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HB 793, Engrossed 1

2023 Legislature

1  
 2 An act relating to collateral protection insurance;  
 3 creating part XXII of ch. 627, F.S., entitled  
 4 "Collateral Protection Insurance"; creating s.  
 5 627.9901, F.S.; providing legislative purpose;  
 6 creating s. 627.9902, F.S.; providing applicability;  
 7 creating s. 627.9903, F.S.; defining terms; creating  
 8 s. 627.9904, F.S.; specifying requirements for  
 9 collateral protection insurance policy terms;  
 10 providing a restriction on insurance charges made to  
 11 mortgagors; creating s. 627.9905, F.S.; providing for  
 12 the calculation of collateral protection insurance  
 13 coverages and premiums; requiring certain excess  
 14 replacement cost coverage to be paid to the mortgagor;  
 15 prohibiting insurers from writing collateral  
 16 protection insurance having certain premium rates;  
 17 creating s. 627.9906, F.S.; specifying prohibited  
 18 practices by insurers and insurance agents relating to  
 19 collateral protection insurance; creating s. 627.9907,  
 20 F.S.; providing construction relating to  
 21 noncircumvention; creating s. 627.9908, F.S.;  
 22 providing requirements for the delivery and contents  
 23 of policies or certificates of collateral protection  
 24 insurance; creating s. 627.9909, F.S.; specifying  
 25 requirements for the filing of policy forms and rates;

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26 requiring certain insurers to file specified annual  
 27 reports with the Office of Insurance Regulation;  
 28 providing construction; creating s. 627.9911, F.S.;  
 29 specifying the office's authority to enforce the  
 30 provisions of the part; specifying applicable  
 31 provisions for proceedings and for assessing  
 32 penalties; creating s. 627.9912, F.S.; authorizing the  
 33 Financial Services Commission to adopt rules; creating  
 34 s. 627.9913, F.S.; providing severability; providing  
 35 an effective date.

36  
 37 Be It Enacted by the Legislature of the State of Florida:

38  
 39 Section 1. Part XXII of chapter 627, Florida Statutes,  
 40 consisting of ss. 627.9901-627.9913, Florida Statutes, is  
 41 created and entitled "Collateral Protection Insurance."

42 Section 2. Section 627.9901, Florida Statutes, is created  
 43 to read:

44 627.9901 Purpose.—The purpose of this part is to:

45 (1) Promote the public welfare by regulating collateral  
 46 protection insurance on real property.

47 (2) Create a legal framework within which collateral  
 48 protection insurance on real property may be written in this  
 49 state.

50 (3) Help maintain the separation between the lenders and

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51 servicers and the insurers and insurance agents.

52 (4) Minimize the possibility of unfair competitive  
 53 practices in the sale, placement, solicitation, and negotiation  
 54 of collateral protection insurance.

55 Section 3. Section 627.9902, Florida Statutes, is created  
 56 to read:

57 627.9902 Scope.—

58 (1) This part applies to insurers and insurance agents  
 59 engaged in any mortgage transaction involving collateral  
 60 protection insurance.

61 (2) All collateral protection insurance written in  
 62 connection with mortgaged real property, including manufactured  
 63 and mobile homes, is subject to the provisions of this part,  
 64 except:

65 (a) Insurance associated with mortgage loans or other  
 66 extensions of credit made primarily for business, commercial, or  
 67 agricultural purposes.

68 (b) Insurance offered by the lender or servicer and  
 69 elected by the mortgagor at the mortgagor's option.

70 (c) Insurance purchased by a lender or servicer on real  
 71 estate owned property.

72 (d) Insurance for which no specific charge is made to the  
 73 mortgagor or the mortgagor's account.

74 Section 4. Section 627.9903, Florida Statutes, is created  
 75 to read:

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76           627.9903 Definitions.—As used in this part, the term:  
 77           (1) "Affiliate" has the same meaning as in s. 624.10.  
 78           (2) "Collateral protection insurance" has the same meaning  
 79 as in s. 624.6085, provided that for purposes of this part, the  
 80 term applies only to mortgaged real property and not to personal  
 81 property.  
 82           (3) "Individual collateral protection insurance" means  
 83 coverage for individual real property evidenced by a certificate  
 84 of coverage under a master collateral protection insurance  
 85 policy or a collateral protection insurance policy for  
 86 individual real property.  
 87           (4) "Insurance agent" has the same meaning as the term  
 88 "agent" in s. 626.015.  
 89           (5) "Insurer" has the same meaning as in s. 624.03,  
 90 provided that for purposes of this part, the term is limited to  
 91 an insurer, or an affiliate of the insurer, authorized to issue  
 92 collateral protection insurance on mortgaged real property in  
 93 this state.  
 94           (6) "Investor" means a person or an entity, or an  
 95 affiliate thereof, holding a beneficial interest in loans  
 96 secured by real property.  
 97           (7) "Lapse" means the date on which a mortgagor has failed  
 98 to comply with a mortgage agreement's requirements to maintain  
 99 valid and sufficient insurance upon mortgaged real property.  
 100           (8) "Lender" means a person or an entity, or an affiliate

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101 thereof, making loans secured by an interest in real property.

102 (9) "Loss ratio" means the ratio of incurred losses to  
103 earned premium.

104 (10) "Master collateral protection insurance policy" means  
105 a group policy issued to a lender or servicer which provides  
106 coverage for all loans in the lender's or servicer's loan  
107 portfolio as needed.

108 (11) "Mortgage agreement" means the written document  
109 setting forth an obligation or a liability of any kind secured  
110 by a lien on real property and due from, owing by, or incurred  
111 by a mortgagor to a lender on account of a mortgage loan, which  
112 document includes the security agreement, the deed of trust,  
113 other documents of similar effect, and any other document  
114 incorporated by reference.

115 (12) "Mortgage loan" has the same meaning as in s.  
116 494.001 (25) (a) .

117 (13) "Mortgagee" means a person who holds mortgaged real  
118 property as security for repayment of a mortgage agreement.

119 (14) "Mortgagor" means a person who is obligated on a  
120 mortgage loan pursuant to a mortgage agreement.

121 (15) "Real estate owned property" means property owned or  
122 held by a lender or servicer as a result of a foreclosure under  
123 the related mortgage agreement or acceptance of a deed in lieu  
124 of foreclosure.

125 (16) "Replacement cost value" means the estimated cost to

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126 replace covered property at the time of loss or damage without  
 127 deduction for depreciation. Replacement cost value is not market  
 128 value but is the cost to replace covered property to its pre-  
 129 loss condition.

130 (17) "Servicer" means a person or an entity, or an  
 131 affiliate thereof, contractually obligated to service one or  
 132 more mortgage loans for a lender or an investor. The term  
 133 includes an entity involved in subservicing arrangements.

134 Section 5. Section 627.9904, Florida Statutes, is created  
 135 to read:

136 627.9904 Term of insurance policy.-

137 (1) Collateral protection insurance must become effective  
 138 no earlier than the date of lapse of insurance upon mortgaged  
 139 real property subject to the terms of a mortgage agreement or  
 140 any state or federal law requiring the same.

141 (2) Individual collateral protection insurance must  
 142 terminate on the earliest of the following dates:

143 (a) The date on which insurance acceptable under the  
 144 mortgage agreement becomes effective, subject to the mortgagor  
 145 providing sufficient evidence of such acceptable insurance.

146 (b) The date on which the applicable real property no  
 147 longer serves as collateral for a mortgage loan pursuant to a  
 148 mortgage agreement.

149 (c) Such other date as specified by the individual policy  
 150 or certificate of insurance.

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151 (d) Such other date as specified by the lender or  
 152 servicer.

153 (e) The termination date of the policy.

154 (3) An insurance charge may not be made to a mortgagor for  
 155 collateral protection insurance before the effective date of the  
 156 collateral protection insurance or for a term longer than the  
 157 scheduled term of the collateral protection insurance.

158 Section 6. Section 627.9905, Florida Statutes, is created  
 159 to read:

160 627.9905 Calculation of coverage and payment of premiums.—

161 (1) Any collateral protection insurance coverage, and the  
 162 subsequent calculation of premium, should be based upon the  
 163 replacement cost value of the property, which is determined as:

164 (a) If known to the lender or servicer, the last known  
 165 coverage amount, which is the dwelling coverage amount set forth  
 166 in the most recent evidence of insurance coverage provided by  
 167 the mortgagee. The insurer shall inquire of the insured at least  
 168 once as to the last known coverage amount. If the insurer is  
 169 unable to obtain the last known coverage amount from the insured  
 170 or in another manner, the insurer may proceed according to  
 171 paragraph (b) or paragraph (c), as applicable.

172 (b) If the last known coverage amount is unknown, the  
 173 replacement cost of the property serving as collateral, as  
 174 calculated by the insurer, unless the use of replacement cost  
 175 for this purpose is prohibited by other state or federal law.

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176 (c) If the last known coverage amount is unknown and the  
177 replacement cost is not available or its use is prohibited by  
178 other state or federal law, the unpaid principal balance of the  
179 mortgage loan.

180 (2) In the event of a covered loss, any replacement cost  
181 coverage provided by an insurer in excess of the unpaid  
182 principal balance of the mortgage loan must be paid to the  
183 mortgagor.

184 (3) An insurer may not write collateral protection  
185 insurance for which the premium rate differs from that  
186 determined by the schedules of the insurer on file with the  
187 office as of the effective date of any such policy.

188 Section 7. Section 627.9906, Florida Statutes, is created  
189 to read:

190 627.9906 Prohibited practices.-

191 (1) An insurer or insurance agent may not issue collateral  
192 protection insurance on mortgaged property that the insurer or  
193 insurance agent, or an affiliate thereof, owns, performs the  
194 servicing for, or owns the servicing right to.

195 (2) An insurer or insurance agent may not compensate,  
196 including through the payment of commissions to, a lender, an  
197 insurer, an investor, or a servicer on collateral protection  
198 property insurance policies issued by the insurer.

199 (3) An insurer or insurance agent may not share collateral  
200 protection insurance premium or risk with the lender, investor,



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201 or servicer that obtained the collateral protection insurance.

202 (4) An insurer or insurance agent may not offer contingent  
 203 commissions, profit sharing, or other payments dependent upon  
 204 profitability or loss ratios to any person affiliated with a  
 205 servicer or the insurer in connection with collateral protection  
 206 insurance.

207 (5) An insurer may not provide free or below-cost  
 208 outsourced services to lenders, investors, or servicers or  
 209 outsource its own functions to lenders, insurance agents,  
 210 investors, or servicers on an above-cost basis.

211 (6) An insurer or insurance agent may not make any  
 212 payments, including, but not limited to, the payment of expenses  
 213 to a lender, an insurer, an investor, or a servicer, for the  
 214 purpose of securing collateral protection insurance business or  
 215 related outsourced services.

216 Section 8. Section 627.9907, Florida Statutes, is created  
 217 to read:

218 627.9907 Noncircumvention.—This part may not be construed  
 219 to authorize an insurance agent or insurer solely underwriting  
 220 collateral protection insurance to circumvent the requirements  
 221 of this part. Any requirement, limitation, or exclusion provided  
 222 in this part applies to an insurer or insurance agent involved  
 223 in collateral protection insurance.

224 Section 9. Section 627.9908, Florida Statutes, is created  
 225 to read:

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226       627.9908 Evidence of coverage.—Collateral protection  
 227 insurance must be set forth in an individual policy or  
 228 certificate of insurance. A copy of the individual policy,  
 229 certificate of insurance, or other evidence of insurance  
 230 coverage must be mailed, first-class mailed, or delivered in  
 231 person to the last known address of the mortgagor, or delivered  
 232 in accordance with s. 668.50. Notwithstanding any other  
 233 information required by general law or by rule, the individual  
 234 policy or certificate of insurance coverage must include all of  
 235 the following information:

- 236           (1) The address and identification of the insured  
 237 property.
- 238           (2) The coverage amount, or amounts if multiple coverages  
 239 are provided.
- 240           (3) The effective date of the coverage.
- 241           (4) The term of coverage.
- 242           (5) The premium charge for the coverage.
- 243           (6) Contact information for filing a claim.
- 244           (7) A complete description of the coverage provided.

245       Section 10. Section 627.9909, Florida Statutes, is created  
 246 to read:

247       627.9909 Filing, approval, and withdrawal of forms and  
 248 rates.—

- 249           (1) Except as otherwise provided in this part, all policy  
 250 forms and certificates of insurance to be delivered or issued

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251 for delivery in this state are subject to the applicable  
252 provisions of s. 627.410, and the schedules of premium rates  
253 pertaining thereto are subject to the applicable provisions of  
254 s. 627.062.

255 (2) With respect to any analysis of rates in accordance  
256 with s. 627.062(1), the analysis must also include a  
257 determination as to whether expenses included by the insurer in  
258 the rate are appropriate.

259 (3) Notwithstanding s. 627.0645, insurers subject to this  
260 part shall refile collateral protection property insurance rates  
261 at least once every 4 years.

262 (4) All insurers writing collateral protection insurance  
263 shall have separate rates for collateral protection insurance  
264 and voluntary insurance obtained by a mortgage servicer on real  
265 estate owned property.

266 (5) Upon the introduction of a new collateral protection  
267 insurance program, the insurer shall reference its experience in  
268 existing programs in the associated filings. This part does not  
269 limit an insurer's discretion, as actuarially appropriate, to  
270 distinguish different terms, conditions, exclusions, eligibility  
271 criteria, or other unique or different characteristics.  
272 Moreover, an insurer may, where actuarially acceptable, rely  
273 upon models or, in the case of flood filings where applicable  
274 experience is not credible, on National Flood Insurance Program  
275 data.

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276 (6) By April 1 of each year, each insurer with at least  
277 \$100,000 in direct written premium for collateral protection  
278 insurance in this state during the prior calendar year shall  
279 report to the office the following information for the prior  
280 calendar year:

281 (a) Actual loss ratio.

282 (b) Earned premium.

283 (c) Any aggregate schedule rating debit or credit to  
284 earned premium.

285 (d) Itemized expenses.

286 (e) Paid losses.

287 (f) Loss reserves, including case reserves and reserves  
288 for incurred but not reported losses.

289  
290 The report must be separately produced for each collateral  
291 protection insurance program and presented on both an  
292 individual-jurisdiction and countrywide basis.

293 (7) Except in the case of collateral protection insurance  
294 covering the peril of flood, to which this subsection does not  
295 apply, if an insurer experiences an annual loss ratio of less  
296 than 35 percent in any collateral protection insurance program  
297 for 2 consecutive years, it must submit a rate filing, either  
298 adjusting its rates or supporting their continuance, to the  
299 office no more than 90 days after the submission of the data  
300 required in paragraph (6) (f).

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301 (8) Except as specifically set forth in this section, rate  
 302 and form filing requirements are subject to the Florida  
 303 Insurance Code.

304 Section 11. Section 627.9911, Florida Statutes, is created  
 305 to read:

306 627.9911 Enforcement; proceedings; penalties.—The office  
 307 has all rights and powers to enforce the provisions of this part  
 308 as provided by s. 624.307. All proceedings must be conducted in  
 309 accordance with chapter 120. Any penalty must be assessed in  
 310 accordance with s. 624.4211.

311 Section 12. Section 627.9912, Florida Statutes, is created  
 312 to read:

313 627.9912 Rulemaking.—The commission may adopt rules to  
 314 administer this part.

315 Section 13. Section 627.9913, Florida Statutes, is created  
 316 to read:

317 627.9913 Severability.—If any provision of this part or  
 318 its application to any person or circumstance is held invalid,  
 319 the invalidity does not affect other provisions or applications  
 320 of this part which can be given effect without the invalid  
 321 provision or application, and to this end the provisions of this  
 322 part are severable.

323 Section 14. This act shall take effect July 1, 2023.