

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 717 Consumer Protection

SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Clemons and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1598

FINAL HOUSE FLOOR ACTION: 114 Y's

1 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

CS/CS/HB 717 passed the House on April 28, 2021, as CS/CS/SB 1598.

The bill makes the following changes to the Florida Department of Financial Services (DFS):

- **Consumer Credit Scores and Security Freezes** – deletes a provision specifying the fee a consumer reporting agency may charge to reissue or provide a new unique personal identifier to a consumer's representative to remove a security freeze. It also requires insurers to notify applicants of the availability of DFS's free financial literacy resources at certain times.
- **Consumer Services** – requires that licensees provide documents when responding to written requests from DFS's Division of Consumer Services.
- **Professions** – establishes insurance adjusting firms' licensure requirements and penalties; removes the licensure fee; adds grounds upon which DFS may revoke or suspend licenses; establishes penalties for aiding and abetting unlicensed adjusting firms; prohibits a licensed contractor or subcontractor from advertising, soliciting, offering to handle, handling, or performing public adjuster services unless licensed as a public adjuster; prohibits persons other than a licensed public adjuster or attorney from offering to initiate or negotiate on behalf of an insured or advertising services which require a public adjuster license; prohibits a public adjuster, public adjuster apprentice, or public adjusting firm who solicits a claim and does not enter into a contract with an insured or third party claimant from charging or receiving payment from an insured or a third party claimant.
- **Insurance Agency Names** – provides specific authority for DFS to disapprove insurance agency names containing the words "Medicaid" and "Medicare."
- **Industrial Class Insurers** – amends the laws regarding industrial life insurance, small policies written upon individual lives, so that no such policies may be sold in Florida after July 1, 2021.
- **Policyholder Rights** – extends the time that a policyholder has to cancel a contract with a public adjuster and amends the Homeowner Claims Bill of Rights. The bill also provides claims handling requirements, including policyholder notification of a change in adjuster, for both admitted and surplus lines insurers.
- **Export to Surplus Lines** – mandates that the notification regarding the export of a policy to the surplus lines market, currently given only to commercial policyholders, be given to all policyholders.
- **Unfair or Deceptive Acts** – adds two grounds, based upon effectuating an entire insurance policy without consent, to the list of acts that constitute sliding.
- **Florida Insurance Guaranty Association (FIGA) Deductible** – eliminates a \$100 deductible that a policyholder must pay for a claim covered by FIGA.
- **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)** – FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of an insurer's liquidation, leaving some policyholders whose policies have lapsed prior to liquidation with unpaid claims. The bill eliminates that disparity by removing an exception to the definition of "covered claim."

The bill may have a minimal positive fiscal impact on state government revenues. It has a minimal negative impact on state expenditures and no impact on local government revenues or expenditures. The bill may have a positive economic benefit to consumers and a possible indeterminate negative economic impact on insurers.

Subject to the Governor's veto powers, the bill is effective upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The Department of Financial Services (DFS) is composed of 13 divisions and one independent office. They are the Divisions of:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Consumer Credit Reports and Scores and Security Freezes

Security Freezes

Section 501.0051, F.S., allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, which prohibits a consumer reporting agency from releasing the credit report, credit score, or any information contained in the consumer report without express authorization from the parent or guardian.¹ Within 10 days of placing a security freeze, a consumer reporting agency is required to provide the consumer with a unique personal identification number (PIN) that must then be utilized to request removal of the freeze.² Current law permits a consumer reporting agency to charge up to \$10 to reissue a lost or misplaced PIN.³

Effect of the Bill

The bill deletes a provision specifying the fee a consumer reporting agency may charge to reissue or provide a new unique personal identifier to a consumer's representative to remove a security freeze.

Credit Reports and Scores

Under certain circumstances, insurers are permitted to utilize applicants' credit reports and scores in underwriting and rating decisions.⁴ The insurer must notify applicants that credit reports and scores are being utilized for these purposes.⁵ DFS currently offers free financial literacy programs and maintains a toll-free insurance consumer helpline and a website to assist consumers with insurance questions, concerns, and complaints.⁶ Insurers are not required to provide applicants with information regarding these resources when notifying applicants of the use of their credit reports and scores.

¹ S. 501.0051(1), F.S.

² S. 501.0051(5), F.S.

³ S. 501.0051(9)(b), F.S.

⁴ See s. 626.9741, F.S.

⁵ *Id.*

⁶ Florida Department of Financial Services (DFS), Agency Analysis of 2021 House Bill 717, p. 3 (Feb. 25, 2021).

Effect of the Bill

The bill provides that, at the same time that insurers inform consumers of the use of credit reports and scores for underwriting and rating purposes, the insurers must provide consumers with notification that DFS offers free financial literacy programs to assist them in understanding how credit scores are calculated and how credit works.

Companies' Responses to DFS Division of Consumer Services

Current law requires that licensees holding certificates of authority from DFS (agents and agencies) or the Office of Insurance Regulation (OIR) (insurance companies) must respond to written requests from DFS's Division of Consumer Services concerning consumer complaints.⁷ It does not specifically require that licensees provide documents in response to such requests.

Effect of the Bill

The bill adds requested documents to the response that a licensee must provide to the Division of Consumer Services when the division makes a written request to a licensee regarding a consumer complaint, but specifies that documents need not be released if they are protected by attorney-client or work-product privilege.

Requirements Placed on Licensees of DFS

Agents, Customer and Service Representatives, Adjusters, Insurance Agencies, Managing General Agents, and Insurance Adjusting Firms

Section 626.112, F.S., sets forth various requirements that insurance agents, agencies, adjusters, customer and service representatives, and managing general agents must meet in order to operate within Florida. In 2017, the Legislature passed a law modifying the requirements for licensure for adjusters, including adjusting firms.⁸ Prior to 2017, an adjusting firm was required to be licensed only if it failed to designate a primary adjuster within 30 days of starting the firm or changing the primary adjuster. Current law still authorizes, but does not require, licensure of adjusting firms.

Although current law provides penalties for acting as an unlicensed insurance agent, adjuster, customer or service representative, or managing general agent, it does not provide any penalties for aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities within the state.

Effect of the Bill

The bill establishes that no individual or entity may act as an adjusting firm without complying with the legal requirements for obtaining an adjusting firm license for each location where activity occurs that only a licensed adjuster may perform. However, a licensed adjusting firm owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or using the services of other licensees is exempt from this requirement. The licensing requirements for an adjusting firm are essentially notification requirements. An application for licensure as an adjusting firm requires providing the name of each majority owner, partner, officer, and director of the firm, the home address of each, and firm's location. The bill removes the \$60 licensure fee. If an adjusting firm is required to be licensed, but fails to apply for licensure, DFS shall impose on the firm an administrative penalty of up to \$10,000.

⁷ S. 624.307(10)(b), F.S.

⁸ Ch. 2017-147, Laws of Fla.

The bill provides that any person who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in Florida without a license commits a third-degree felony. The bill also provides that no person, except a duly licensed attorney exempted under s. 626.860, F.S., or agent exempted under s. 626.862, F.S., shall provide claims adjusting services unless licensed and appointed as an adjuster. Additionally, the bill provides that a public adjuster, public adjuster apprentice, or public adjuster firm that solicits a claim and does not enter into a lawful contract with an insured or third-party claimant may not charge or receive payment for any service related to the claim. DFS may take administrative actions and impose fines against any person performing claims adjusting services or soliciting without the required licensure.

Grounds for Refusal, Suspension, or Revocation of Agent's, Adjuster's, Customer or Service Representative's, or Managing General Agent's License or Appointment

Section 626.621, F.S., provides grounds under which DFS may deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of an applicant, agent, adjuster, customer or service representative, or managing general agent. Currently, these licensees or appointees are not required to maintain the privacy of consumers' financial and medical information. Additionally, Florida law does not provide for administrative action when a person violates Federal Trade Commission laws regarding telephone solicitation.

Effect of the Bill

The bill adds the following to the grounds for which DFS can deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of the above-listed persons:

- taking action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the general public; and
- initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless the prospective customer requests such contact.

Insurance Agency Names

Florida law permits DFS to disapprove insurance agency names under certain circumstances, including when the use of those names may mislead the public.⁹ DFS has concerns that the inclusion of the words "Medicare" or "Medicaid" in the name of an insurance agency may confuse "vulnerable consumers" about the nature of the agency, but it lacks the specific authority to disapprove an agency name that includes those words.¹⁰

Effect of the Bill

The bill adds use of the words "Medicare" and "Medicaid" to the grounds for which DFS may disapprove an insurance agency name. An agency licensed as of July 1, 2021, whose name contains the word Medicare or Medicaid, may continue to use the name until June 30, 2023, as long as its license remains valid. A license containing the word Medicare or Medicaid will automatically expire on July 1, 2023, unless these words are removed.

⁹ S. 626.602, F.S.

¹⁰ DFS, *supra* note 6, at 2.

Industrial Class Insurers

Industrial class insurers write industrial life insurance policies, which are life insurance policies written upon individual lives in small amounts for which agents generally collect weekly or monthly premiums.¹¹ In general, the prevalence of industrial life insurance policies has continued to decline. Based upon data available from DFS, no new industrial life insurance has been written in the past year and few licensed life insurers continue to maintain industrial life insurance policies.¹²

Effect of the Bill

The bill amends and repeals the statutes related to industrial class insurers and industrial life insurance so that no industrial life insurance policy may be sold in Florida after July 1, 2021. The bill has no effect on industrial life insurance policies that were sold prior to that date and have continued to remain in force.

Policyholder Rights

Public Adjusters

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.¹³ In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.¹⁴ At present, absent a state of emergency, such a contract may only be canceled within three days after the latter of the date on which the contract was executed or within three days after the date on which the claimant has notified the insurer of the claim.¹⁵ During a state of emergency, and for one year after the date of loss, an insured or claimant has five days after the date on which the contract was executed to cancel the contract without penalty or obligation.

Public adjusters who have contracted with claimants must also provide to the claimant a written estimate of loss to assist the claimant with obtaining a claim payment from the insurance company. According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.¹⁶

Effect of the Bill

The bill changes the timeframe for an insured or claimant to cancel a contract with a public adjuster without penalty or obligation to 10 calendar days, rather than from three business days after the latter of the date on which the contract was executed or the date on which the insured or claimant has notified the insurer of the claim. The bill provides that the 10-day timeframe applies regardless of whether there is a state of emergency.

The bill also provides that the written estimate that the public adjuster must provide to the claimant must include an itemized per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies. The written estimate must be provided to the insured within 60 days after

¹¹ S. 627.502, F.S.

¹² DFS, *supra* note 6, at 5.

¹³ S. 626.854, F.S.

¹⁴ *See id.*

¹⁵ *Id.*

¹⁶ DFS, *supra* note 6, at 2-3.

the date the contract is executed. Additionally, the bill prohibits a licensed contractor or subcontractor from soliciting an insured to file a claim with an insurer.

Homeowner Claims Bill of Rights

Section 627.7142, F.S., contains a Homeowner Claims Bill of Rights (Bill of Rights) that insurers issuing personal lines residential property insurance policies in Florida must provide to policyholders within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. While the Bill of Rights does not contain all of the rights of a policyholder, it is designed to summarize some of the significant rights, including rights regarding communications from insurers, payments of claims, and resolution of disputed claims.¹⁷ The Bill of Rights contains no requirements that an insurer notify the policyholder when it assigns a different adjuster to the claim. It does not specify that a policyholder may be entitled to receive interest from an insurer when the insurer fails to timely fulfill claim obligations. Furthermore, the Bill of Rights does not mention that a policyholder may take video of damage before and after repairs in addition to photographs of the damage.

Effect of the Bill

The bill amends the Bill of Rights in the following ways:

- states that a policyholder to which the Bill of Rights applies must receive the payment of interest from the insurance company if the insurance company does not pay full settlement of a claim or deny the claim within 90 days after the claim is filed;
- advises a policyholder to file all claims directly with his or her insurance company; and
- clarifies that in addition to photographs, a policyholder may take video of damage before and after repairs.

The bill requires an insurer to provide the Bill of Rights to a policyholder within 14 days after receiving an initial claim communication, even during a state of emergency.

Insurer's Duties to Acknowledge and Investigate Claims

Pursuant to Florida law, residential property insurers have certain obligations regarding the handling of claims, including responding to communications and timely payment or denial of claims.¹⁸ Policyholders have complained to DFS that repeated changes in adjusters for insurance companies have contributed to significant delays in the claim handling process.¹⁹ In addition, policyholders have indicated that because of a lack of access to claims information, their insurance agents are not able to respond claims-related questions in a meaningful way.²⁰

The applicable law neither requires that any licensed adjuster assigned by an insurer to conduct a physical inspection of damage property provide the policyholder with his or her name, license number, and contact information, nor requires that the insurer provide a copy of the inspection report to the policyholder following receipt from the adjuster. There is no statutory requirement that an insurer notify a policyholder when it has assigned a new adjuster to the policyholder's claim. Further, the law does not contain any mandate that the insurer inform the policyholder of the fact that an estimate may be preliminary in nature and may be revised or the fact that when a partial payment is issued the insurer is continuing to evaluate a claim and may issue additional payments.

Effect of the Bill

¹⁷ S. 627.7142, F.S.

¹⁸ S. 627.70131, F.S.

¹⁹ DFS, *supra* note 6, at 4.

²⁰ *Id.*

The bill makes the following changes to existing law regarding the investigation and adjusting of residential property insurance claims:

- Changes the timeframe from 10 business days to 14 days from receipt of a proof of loss statement for an insurer to begin the investigation of a claim.
- If an investigation of a claim involves a physical inspection of property, a licensed adjuster assigned by the insurer must provide a policyholder with his or her name and license number.
- Provides that any subsequent communication with the policyholder regarding the claim must include the name and license number of the adjuster communicating about the claim.
- Requires the insurer to maintain a record or log of each adjuster who communicates with the policyholder and to provide a list of those adjusters to the policyholder, DFS, or OIR upon request.
- When providing a preliminary or partial damage claim estimate or a preliminary or partial claim payment, an insurer must provide a detailed disclosure as specified in the bill.

The bill provides that the above changes regarding residential property insurance claims shall be applicable to surplus lines policies in addition to policies written on the admitted market.

Export of Policies to Surplus Lines

Notification of Export

When insurance is not available to Florida consumers from authorized insurance carriers²¹, it generally becomes necessary and legally permissible to obtain a policy on the surplus lines market.²² However, under current surplus lines law, only consumers purchasing commercial insurance policies on the surplus lines market receive notification at the time of purchase that policies are being issued on that market.²³ Consequently, the first time that some residential policyholders are informed that their policies have been issued by surplus lines carriers is after their policies have been issued.²⁴ The notification currently provided to commercial policyholders whose policies are issued on the surplus lines market also includes the statement that “superior coverage may be available in the admitted market and at a lesser cost.”²⁵

Effect of the Bill

The bill amends surplus lines law to require that, at the time policies are exported to the surplus lines market, the notification statement currently signed by consumers whose commercial insurance policies are being exported to the surplus lines market must be signed, or otherwise acknowledged by all consumers whose insurance policies are being exported to the surplus lines market. The bill also replaces the statement “superior coverage may be available in the admitted market and at a lesser cost,” with “coverage may be available in the admitted market.” Additionally, the notification statement advises consumers whose policies are being exported that surplus lines carriers are not protected under the Florida Insurance Guaranty Act in the event of the carrier’s insolvency.

Unfair Methods of Competition and Unfair or Deceptive Acts – Sliding

The Florida Insurance Code prohibits licensees from engaging in unfair methods of competition and unfair or deceptive acts or practices, including sliding.²⁶ Under Florida law, sliding currently includes: representing to an applicant that a specific ancillary coverage or product is required by law when it is

²¹ Authorized insurance carriers are those who have received a certificate of authority from OIR to transact insurance business within the state. S. 624.09, F.S.

²² See s. 626.913, F.S.

²³ S. 626.916(3)(b)3, F.S.

²⁴ DFS, *supra* note 6, at 3.

²⁵ S. 626.916(3)(b)3, F.S.

²⁶ S. 626.9541, F.S.

not; representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.²⁷ According to DFS, some Florida insurers have begun a practice of effectuating entire policies without informing consumers they have done so.²⁸

Effect of the Bill

The bill adds the following to the list of prohibited conduct that constitutes sliding:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without prior informed consent from the owner of the property being insured; and
- Mailing, transmitting, or otherwise submitting a premium invoice to a mortgagee or escrow agent in order to effectuate an insurance policy without the prior informed consent from the owner of the property being insured. However, collateral protection insurance by a mortgagee or escrow does not constitute sliding.

Florida Insurance Guaranty Association Deductible

Under federal law, insurance companies cannot file for bankruptcy.²⁹ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers³⁰ in Florida and sets up guaranty associations where necessary.³¹ Florida operates five guaranty associations including the Florida Insurance Guaranty Association (FIGA).³²

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.”³³ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.³⁴

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 with unpaid claims. Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of \$100, and less than \$300,000.³⁵ Under current law, therefore, there is a \$100 deductible on all property and casualty claims covered by FIGA.

Effect of the Bill

The bill eliminates the \$100 deductible on claims paid by FIGA so that such claims will be covered for any amount exceeding \$0 and less than \$300,000.

Florida Workers’ Compensation Insurance Guaranty Association

²⁷ S. 626.9541(1)(z), F.S.

²⁸ DFS, *supra* note 6, at 3.

²⁹ 11 U.S.C. § 109(b)(2).

³⁰ 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.

³¹ Ch. 631, F.S.

³² Ch. 631, part II, F.S.

³³ S. 631.51, F.S.

³⁴ S. 631.52, F.S.

³⁵ S. 631.57(1), F.S.

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) was created in 1997 by merging the workers' compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association.³⁶ FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.³⁷ When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Because FWCIGA covers claims for workers' compensation policies that are in effect on the date of the final order of liquidation, this leaves policyholders whose policies have lapsed prior to liquidation with unpaid claims.

Effect of the Bill

The bill removes the language "any return of premium resulting from a policy that was not in force on the date of the final order of liquidation" from the definition of what is excluded as a "covered claim."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has the potential to result in increased revenues for DFS in the form of administrative fines imposed on adjusting firms for violations of ss. 624.307 and 626.112, F.S. The increase may be offset by a simultaneous decrease in fines against individual adjusters, since DFS will have authority to levy fines against the firm instead of the individual.³⁸

2. Expenditures:

The bill has an insignificant fiscal impact on DFS. Changes to DFS's licensing system for adjusting firms to be licensed in Florida will have a minimal negative fiscal impact on the Insurance Regulatory Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers. It removes fees charged by consumer reporting agencies for the reissuance of PINs and eliminates the \$100 deductible FIGA charges for covered claims.

³⁶ Ch. 97-262, Laws of Fla.

³⁷ S. 631.902, F.S.

³⁸ Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: HB 717 Fiscal, (Mar. 9, 2021).

The bill has potential negative direct economic impacts on the private sector. The inability of a consumer reporting agency to charge fees to reissue PINs will result in an indeterminate decrease in revenues for consumer reporting agencies. Adjusting firms will no longer be subject to the \$60 licensure fee but could be assessed administrative fines up to \$10,000 for violations of ss. 624.307 and 626.112, F.S.

D. FISCAL COMMENTS:

None.