

1 A bill to be entitled
2 An act relating to insurance; amending s. 215.555,
3 F.S.; revising the reimbursement of loss adjustment
4 expenses by the Florida Hurricane Catastrophe Fund;
5 amending s. 319.30, F.S.; revising the manner in which
6 insurance companies must forward motor vehicle or
7 mobile home titles to the Department of Highway Safety
8 and Motor Vehicles under certain circumstances;
9 revising the effective date of specified provisions
10 relating to certificates of title or certificates of
11 destruction; authorizing electronic signatures for
12 certain purposes; amending s. 440.381, F.S.; revising
13 the requirements for workers' compensation insurance
14 applications; creating s. 624.1055, F.S.; providing
15 right of contribution of certain liability insurers
16 against other liability insurers for defense costs;
17 providing for apportionment of costs; providing for
18 enforcement of right of contribution; providing
19 construction; providing applicability; amending s.
20 624.155, F.S.; deleting a provision that tolls, under
21 certain circumstances, a period before a civil action
22 against an insurer may be brought; deleting a
23 provision authorizing the Department of Financial
24 Services to return a civil remedy notice for lack of
25 specificity; prohibiting the filing of the notice

26 | within a certain timeframe under certain
27 | circumstances; amending s. 624.4085, F.S.; providing
28 | applicability of risk-based capital requirements for
29 | certain insurers; specifying risk-based capital
30 | determination for certain insurers; amending s.
31 | 626.914, F.S.; revising the definition of the term
32 | "diligent effort," as used in the Surplus Lines Law;
33 | amending s. 626.916, F.S.; removing the cap on per-
34 | policy fees charged by a filing surplus lines agent
35 | under certain circumstances; requiring such fees to be
36 | itemized and enumerated; authorizing a reasonable per-
37 | policy fee charged by a retail agent on surplus lines
38 | policies; requiring such fees to be itemized before
39 | policy purchase; amending s. 626.9541, F.S.; providing
40 | construction; amending s. 627.0655, F.S.; revising the
41 | circumstances under which certain insurance premium
42 | discounts are authorized; amending s. 627.426, F.S.;
43 | revising the requirements for sufficient proof of
44 | notice for certain insurance notices; amending s.
45 | 627.4555, F.S.; requiring life insurers that are
46 | required to provide a specified notice to policyowners
47 | of an impending lapse in coverage to also notify the
48 | policyowner's agent of record within a certain
49 | timeframe; providing that the agent is not responsible
50 | for any lapse in coverage; exempting the insurer from

51 the requirement under certain circumstances; amending
 52 s. 627.7015, F.S.; revising the periods of time when
 53 property insurers must notify policyholders of certain
 54 mediation programs; amending s. 627.7295, F.S.;
 55 reducing the amount that must be collected from
 56 insureds before policies or binders are issued;
 57 providing applicability; providing effective dates.

58

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

60

61 Section 1. Effective January 1, 2020, paragraph (b) of
 62 subsection (4) of section 215.555, Florida Statutes, is amended
 63 to read:

64 215.555 Florida Hurricane Catastrophe Fund.—

65 (4) REIMBURSEMENT CONTRACTS.—

66 (b)1. The contract shall contain a promise by the board to
 67 reimburse the insurer for 45 percent, 75 percent, or 90 percent
 68 of its losses from each covered event in excess of the insurer's
 69 retention, plus 10 ~~5~~ percent of the reimbursed losses to cover
 70 loss adjustment expenses.

71 2. The insurer must elect one of the percentage coverage
 72 levels specified in this paragraph and may, upon renewal of a
 73 reimbursement contract, elect a lower percentage coverage level
 74 if no revenue bonds issued under subsection (6) after a covered
 75 event are outstanding, or elect a higher percentage coverage

76 level, regardless of whether or not revenue bonds are
77 outstanding. All members of an insurer group must elect the same
78 percentage coverage level. Any joint underwriting association,
79 risk apportionment plan, or other entity created under s.
80 627.351 must elect the 90-percent coverage level.

81 3. The contract shall provide that reimbursement amounts
82 shall not be reduced by reinsurance paid or payable to the
83 insurer from other sources.

84 Section 2. Paragraph (b) of subsection (3) of section
85 319.30, Florida Statutes, is amended, and paragraph (d) is added
86 to that subsection to read:

87 319.30 Definitions; dismantling, destruction, change of
88 identity of motor vehicle or mobile home; salvage.—

89 (3)

90 (b) The owner, including persons who are self-insured, of
91 a motor vehicle or mobile home that is considered to be salvage
92 shall, within 72 hours after the motor vehicle or mobile home
93 becomes salvage, forward the title to the motor vehicle or
94 mobile home to the department for processing. However, an
95 insurance company that pays money as compensation for the total
96 loss of a motor vehicle or mobile home shall obtain the
97 certificate of title for the motor vehicle or mobile home, make
98 the required notification to the National Motor Vehicle Title
99 Information System, and, within 72 hours after receiving such
100 certificate of title, forward such title via electronic means,

101 the United States Postal Service, or another commercially
102 available delivery service to the department for processing. The
103 owner or insurance company, as applicable, may not dispose of a
104 vehicle or mobile home that is a total loss before it obtains a
105 salvage certificate of title or certificate of destruction from
106 the department. Effective upon the completion of the Motorist
107 Modernization Project by the department, but no later than July
108 1, 2023:

109 1. Thirty days after payment of a claim for compensation
110 pursuant to this paragraph, the insurance company may receive a
111 salvage certificate of title or certificate of destruction from
112 the department if the insurance company is unable to obtain a
113 properly assigned certificate of title from the owner or
114 lienholder of the motor vehicle or mobile home, if the motor
115 vehicle or mobile home does not carry an electronic lien on the
116 title and the insurance company:

117 a. Has obtained the release of all liens on the motor
118 vehicle or mobile home;

119 b. Has provided proof of payment of the total loss claim;
120 and

121 c. Has provided an affidavit on letterhead signed by the
122 insurance company or its authorized agent stating the attempts
123 that have been made to obtain the title from the owner or
124 lienholder and further stating that all attempts are to no
125 avail. The affidavit must include a request that the salvage

126 certificate of title or certificate of destruction be issued in
127 the insurance company's name due to payment of a total loss
128 claim to the owner or lienholder. The attempts to contact the
129 owner may be by written request delivered in person or by first-
130 class mail with a certificate of mailing to the owner's or
131 lienholder's last known address.

132 2. If the owner or lienholder is notified of the request
133 for title in person, the insurance company must provide an
134 affidavit attesting to the in-person request for a certificate
135 of title.

136 3. The request to the owner or lienholder for the
137 certificate of title must include a complete description of the
138 motor vehicle or mobile home and the statement that a total loss
139 claim has been paid on the motor vehicle or mobile home.

140 (d) An electronic signature that is consistent with
141 chapter 668 satisfies any signature required under this
142 subsection.

143 Section 3. Subsection (2) of section 440.381, Florida
144 Statutes, is amended to read:

145 440.381 Application for coverage; reporting payroll;
146 payroll audit procedures; penalties.-

147 (2) Submission of an application that contains false,
148 misleading, or incomplete information provided with the purpose
149 of avoiding or reducing the amount of premiums for workers'
150 compensation coverage is a felony of the second degree,

151 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
152 The application must contain a statement that the filing of an
153 application containing false, misleading, or incomplete
154 information provided with the purpose of avoiding or reducing
155 the amount of premiums for workers' compensation coverage is a
156 felony of the third degree, punishable as provided in s.
157 775.082, s. 775.083, or s. 775.084. The application must contain
158 a sworn statement by the employer attesting to the accuracy of
159 the information submitted and acknowledging the provisions of
160 former s. 440.37(4). The application must contain a sworn
161 statement by the agent attesting that the agent explained to the
162 employer or officer the classification codes that are used for
163 premium calculations. The sworn statements by the employer and
164 the agent are not required to be notarized.

165 Section 4. Section 624.1055, Florida Statutes, is created
166 to read:

167 624.1055 Right of contribution among liability insurers
168 for defense costs.—A liability insurer who owes a duty to defend
169 an insured and who defends the insured against a claim, suit, or
170 other action has a right of contribution for defense costs
171 against any other liability insurer who owes a duty to defend
172 the insured against the same claim, suit, or other action,
173 provided that contribution may not be sought from any liability
174 insurer for defense costs that are incurred before the liability
175 insurer's receipt of notice of the claim, suit, or other action.

176 (1) APPORTIONMENT OF COSTS.—The court shall allocate
177 defense costs among liability insurers who owe a duty to defend
178 the insured against the same claim, suit, or other action in
179 accordance with the terms of the liability insurance policies.
180 The court may use such equitable factors as the court determines
181 are appropriate in making such allocation.

182 (2) ENFORCEMENT OF RIGHT OF CONTRIBUTION.—A liability
183 insurer who is entitled to contribution from another liability
184 insurer under this section may file an action for contribution
185 in a court of competent jurisdiction.

186 (3) CONSTRUCTION.—

187 (a) This section is not intended to alter any terms of a
188 liability insurance policy or to create any additional duty on
189 the part of a liability insurer to an insured.

190 (b) An insured may not rely on this section as grounds for
191 a complaint against a liability insurer.

192 (4) APPLICABILITY.—This section applies to liability
193 insurance policies issued for delivery in this state, or
194 liability insurance policies under which an insurer has a duty
195 to defend an insured against claims asserted or suits or actions
196 filed in this state. Such liability insurance policies include
197 surplus lines insurance policies authorized under the Surplus
198 Lines Law, ss. 626.913-626.937.

199 (5) Notwithstanding subsection (4), this section does not
200 apply to motor vehicle liability insurance or medical

201 professional liability insurance.

202 Section 5. Subsection (3) of section 624.155, Florida
 203 Statutes, is amended to read:

204 624.155 Civil remedy.—

205 (3) (a) As a condition precedent to bringing an action
 206 under this section, the department and the authorized insurer
 207 must have been given 60 days' written notice of the violation.
 208 ~~If the department returns a notice for lack of specificity, the~~
 209 ~~60-day time period shall not begin until a proper notice is~~
 210 ~~filed.~~

211 (b) The notice shall be on a form provided by the
 212 department and shall state with specificity the following
 213 information, and such other information as the department may
 214 require:

215 1. The statutory provision, including the specific
 216 language of the statute, which the authorized insurer allegedly
 217 violated.

218 2. The facts and circumstances giving rise to the
 219 violation.

220 3. The name of any individual involved in the violation.

221 4. Reference to specific policy language that is relevant
 222 to the violation, if any. If the person bringing the civil
 223 action is a third party claimant, she or he shall not be
 224 required to reference the specific policy language if the
 225 authorized insurer has not provided a copy of the policy to the

226 third party claimant pursuant to written request.

227 5. A statement that the notice is given in order to
228 perfect the right to pursue the civil remedy authorized by this
229 section.

230 ~~(c) Within 20 days of receipt of the notice, the~~
231 ~~department may return any notice that does not provide the~~
232 ~~specific information required by this section, and the~~
233 ~~department shall indicate the specific deficiencies contained in~~
234 ~~the notice. A determination by the department to return a notice~~
235 ~~for lack of specificity shall be exempt from the requirements of~~
236 ~~chapter 120.~~

237 (c)~~(d)~~ No action shall lie if, within 60 days after filing
238 notice, the damages are paid or the circumstances giving rise to
239 the violation are corrected.

240 (d)~~(e)~~ The authorized insurer that is the recipient of a
241 notice filed pursuant to this section shall report to the
242 department on the disposition of the alleged violation.

243 (e)~~(f)~~ The applicable statute of limitations for an action
244 under this section shall be tolled for a period of 65 days by
245 the mailing of the notice required by this subsection or the
246 mailing of a subsequent notice required by this subsection.

247 (f) A notice required under this subsection may not be
248 filed within 60 days after appraisal is invoked by any party in
249 a residential property insurance claim.

250 Section 6. Paragraphs (d) and (e) of subsection (2) of

251 section 624.4085, Florida Statutes, are amended to read:

252 624.4085 Risk-based capital requirements for insurers.—

253 (2)

254 (d) A life and health insurer's risk-based capital is
255 determined in accordance with the formula set forth in the risk-
256 based capital instructions. The formula takes into account and
257 may adjust for the covariance between:

258 1. The risk with respect to the insurer's assets;

259 2. The risk of adverse insurance experience with respect
260 to the insurer's liabilities and obligations;

261 3. The interest rate risk with respect to the insurer's
262 business; and

263 4. Any other business or other relevant risk set out in
264 the risk-based capital instructions,

265

266 determined in each case by applying the factors in the manner
267 set forth in the risk-based capital instructions. This paragraph
268 does not apply to a health maintenance organization or a prepaid
269 limited health service organization.

270 (e) A property and casualty insurer's and, if subject to
271 this section pursuant to paragraph (1)(g), a health maintenance
272 organization's or a prepaid limited health service

273 organization's, risk-based capital is determined in accordance

274 with the formula set forth in the risk-based capital

275 instructions. The formula takes into account and may adjust for

276 | the covariance between:
 277 | 1. The asset risk;
 278 | 2. The credit risk;
 279 | 3. The underwriting risk; and
 280 | 4. Any other business or other relevant risk set out in
 281 | the risk-based capital instructions,

282 |
 283 | determined in each case by applying the factors in the manner
 284 | set forth in the risk-based capital instructions.

285 | Section 7. Subsection (4) of section 626.914, Florida
 286 | Statutes, is amended to read:

287 | 626.914 Definitions.—As used in this Surplus Lines Law,
 288 | the term:

289 | (4) "Diligent effort" means seeking coverage from and
 290 | having been rejected by at least three authorized insurers
 291 | currently writing this type of coverage and documenting these
 292 | rejections. However, if the residential structure has a dwelling
 293 | replacement cost of \$700,000 ~~\$1 million~~ or more, the term means
 294 | seeking coverage from and having been rejected by at least one
 295 | authorized insurer currently writing this type of coverage and
 296 | documenting this rejection.

297 | Section 8. Subsection (4) of section 626.916, Florida
 298 | Statutes, is amended, and subsection (5) is added to that
 299 | section, to read:

300 | 626.916 Eligibility for export.—

301 (4) A reasonable per-policy fee, ~~not to exceed \$35,~~ may be
302 charged by the filing surplus lines agent for each policy
303 certified for export. This per-policy fee must be itemized
304 separately to the customer before purchase and enumerated in the
305 policy.

306 (5) A retail agent may charge a reasonable per-policy fee
307 for placement of a surplus lines policy under this section. This
308 per-policy fee must be itemized separately to the customer
309 before purchase.

310 Section 9. Subsection (5) is added to section 626.9541,
311 Florida Statutes, to read:

312 626.9541 Unfair methods of competition and unfair or
313 deceptive acts or practices defined.—

314 (5) LOSS CONTROL AND LOSS MITIGATION.—This section does
315 not prohibit an insurer or agent from offering or giving to an
316 insured, for free or at a discounted price, services or other
317 merchandise, goods, wares, or other items of value that relate
318 to loss control or loss mitigation with respect to the risks
319 covered under the policy.

320 Section 10. Section 627.0655, Florida Statutes, is amended
321 to read:

322 627.0655 Policyholder loss or expense-related premium
323 discounts.—An insurer or person authorized to engage in the
324 business of insurance in this state may include, in the premium
325 charged an insured for any policy, contract, or certificate of

326 insurance, a discount based on the fact that another policy,
 327 contract, or certificate of any type has been purchased by the
 328 insured from:

329 (1) The same insurer or insurer group, or another insurer
 330 under a joint marketing agreement;

331 (2) The Citizens Property Insurance Corporation created
 332 under s. 627.351(6), if the same insurance agent is servicing
 333 both policies; ~~or~~

334 (3) An insurer that has removed the policy from the
 335 Citizens Property Insurance Corporation or issued a policy
 336 pursuant to the clearinghouse program under s. 627.3518, if the
 337 same insurance agent is servicing both policies; or

338 (4) An insurer, if the same insurance agent is servicing
 339 the policies.

340 Section 11. Subsection (2) of section 627.426, Florida
 341 Statutes, is amended to read:

342 627.426 Claims administration.—

343 (2) A liability insurer shall not be permitted to deny
 344 coverage based on a particular coverage defense unless:

345 (a) Within 30 days after the liability insurer knew or
 346 should have known of the coverage defense, written notice of
 347 reservation of rights to assert a coverage defense is given to
 348 the named insured by United States postal proof of mailing,
 349 registered or certified mail, or other mailing using the
 350 Intelligent Mail barcode or other similar tracking method used

351 or approved by the United States Postal Service sent to the last
352 known address of the insured or by hand delivery; and

353 (b) Within 60 days of compliance with paragraph (a) or
354 receipt of a summons and complaint naming the insured as a
355 defendant, whichever is later, but in no case later than 30 days
356 before trial, the insurer:

357 1. Gives written notice to the named insured by United
358 States postal proof of mailing, registered or certified mail, or
359 other mailing using the Intelligent Mail barcode or other
360 similar tracking method used or approved by the United States
361 Postal Service of its refusal to defend the insured;

362 2. Obtains from the insured a nonwaiver agreement
363 following full disclosure of the specific facts and policy
364 provisions upon which the coverage defense is asserted and the
365 duties, obligations, and liabilities of the insurer during and
366 following the pendency of the subject litigation; or

367 3. Retains independent counsel which is mutually agreeable
368 to the parties. Reasonable fees for the counsel may be agreed
369 upon between the parties or, if no agreement is reached, shall
370 be set by the court.

371 Section 12. Section 627.4555, Florida Statutes, is amended
372 to read:

373 627.4555 Secondary notice.—

374 (1) Except as provided in this section, a contract for
375 life insurance issued or issued for delivery in this state on or

376 after October 1, 1997, covering a natural person 64 years of age
377 or older, which has been in force for at least 1 year, may not
378 be lapsed for nonpayment of premium unless, after expiration of
379 the grace period, and at least 21 days before the effective date
380 of any such lapse, the insurer has mailed a notification of the
381 impending lapse in coverage to the policyowner and to a
382 specified secondary addressee if such addressee has been
383 designated in writing by name and address by the policyowner. An
384 insurer issuing a life insurance contract on or after October 1,
385 1997, shall notify the applicant of the right to designate a
386 secondary addressee at the time of application for the policy,
387 on a form provided by the insurer, and at any time the policy is
388 in force, by submitting a written notice to the insurer
389 containing the name and address of the secondary addressee. For
390 purposes of any life insurance policy that provides a grace
391 period of more than 51 days for nonpayment of premiums, the
392 notice of impending lapse in coverage required by this section
393 must be mailed to the policyowner and the secondary addressee at
394 least 21 days before the expiration of the grace period provided
395 in the policy. This section does not apply to any life insurance
396 contract under which premiums are payable monthly or more
397 frequently and are regularly collected by a licensed agent or
398 are paid by credit card or any preauthorized check processing or
399 automatic debit service of a financial institution.

400 (2) If the policyowner has a life agent of record or any

401 agent of record, the insurer must also notify the agent of the
402 impending lapse in coverage or mail or send electronically a
403 copy of the notification of the impending lapse in coverage
404 under subsection (1) to the agent at least 21 days before the
405 effective date of any such lapse. Receipt of such notice does
406 not make the agent responsible for any lapse in coverage. An
407 insurer is not required to notify the agent under this
408 subsection if any of the following applies:

409 (a) The insurer maintains an online system that allows an
410 agent to independently determine if a policy has lapsed.

411 (b) The insurer maintains a procedure that allows an agent
412 to independently determine whether the notice of lapse has been
413 sent to the insured.

414 (c) The insurer has no record of the current agent of
415 record.

416 (d) The agent is employed by the insurer or an affiliate
417 of the insurer.

418 Section 13. Subsection (2) of section 627.7015, Florida
419 Statutes, is amended to read:

420 627.7015 Alternative procedure for resolution of disputed
421 property insurance claims.—

422 (2) Either at the time a first-party claim within the
423 scope of this section is filed by the policyholder or at the
424 time coverage is applied and payment is determined, the insurer
425 shall notify the policyholder of its right to participate in the

426 mediation program under this section. The department shall
427 prepare a consumer information pamphlet for distribution to
428 persons participating in mediation.

429 Section 14. Subsection (7) of section 627.7295, Florida
430 Statutes, is amended to read:

431 627.7295 Motor vehicle insurance contracts.—

432 (7) A policy of private passenger motor vehicle insurance
433 or a binder for such a policy may be initially issued in this
434 state only if, before the effective date of such binder or
435 policy, the insurer or agent has collected from the insured an
436 amount equal to at least 1 month's ~~2 months'~~ premium. An
437 insurer, agent, or premium finance company may not, directly or
438 indirectly, take any action resulting in the insured having paid
439 from the insured's own funds an amount less than the 1 month's ~~2~~
440 ~~months'~~ premium required by this subsection. This subsection
441 applies without regard to whether the premium is financed by a
442 premium finance company or is paid pursuant to a periodic
443 payment plan of an insurer or an insurance agent. This
444 subsection does not apply if an insured or member of the
445 insured's family is renewing or replacing a policy or a binder
446 for such policy written by the same insurer or a member of the
447 same insurer group. This subsection does not apply to an insurer
448 that issues private passenger motor vehicle coverage primarily
449 to active duty or former military personnel or their dependents.
450 This subsection does not apply if all policy payments are paid

451 pursuant to a payroll deduction plan, an automatic electronic
452 funds transfer payment plan from the policyholder, or a
453 recurring credit card or debit card agreement with the insurer.
454 This subsection and subsection (4) do not apply if all policy
455 payments to an insurer are paid pursuant to an automatic
456 electronic funds transfer payment plan from an agent, a managing
457 general agent, or a premium finance company and if the policy
458 includes, at a minimum, personal injury protection pursuant to
459 ss. 627.730-627.7405; motor vehicle property damage liability
460 pursuant to s. 627.7275; and bodily injury liability in at least
461 the amount of \$10,000 because of bodily injury to, or death of,
462 one person in any one accident and in the amount of \$20,000
463 because of bodily injury to, or death of, two or more persons in
464 any one accident. This subsection and subsection (4) do not
465 apply if an insured has had a policy in effect for at least 6
466 months, the insured's agent is terminated by the insurer that
467 issued the policy, and the insured obtains coverage on the
468 policy's renewal date with a new company through the terminated
469 agent.

470 Section 15. Section 624.1055, Florida Statutes, as created
471 by this act, applies to any claim, suit, or other action
472 initiated on or after January 1, 2020.

473 Section 16. Except as otherwise expressly provided in this
474 act, this act shall take effect July 1, 2019.