows property insurers to include in the policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by the OIR. If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.
- Requires that policyholders that select a roof deductible must receive an actuarially sound premium credit or discount.
- Provides that the roof deductible does not apply to:
 - A total loss to the primary structure in accordance with the valued policy law,⁴² which is caused by a covered peril.
 - A loss caused by a hurricane.
 - A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
 - A roof loss requiring the repair of less than 50 percent of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- Specifies that a roof deductible only applies to a claim adjusted on a replacement cost basis.
- Authorizes an insurer to limit the claim payment for a roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.
- Requires a roof deductible provision to be clear and unambiguous.
- Requires the inclusion of the following disclosures:
 - On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
 - On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal.
- Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

Law requires insureds to notify an insurer of a claim or reopened claim,⁴³ within 1 year after the date of loss.⁴⁴ Notice of a supplemental claim⁴⁵ must be given to the insurer within 18 months of the date of loss or such claim is barred. Insureds are also required to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have

³⁹ See s. 631.061, F.S. for grounds for liquidation. See s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

⁴⁰ S. 631.57, F.S.

⁴¹ S. 672.701(10), F.S.

⁴² S. 627.702, F.S.

⁴³ S. 627.70132(1)(a), F.S., defines "reopened claim" as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

⁴⁴ S. 627.702(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

⁴⁵ S. 627.70132(1)(b), F.S., defines "supplemental claim" as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

known about the loss.⁴⁶ The law does not currently contain any tolling of these time limits for military service members.

Effect of the Bill – Insurance Policy/Claims Handling

The bill adds two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent. They are:

- Altering or amending an insurance adjuster’s report without including:
 - A detailed lists of all changes made to the report.
 - The identity of the person who ordered each change.
 - A detailed explanation of why a change was made if the change reduces an estimate of a loss.
- Authorizing or permitting an insurer to pay a bonus to an officer or director of an insurer while the insurer is impaired or insolvent, regardless of whether delinquency proceedings have been, or will be, initiated.

The bill prohibits Citizens from determining that a property risk is ineligible for coverage solely because the property risk has unrepaired damage that is the subject of a claim being serviced by the Florida Insurance Guaranty Association (FIGA). This prohibition applies to a property until the earlier of 36 months from the date FIGA starting servicing the claim or the date that FIGA closes the claim.

The bill clarifies that if a roof deductible is applied to a loss that is the subject of a claim under a residential property insurance policy, no other deductible may be applied to any other loss to the property caused by the same covered peril.

The bill provides tolling of the time limitations for providing notice of a property insurance claim to an insurer during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember⁴⁷ to file a claim.

The bill clarifies that nothing in SB 2A (2022A) shall be construed to impair any right under any insurance contract in effect on or before that bill became law.⁴⁸

Fines Against Insurers, Agencies, and Agents

Background

DFS provides education, information, and assistance to consumers for all products or services regulated by DFS or FSC.⁴⁹ DFS’ duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation of consumer and insurance company disputes; and
- Serving as a conduit for referrals for further legal action by DFS.⁵⁰

DFS may impose an administrative penalty on a person who holds a license or certificate of authority from DFS if that person fails to respond to DFS’ request for information within 20 days.⁵¹ A licensed

⁴⁶ S. 627.706(5), F.S.

⁴⁷ A servicemember is defined in s. 250.01(19), F.S., as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

⁴⁸ SB 2A was the property insurance bill that was passed during the 2022A Special Session. It became ch. 2022-271, Laws of Fla. This provision applies to SB 2A from the date it became law. See drafting comments.

⁴⁹ Florida Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2023-24 through 2027-28*, 15 (Oct. 17, 2022), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24407&DocType=PDF> (last visited Apr. 2, 2023). See also, Florida Department of Financial Services, Consumer Guides, <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm> (last visited Apr. 2, 2023).

⁵⁰ S. 624.307(10)(a), F.S.

⁵¹ S. 624.307(10)(b), F.S.

individual must produce any requested documents not subject to attorney-client or work product privilege.

OIR, through its ongoing oversight and examination process, determines whether insurance companies are operating in compliance with the Insurance Code. OIR is authorized to impose administrative fines in lieu of suspension or revocation if it finds that one or more grounds exist for the discretionary revocation or suspension of the certificate of authority.⁵² OIR may impose an administrative fine as follows:

- A maximum of \$5,000, per non-willful violation, with an aggregate limit of \$20,000 for all non-willful violations arising out of the same action.
- A maximum of \$40,000 per violation, with a \$200,000 aggregate limit for all willful violations arising out of the same action.
- If an insurer owes restitution due to a violation, the insurer must provide the restitution and include 12 percent interest from the date of the violation or the inception of the insured's policy.

The Insurance Code also authorizes fines for engaging in an unfair or deceptive act or practice involving the business of insurance.⁵³ An insurer that commits such violations is subject to a fine of:

- A maximum of \$5,000 for each non-willful violation, not to exceed an aggregate amount of \$20,000.
- A maximum of \$40,000 for each willful violation arising from the same action, not to exceed an aggregate amount of \$200,000.⁵⁴

Effect of the Bill – Fines

Consumer Services – Fines

The bill reduces the time that insurers and agents have to respond to Consumer Services regarding consumer complaints from 20 days to 14 days, but allows them to respond electronically instead of solely in writing. It also increases the fines for an insurer's failure to respond to such complaints from \$2,500 per violation to \$5,000 per violation.

OIR – Fines

The bill creates the following fines for violations of the Insurance Code by an insurer related to a covered loss or claim related to a declared a state of emergency:

- \$25,000 per violation, up to an aggregate amount of \$100,000 for all nonwillful violations arising out of the same action.
- \$200,000 per violation, up to an aggregate amount of \$1,000,000 for all willful violations arising out of the same action.

The bill increases the current maximum fines for all other violations of the Insurance Code by an insurer, as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations	Increased Fine Aggregate Violations
Non-willful	\$5,000	\$12,500	\$20,000	\$50,000
Willful	\$40,000	\$100,000	\$200,000	\$500,000

Unfair Methods of Competition or Unfair or Deceptive Acts or Practices – Fines

⁵² S. 624.4211, F.S.

⁵³ S. 626.9521, F.S.

⁵⁴ S. 626.9521(2), F.S.

The bill establishes that anyone who engages in an unfair method of competition or unfair or deceptive act or practice related to a covered loss or claim caused by a declared state of emergency is subject to the following fines:

- For any person,⁵⁵ up to \$25,000 for each nonwillful violation and \$200,000 for each willful violation.
- For an insurer, an aggregate maximum of \$100,000 for all nonwillful violations and \$1,000,000 for all willful violations arising out of the same action.

The maximum fine for engaging in twisting,⁵⁶ churning,⁵⁷ or willfully submitting fraudulent signatures on an application or policy-related document are increased from \$5,000 to \$12,500 for each nonwillful violation and from \$75,000 to \$187,500 for each willful violation. The aggregate maximum fines for this conduct are increased from \$50,000 to \$125,000 for all nonwillful violations and from \$250,000 to \$625,000 for all willful violations arising out of the same actions.

The bill increases the maximum fines for all other instances of unfair methods of competition or unfair or deceptive acts or practices by a person as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations by an Insurer	Increased Fine Aggregate Violations by an Insurer
Non-willful	\$5,000	\$12,500	\$20,000	\$50,000
Willful	\$40,000	\$100,000	\$200,000	\$500,000

Reporting Requirements

Background

OIR is required to submit an annual report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chairs of the legislative committees with jurisdiction over matters of insurance, and the Governor.⁵⁸ The report is to cover the following information from the preceding calendar year:

- Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including assets, liabilities, and net worth.
- Names of insurers whose business was closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable.
- Names of insurers against which delinquency or similar proceedings were instituted and related information.
- The receipts and estimated expenses of OIR.
- Other pertinent information as OIR deems to be in the public interest.
- A compilation of the laws passed by the Legislature relating to insurance.
- An analysis and summary report of the state of the insurance industry in Florida.

⁵⁵ Person in connection with unfair methods of competition and unfair or deceptive acts or practices means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or business trust or any entity involved in the business of insurance. S. 626.9511(1), F.S.

⁵⁶ Twisting is defined as knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer. S. 626.9541(1)(l), F.S.

⁵⁷ Churning is a practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation. S. 626.9541(1)(aa).

⁵⁸ S. 624.315, F.S. As of the date of this analysis, OIR has not provided its annual report to the Legislature since its 2021 Annual Report, which contained data from calendar year 2020.

The Division of Investigative and Forensic Services (DIFS) investigates various types of insurance fraud including Personal Injury Protection fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.⁵⁹ DIFS is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,⁶⁰ false and fraudulent insurance claims,⁶¹ and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.⁶² DIFS includes a Bureau of Insurance Fraud (Bureau) and employs sworn law enforcement officers to investigate insurance fraud.

Effect of the Bill – Reporting

The bill requires OIR to provide an annual report by February 15 each year to the Governor, President of the Senate, and Speaker of the House on its actions to enforce insurer compliance with the Insurance Code during the previous year (annual compliance report). OIR must also publish the annual compliance report on its website. The annual compliance report must contain information regarding:

- Revocation, denial, or suspension of any license or registration issued by OIR.
- Fines imposed by OIR for violations of the Insurance Code.
- Consent orders entered into by OIR.
- Examinations and investigations conducted and completed for which OIR found violations of law or rule, but did not take enforcement action.

OIR must also create quarterly reports detailing all actions to enforce insurer compliance with the Insurance Code during the previous quarter. The quarterly reports must be submitted to the FSC, President of the Senate, Speaker of the House, and legislative committees with jurisdiction over insurance matters. They must contain the same information as the annual compliance report.

The bill requires that the Bureau submit a performance report to the President of the Senate and Speaker of the House by January 1 each year, which includes at least the following information:

- Total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau.
- Number of referrals received from insurers, OIR, and Consumer Services, and the outcome of those referrals.
- Number of investigations undertaken by the Bureau which were not the result of a referral from an insurer and the outcome of those investigations.
- Number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.
- Number of cases presented by the Bureau which local or statewide prosecutors declined to prosecute with the reasons why they declined.
- A summary of the annual report containing the data collected from fraud prosecutors.⁶³
- The total number of employees assigned to the Bureau, broken down by location.
- Average caseload and turnaround time for each investigator.

The bill clarifies that, in addition to reporting to other agencies, DIFS may report alleged insurance-related crimes that impact two or more Florida judicial circuits to the statewide prosecutor.

Rates/Premiums

Background

⁵⁹ See <https://myfloridacfo.com/Division/DIFS/> (last visited Apr. 2, 2023).

⁶⁰ S. 626.9541, F.S.

⁶¹ S. 817.234, F.S.

⁶² S. 624.15, F.S.

⁶³ S. 626.9896, F.S. requires such a report be prepared annually by the Bureau and presented to the Governor, President of the Senate, and Speaker of the House of Representatives.

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.⁶⁴ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.⁶⁵ Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,⁶⁶ which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.⁶⁷

Effect of the Bill – Rates/Premiums

The bill requires all residential property insurers to provide information on their websites describing hurricane mitigation premium discounts available to policyholders. Additionally, beginning on January 1, 2025, and every five years thereafter, OIR must reevaluate the fixtures or construction techniques demonstrated to reduce windstorm losses, and the discounts, credits, other rate differentials, and reductions in deductibles that correspond to these fixtures and techniques.

Agency Staffing

Background

DFS and OIR have both expressed to the Legislature that they have difficulty recruiting and retaining qualified staff due to their inability to compete with the salaries paid by the private sector for similar work. During a presentation to the Senate Banking and Insurance Committee on March 29, 2023, the Director of DFS Consumer Services explained that there is currently a 55 percent vacancy rate in the positions for the telephone helpline.⁶⁸

Effect of the Bill – Agency Staffing

The bill appropriates recurring and nonrecurring funds from the Insurance Regulatory Trust Fund to create the following full-time positions to implement this bill:

- Five positions within DFS.
- Fourteen positions within OIR.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.307, F.S., relating to general powers; duties.

Section 2. Amends s. 624.3152, F.S., relating to annual report.

Section 3. Creates s. 624.3152, F.S., relating to quarterly report of enforcement activity.

Section 4. Amends s. 624.316, F.S., relating to examination of insurers.

Section 5. Amends s. 624.3161, F.S., relating to market conduct examinations.

Section 6. Amends s. 624.4211, F.S., relating to administrative fine in lieu of suspension or revocation.

⁶⁴ S. 627.062(2)(j), F.S.

⁶⁵ S. 627.0629(1), F.S.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Senate Committee on Banking and Insurance, *Presentation by Greg Thomas from DFS*, https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202303290830&Redirect=true (last visited Apr. 8, 2023).

- Section 7.** Amends s. 626.207, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking authority.
- Section 8.** Amends s. 626.9521, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties.
- Section 9.** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.
- Section 10.** Amends s. 626.989, F.S., relating to investigation by department of Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.
- Section 11.** Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.
- Section 12.** Amends s. 627.31, F.S., relating to insurance risk apportionment plans.
- Section 13.** Amends s. 627.701, F.S., relating to liability of insureds; coinsurance; deductibles.
- Section 14.** Amends s. 627.70132, F.S., relating to notice of property insurance claim.
- Section 15.** Provides uncoded directory language.
- Section 16.** Provides an appropriation of funds for DFS.
- Section 17.** Provides an appropriation of funds for OIR.
- Section 18.** Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If the bill results in DFS and OIR assessing newly created or increased fine amounts against insurers, insurance agents and agencies, or others, it may result in additional revenues for the state.

2. Expenditures:

The bill provides for appropriation of funds from the Insurance Regulatory Trust Fund for:

- \$494,774 in recurring funds and \$23,410 in nonrecurring funds for five additional full-time positions within DFS.
- \$1,301,672 in recurring funds and \$65,548 in nonrecurring funds for fourteen additional full-time positions within OIR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a negative economic impact on insurers if they are assessed new or increased fine amounts and if they have to expend additional funds to pay for more frequent examinations by OIR.⁶⁹

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 provides OIR and the FSC with the authority necessary to implement rules and forms to administer the portions of the bill where rulemaking and form creation are required, including risk-based selection methods for financial and market conduct examinations of insurers and mitigation discounts for residential property insurance policies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 148-271: These lines contain errors in coding. Certain lines of new statutory language lack underlining and should be amended to correct the coding.

Lines 256-258: These lines require consideration of particular metrics from a NAIC Market Conduct Annual Statement in determining whether a market conduct examination is necessary, but the metrics are not defined. The bill should be amended to provide the metrics that must be considered.

Lines 684-691: Chapter 2022-271, Laws of Fla., (SB 2A (2022A)) contains multiple effective dates, so the language in this section of the bill may cause confusion about what date applies in the event of a dispute under an insurance contract that went into effect after the bill was approved by the Governor, but before the applicable effective date specified within the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁶⁹ Insurers are responsible for paying OIR for the cost of their examinations. S. 624.320, F.S.
STORAGE NAME: pcb04.COM
DATE: 4/8/2023