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Testimony from:

Jerry Theodorou, Director of Finance, Insurance and Trade Policy, R Street Institute

**In SUPPORT of HB 1D, “An ACT relating to property insurance; creating s. 215.5551, F.S.; creating the Reinsurance to Assist Policyholders program to be administered by the State Board of Administration; defining terms; requiring certain property insurers to obtain coverage under the program; requiring the board to provide reimbursement to property insurers under the program; requiring the board and property insurers to enter into contracts to provide certain insurance reimbursement; providing requirements for the contracts; providing construction; providing calculations for specified amounts of losses to determine reimbursement under the program; authorizing the board to inspect, examine, and verify insurer records; providing insurer eligibility qualifications for the program; providing for disqualification; requiring certain insurers to notify the board under a specified circumstance; prohibiting premiums from being charged for participation in the program; providing that the program does not affect the claims-paying capacity of the Florida Hurricane Catastrophe Fund; requiring the program to pay reimbursements directly to the applicable state guaranty fund in the event of insolvency; specifying requirements for the Florida Hurricane Catastrophe Fund if an insurer or the Citizens Property Insurance Corporation accept assignments of unsound insurers; providing that certain violations are violations of the insurance code; authorizing the board to enforce certain requirements; authorizing the board to adopt rules; providing legislative intent; requiring the board to submit a written notice within a certain timeframe to the Executive Office of the Governor relating to the program funds, under certain circumstances; providing a requirement for the notice and subsequent requests; requiring the Executive Office of the Governor to instruct the Chief Financial Officer to draw a warrant for a transfer to the board for the program under certain circumstances and to provide notification to specified persons within a certain timeframe; prohibiting cumulative transfers from exceeding a specified amount; providing reporting requirements; providing for expiration and transfer of unencumbered funds; requiring certain property insurers to reduce rates to reflect certain cost savings through rate filings by a specified date; prohibiting such insurers from making other rate changes; requiring the Office of Insurance Regulation to expedite the review of certain filings; amending s. 215.5586, F.S.; adding a requirement for hurricane mitigation inspection applications; revising homeowner eligibility criteria for mitigation grants; specifying matching requirements for grants; revising reporting requirements; providing an appropriation; requiring the Department of Financial Services to submit budget amendments; specifying requirements for budget amendments; providing for reversion and appropriation of any unexpended balance; providing for expiration; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; creating s. 624.1551, F.S.; requiring claimants to establish that property insurers have breached the insurance contract to prevail in certain claims for damages; amending s. 624.307, F.S.; requiring the office to publish certain information on its website; amending s. 624.313, F.S.; requiring the office to**



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print and make a specified report available by a specified date annually; revising the information the office must include in such report; amending s. 624.315, F.S.; revising the information the office must include in certain reports; amending s. 624.424, F.S.; requiring the Office of Insurance Regulation to aggregate on a statewide basis and make publicly available certain data submitted by insurers and insurer groups; specifying requirements for publishing such data; providing that such information is not a trade secret and is not subject to a certain public records exemption; amending s. 626.9373, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.428, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.701, F.S.; revising a prohibition against the issuance of insurance policies containing certain deductible provisions; revising the conditions a personal lines residential property insurance policy covering certain risks must meet under certain circumstances; requiring personal lines residential property insurance policies containing separate roof deductibles to include specified information; authorizing property insurers to include separate roof deductibles if certain requirements are met; providing requirements for policyholders in rejecting such deductibles under certain circumstances; requiring the office to expedite the review of filing of certain forms; authorizing the commission to adopt certain model forms or guidelines; requiring the office to review certain filings within a specified timeframe; providing that roof deductible portions of the filing are not subject to a specified extension for review; amending s. 627.7011, F.S.; authorizing property insurers to limit certain roof claim payments under certain circumstances; defining the term "authorized inspector"; prohibiting insurers from refusing to issue or renew homeowners' policies insuring certain structures; requiring insurers to allow homeowners to have roof inspections performed before requiring roof replacement; providing applicability; amending s. 627.70131, F.S.; requiring insurers to conduct physical inspections for certain claims within a specified timeframe; requiring property insurers to notify and provide certain detailed estimates to policyholders; providing construction; requiring property insurers to provide reasonable explanations related to claims under certain circumstances; amending s. 627.70152, F.S.; making a technical change; authorizing property insurers to be awarded attorney fees in certain suit dismissals; providing that a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.7142, F.S.; conforming a cross-reference; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; deleting the definitions of the terms "disputed amount" and "judgment obtained"; revising a requirement for assignment agreements; revising the requirement for assignees to indemnify and hold harmless assignors; specifying a timeframe during which and the addresses to which



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a notice of intent must be served; deleting certain limitations on the recovery and award of attorney fees in suits related to assignment agreements; creating s. 627.7154, F.S.; creating an insurer stability unit within the office for a specified purpose; specifying the duties of the unit; requiring the unit to provide a specified report biannually; specifying requirements for such report; specifying events that trigger referrals to the unit; requiring the unit's supervisors to review such referrals for a certain determination; requiring unit expenses be paid from a specified fund; requiring costs of examinations to be paid by examined persons in a specified circumstance; amending s. 631.031, F.S.; requiring notifications by the office to the department of grounds for delinquency proceedings to include an affidavit; specifying contents of such affidavit; amending s. 631.398, F.S.; specifying duties of the department for insurer insolvency proceedings; providing for construction of the act in pari materia with laws enacted during the 2022 Regular Session of the Legislature; providing effective dates.”

May 25, 2022

Florida Senate Appropriations Committee

Chair Stargel and members of the committee:

Thank you for the opportunity to testify on the Florida property insurance market. My name is Jerry Theodorou, and I am the director of the Finance, Insurance and Trade program at the R Street Institute (R Street), a public policy organization. At R Street, and before, as a property and insurance industry analyst at Conning, an asset management and research firm, my focus is analyzing the conditions of U.S. insurance markets, and the drivers of insurers’ results—market forces and external factors. The main tools I use to study financial performance of insurance products and markets on a national and state-level basis are the rich financial data sets insurers are required to submit periodically to state insurance departments, which are fed to the National Association of Insurance Commissioners.<sup>1</sup>

I will share some data on Florida homeowners insurance and show how Florida stands out from the nation, and from other states.

Florida homeowners insurance is a money-loser for insurance companies. Two key financial performance indicators for insurers are the loss ratio, which is the amount of losses incurred from claims divided by premiums received, and the combined ratio, which is the sum of losses and expenses divided by

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<sup>1</sup> “Data Products,” National Association of Insurance Commissioners, last accessed May 24, 2022.  
[https://content.naic.org/prod\\_serv\\_financial\\_home.htm](https://content.naic.org/prod_serv_financial_home.htm).



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premiums received. In 2021, the combined ratio for homeowners insurance nationwide was 103.3 percent, which means that for every dollar of premium, insurers paid out a dollar and three cents.<sup>2</sup>

Insurers can operate by losing three cents on the dollar because investment income kicks in about 800 basis points of benefit, so the bottom line operating margin in the insurance industry is about five percent.<sup>3</sup>

That is the national picture. Florida is different. In 2021, the combined ratio for Florida homeowners insurance was 120 percent.<sup>4</sup> Florida homeowners insurers have small investment portfolios that only generate about 100 or 200 basis points of investment income, which is insufficient to offset the underwriting loss.<sup>5</sup> For this reason, many insurers operating in Florida are leaving the state, reducing their Florida footprint, not entertaining new business or not renewing business, in order to avoid insolvency. To be sure, several Florida homeowners insurers—five in the past two years—have entered insolvency.<sup>6</sup> Property and casualty insurance insolvencies are very rare, with only about 0.3 percent of insurers becoming insolvent in a year.<sup>7</sup> Florida homeowners insurers, by contrast, fail at an uncharacteristically high rate. Of the 80 Florida-only homeowners insurers that were established since Hurricane Andrew, 22 have failed.<sup>8</sup> This is a remarkably high fatality rate.

Some maintain Florida homeowners insurance is unprofitable because it is hurricane-exposed. Yet, other states are catastrophe-exposed as well. For example, in 2021, South Carolina's homeowners market had 20 points better performance than Florida, North Carolina 11 percentage points, and California, with its wildfire losses, had 17 percentage points better than Florida.<sup>9</sup> It should be remembered that there has

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<sup>2</sup> S&P Market Intelligence/Capital IQ as of May 24, 2022.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Jerry Theodorou, "Florida's Failing Insurers – Who's Next?", *Insurance Journal*, May 12, 2022.

<https://www.insurancejournal.com/blogs/right-street/2022/05/12/667368.htm>.

<sup>7</sup> AM Best Information Services, "Best's Special Report: Best's Impairment Rate and Rating Transition Study – 1977 to 2020," Press Release, May 4, 2021. <https://news.ambest.com/presscontent.aspx?refnum=30655&altsrc=9>.

<sup>8</sup> Luke Gallin, "Florida's 'artificial' insurance structure is 'untenable' – ALIRT," *Reinsurance News*, May 18, 2022.

<https://www.reinsurancene.ws/floridas-artificial-insurance-structure-is-untenable-alirt>.

<sup>9</sup> S&P Market Intelligence/Capital IQ as of May 24, 2022.



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not been a landfalling Florida hurricane since Michael in 2018, so Florida market ills cannot be attributed to catastrophes.<sup>10</sup>

Another important number where Florida is an extreme outlier is the insurance costs for legal defense. Nationally, this expense line accounts for 1.2 percent of premium.<sup>11</sup> Not so in Florida, where it is 6.2 percent of premium.<sup>12</sup> In 2021, Florida insurer legal defense costs amounted to \$815 million, which is shockingly large in a homeowners insurance market for the state measuring \$11 billion in premium.<sup>13</sup>

The elevated defense costs number is a key to identifying the root cause of Florida's problems, and understanding that the dysfunctional Florida homeowners insurance market is not an insurance crisis, but rather a litigation crisis portrayed as an insurance problem. In 2021, Florida insurers were served with 100,595 homeowners insurance lawsuits.<sup>14</sup> The rest of the country, all 49 states plus D.C., had an aggregate 24,700 such lawsuits. A Florida Senate & Banking Committee report found that only 8 percent of the litigated claims amount went to policyholders; 71 percent went to plaintiff attorneys and 21 percent went to defense attorneys.<sup>15</sup>

I support HB 1D mainly because it takes aim at the root cause of the crisis, excessive litigation.

Thank you for your opportunity to present this testimony. I look forward to your questions.

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<sup>10</sup> FSU Emergency Management, "Tropical Storms & Hurricanes: History at FSU," Florida State University, last accessed May 24, 2022.

<https://emergency.fsu.edu/resources/hazards/tropical-storms-hurricanes/tropical-storms-hurricanes-history-fsu>.

<sup>11</sup> S&P Market Intelligence/Capital IQ as of May 24, 2022.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Tom Jacobs, "Lack of new legislative reforms adds to troubles in Fla. homeowners market," S&P Global Market Intelligence, April 8, 2022.

<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/lack-of-new-legislative-reforms-adds-to-troubles-in-fla-homeowners-market-69698261>.

<sup>15</sup> Amy O'Connor, "Florida's Property Insurance Market Is 'Spiraling Towards Collapse' Due to Litigation: Report," *Insurance Journal*, Jan. 20, 2021. <https://www.insurancejournal.com/news/southeast/2021/01/20/598034.htm>.



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