

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 793 Collateral Protection Insurance on Real Property

**SPONSOR(S):** Fernandez-Barquin

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

In general, mortgages require borrowers to maintain adequate homeowners' insurance on their property. Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market. If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.

A lender-placed, or force-placed, insurance policy is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer. In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business. Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage. Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states. Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance (CPI). The bill creates a new statutory chapter part (Part XXII) for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or servicers, and insurers or insurance agents; and
- Minimizing the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes are subject to Part XXII, with certain exceptions. The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. The bill provides the Office of Insurance Regulation with authority to develop rules related to the regulation of Part XXII.

The bill has no effect local revenues or expenditures or state revenues. It has an indeterminate impact on state expenditures. It may have a positive 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:

#### **Background**

##### ***Mortgages on Real Property***

A mortgage is an agreement between a borrower and a lender that gives the lender the right to take the property if the borrower fails to pay the loan plus interest.<sup>1</sup> A mortgage is generally secured by a mortgage note, which is a note evidencing a loan for which real property has been offered as security.<sup>2</sup> All mortgages require borrowers to maintain adequate homeowners' insurance on their property.<sup>3</sup> Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market.<sup>4</sup> If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.<sup>5</sup>

##### ***Lender-placed Insurance/Collateral Protection Insurance (CPI)***

A lender-placed insurance policy<sup>6</sup> is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer.<sup>7</sup> In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business.<sup>8</sup> Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage.<sup>9</sup> Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.<sup>10</sup>

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states.<sup>11</sup> Its state purpose includes creating a legal framework within which lender-placed insurance on real property may be written in a particular state.<sup>12</sup> However, Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance, which is defined as:

[C]ommercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as

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<sup>1</sup> Consumer Financial Protection Bureau, *What is a mortgage?*, [What is a mortgage? | Consumer Financial Protection Bureau \(consumerfinance.gov\)](https://www.consumerfinance.gov/what-is-a-mortgage/) (last visited Mar. 12, 2023). The borrower and the lender are also referred to as the mortgagor and mortgagee, respectively.

<sup>2</sup> Black's Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>3</sup> NAIC, *Lender-Placed Insurance*, <https://content.naic.org/cipr-topics/lender-placed-insurance> (last visited Mar. 12, 2023)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Lender-placed insurance is also known as creditor-placed or force-placed insurance.

<sup>7</sup> NAIC, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* Some of these concerns regarding price and coverage have been raised regarding the lender-place insurers issuing policies in Florida. However, the largest two insurers issuing these policies are already bound by consent orders with the Office of Insurance Regulation (OIR) with conditions very similar to those contained in the Model Act. A copy of these consent orders has been requested from OIR, but has not been received as of the publication of this analysis.

<sup>12</sup> *Id.*

required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.<sup>13</sup>

### ***Review of Insurance Policy Forms and Rates***

In general, an insurer may not use forms to issue insurance policies in the state unless the forms have been filed with, and approved by, the Office of Insurance Regulation (OIR).<sup>14</sup> Once filed, OIR has 30 days to review insurance forms.<sup>15</sup> At the end of the 30-day period, forms will be deemed approved unless they have been affirmatively approved or disapproved by OIR.<sup>16</sup>

Insurers must also file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by OIR.<sup>17</sup> OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.<sup>18</sup> In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Insurers may make rate filings with OIR on a file and use, or use and file basis. If a filing is made on a file and use basis, OIR has 90 days to review and approve the filing before an insurer may use the filed rate.<sup>19</sup> In contrast, a use and file rate may be used before filing, but must be filed within 30 days of the effective date.<sup>20</sup> A use and file rate is still subject to review and disapproval by OIR.<sup>21</sup>

### **Effect of the Bill**

The bill creates a new statutory part of chapter 627, F.S. (Part XXII),<sup>22</sup> for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or services, and insurers or insurance agents; and
- Minimizing the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

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<sup>13</sup> S. 627.6085, F.S.

<sup>14</sup> S. 627.410(1), F.S.

<sup>15</sup> S. 627.410(2), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> S. 627.062(2)(a), F.S.

<sup>18</sup> S. 627.062(1), F.S.

<sup>19</sup> S. 627.062(2)(a)1., F.S.

<sup>20</sup> S. 627.062(2)(a)2., F.S.

<sup>21</sup> *Id.*

<sup>22</sup> The new statutory chapter part will be part XXII of chapter 627, F.S., and will contain ss. 627.9901-627.9913, F.S. It is similar to the NAIC Model Act, but is drafted in a way that will fit appropriately within the Florida Insurance Code. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. S. 624.01, F.S.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes is subject to Part XXII except:

- Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.
- Insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor's option.
- Insurance purchased by a lender or servicer on real-estate owned property.<sup>23</sup>
- Insurance for which no specific charge is made to the mortgagor or mortgagor's account.

The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property.<sup>24</sup> CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. CPI under Part XXII applies only to mortgaged real property, not personal property.

Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Pursuant to the bill, CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The date on which insurance acceptable under the mortgage agreement becomes effective.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers
- The termination date of the policy.

According to the bill, CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the:

- Replacement cost value of the real property serving as collateral as calculated by the insurer; or
- Unpaid principal balance of the mortgage loan.

Part XXII prohibits the following practices by insurers or insurance agents related to CPI:

- Issuing CPI on a mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property.
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer.
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI.
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost.

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<sup>23</sup> Real-estate owned property is often referred to as bank-owned property, and may be property that failed to sell during a foreclosure.

<sup>24</sup> This definition is similar to the definition of collateral protection insurance in s. 624.6085, F.S., discussed above, except that definition also includes coverage secured by personal property.

- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

The bill requires that proof of CPI is provided in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically.<sup>25</sup> The individual policy or certificate of insurance must include all of the following information:

- Address and identification of the insured real property.
- Coverage amount, or amounts if multiple coverages are provided.
- Effective date of coverage.
- Term of coverage.
- Premium charged for the coverage.
- Contact information for filing a claim.
- Complete description of the coverage provided.

The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by OIR. As part of the rate review, OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires that insurers subject to Part XXII refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

By April 1 each year, each insurer with at least \$100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to OIR for the prior calendar year:

- Actual loss ratio.<sup>26</sup>
- Earned premiums.
- Any aggregate schedule rating debit or credit to earned premium.
- Itemized expenses.
- Paid losses.
- Loss reserves, including case reserves and reserves for incurred but not reported losses.<sup>27</sup>

The bill provides OIR with the rights and powers to enforce Part XXII, and all proceedings brought pursuant to Part XXII will be conducted under the Florida Administrative Procedures Act.<sup>28</sup> It also provides OIR with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII. Finally, the bill contains a severability clause so that if any portion of Part XXII is held invalid, the remainder of the Part is not affected.

## B. SECTION DIRECTORY:

**Section 1.** Creates part XXII of chapter 627, F.S., relating to real property collateral protection insurance.

**Section 2.** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

<sup>25</sup> The Uniform Electronic Transaction Act, s. 668.50, F.S., provides the requirements for electronic delivery.

<sup>26</sup> Loss ratio is an insurer's actual claims paid plus loss adjustment expenses divided by total earned premiums.

<sup>27</sup> Incurred but not reported losses are estimated liabilities from losses that have taken place and not yet but reported to insurers as claims.

<sup>28</sup> The Florida Administrative Procedures Act is ch. 120, F.S.

Indeterminate.<sup>29</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

To the extent that the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

**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 with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>29</sup> An analysis HB 793 has been requested from OIR, but not yet received. It should contain information from OIR regarding the bill's impact on state expenditures.