

**CS/SB 338** by **RI, Altman**; (Similar to CS/CS/H 0217) Engineers

**CS/SB 612** by **RI, Brandes**; (Similar to H 0673) Cosmetic Product Registration

**SB 618** by **Grimsley**; (Similar to CS/H 0813) Secondary Metals Recyclers

305438 A S RCS AGG, Simpson Delete L.86 - 584: 04/02 12:32 PM

**CS/SB 680** by **EP, Dean**; (Similar to CS/H 7021) Fish and Wildlife Conservation Commission

648972 A S L RCS AGG, Dean Delete L.596 - 609: 04/02 12:32 PM

**SB 718** by **Lee**; (Similar to CS/CS/CS/1ST ENG/H 0435) Administrative Procedures

**CS/SB 726** by **CM, Ring**; (Similar to H 0793) Consumer Protection

**CS/SB 798** by **CM, Lee**; (Similar to CS/CS/H 0765) Household Moving Services

949376 A S RS AGG, Lee Delete L.82 - 456: 04/08 04:37 PM  
419526 SA S RCS AGG, Lee Delete L.82 - 567: 04/08 04:37 PM

**CS/SB 836** by **BI, Latvala**; (Identical to CS/CS/H 0557) Florida Insurance Guaranty Association

**SB 876** by **Dean**; (Compare to CS/CS/H 0801) Beirut Memorial

916652 D S L RCS AGG, Dean Delete everything after 04/02 12:32 PM

**CS/SB 1134** by **BI, Hays**; (Similar to CS/CS/H 0893) Blanket Health Insurance

296964 A S RCS AGG, Hays Delete L.36 - 96: 04/02 12:32 PM

**CS/SB 1136** by **BI, Hukill**; (Identical to CS/1ST ENG/H 0927) Title Insurance

**SB 1148** by **Stargel**; (Similar to CS/CS/H 1025) Firesafety

941126 A S L RCS AGG, Simpson Delete L.36 - 76: 04/02 12:32 PM

**CS/SB 1190** by **BI, Lee**; (Similar to H 1085) Insurer Solvency

**CS/SB 1222** by **BI, Richter**; (Similar to CS/CS/H 1133) Division of Insurance Agent and Agency Services

491438 A S RCS AGG, Simpson btw L.542 - 543: 04/02 12:32 PM  
350260 A S RCS AGG, Simpson Delete L.682 - 700: 04/02 12:32 PM

**CS/SB 1304** by **GO, Latvala**; (Similar to CS/CS/CS/H 0371) Inspectors General

803784 A S RCS AGG, Dean Delete L.31: 04/02 12:32 PM  
880540 A S RCS AGG, Dean Delete L.174 - 294: 04/02 12:32 PM

**CS/SB 1444** by **CM, Richter**; (Similar to CS/CS/CS/H 0995) Consumer Licensing

776594 A S RCS AGG, Simpson btw L.142 - 143: 04/02 12:32 PM  
751524 A S WD AGG, Simpson btw L.579 - 580: 04/02 12:32 PM  
854928 A S WD AGG, Simpson btw L.917 - 918: 04/02 12:32 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON GENERAL**  
**GOVERNMENT**  
**Senator Hays, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Thursday, April 2, 2015  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 338</b> Regulated Industries / Altman (Similar CS/CS/H 217)	Engineers; Prohibiting a person who is not licensed as an engineer or a structural engineer from using specified names and titles or practicing engineering or structural engineering; exempting certain persons from the licensing requirements; providing licensure and application requirements for a structural engineer license; providing various acts which constitute grounds for disciplinary action against a structural engineer, to which penalties apply, etc.  RI 03/11/2015 Fav/CS AGG 04/02/2015 Favorable FP	Favorable Yeas 6 Nays 0
2	<b>CS/SB 612</b> Regulated Industries / Brandes (Similar H 673)	Cosmetic Product Registration; Removing the requirement that a person who manufactures, packages, repackages, labels, or relabels a cosmetic in this state must register such cosmetic biennially with the Department of Business and Professional Regulation, etc.  RI 03/04/2015 Fav/CS AGG 04/02/2015 Favorable AP	Favorable Yeas 6 Nays 0
3	<b>SB 618</b> Grimsley (Similar CS/H 813)	Secondary Metals Recyclers; Transferring administration of part II of chapter 538, F.S., relating to secondary metals recyclers, from the Department of Revenue to the Department of Agriculture and Consumer Services; authorizing specified persons to inspect regulated metals property and records; prohibiting secondary metals recyclers from purchasing regulated metals property, restricted regulated metals property, or ferrous metals between certain hours or on Sundays; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller's ownership of, or authority to sell, the regulated metals property, etc.  CM 03/02/2015 Favorable AGG 04/02/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Thursday, April 2, 2015, 9:00 — 11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 680</b> Environmental Preservation and Conservation / Dean (Similar CS/H 7021, Compare H 241)	Fish and Wildlife Conservation Commission; Requiring personal flotation devices to be used in accordance with the United States Coast Guard approval labels; revising the dates for tarpon tag validity; removing the income requirement for a restricted species endorsement on a saltwater products license; deleting the requirement that the number of tags pursuant to a collection permit be equal to a safe yield of alligators; establishing penalties for the unlawful feeding of wildlife and freshwater fish, etc.  EP 03/18/2015 Fav/CS AGG 04/02/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
5	<b>SB 718</b> Lee (Similar CS/CS/H 435)	Administrative Procedures; Providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; requiring agencies to set a time for workshops for certain unadopted rules; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge, etc.  JU 03/17/2015 JU 03/24/2015 Favorable AGG 04/02/2015 Not Considered AP	Not Considered
6	<b>CS/SB 726</b> Commerce and Tourism / Ring (Similar H 793)	Consumer Protection; Requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements, etc.  CM 03/10/2015 Fav/CS AGG 04/02/2015 Favorable FP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Thursday, April 2, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>CS/SB 798</b> Commerce and Tourism / Lee (Compare H 765)	Household Moving Services; Removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper, etc.  CM 03/23/2015 Fav/CS AGG 04/02/2015 Not Considered AP	Not Considered
8	<b>CS/SB 836</b> Banking and Insurance / Latvala (Identical CS/CS/H 557)	Florida Insurance Guaranty Association; Revising provisions relating to the levy of assessments on insurers by the Florida Insurance Guaranty Association; requiring charges or recoupments to be displayed separately on premium statements to policyholders and prohibiting their inclusion in rates, etc.  BI 03/10/2015 Fav/CS AGG 04/02/2015 Favorable AP	Favorable Yeas 6 Nays 0
9	<b>SB 876</b> Dean (Compare CS/H 801)	Beirut Memorial; Requiring the Department of Management Services to establish a Beirut Memorial, subject to legislative appropriation; requiring the Department of Management Services to coordinate with the Division of Historical Resources regarding design and placement of the memorial, etc.  MS 03/04/2015 Favorable AGG 04/02/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
10	<b>CS/SB 1134</b> Banking and Insurance / Hays (Similar CS/CS/H 893)	Blanket Health Insurance; Expanding the types of individuals and entities which are eligible for blanket health insurance coverage, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Thursday, April 2, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>CS/SB 1136</b> Banking and Insurance / Hukill (Similar CS/H 927)	Title Insurance; Revising procedures and requirements relating to the recovery of assessments from title insurers through surcharges assessed on policies; revising provisions relating to surcharges collected in excess of the assessments paid by title insurers; revising requirements for the payment of excess surcharges to the Insurance Regulatory Trust Fund; authorizing the Financial Services Commission and the Department of Financial Services to adopt rules for certain purposes, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Favorable AP	Favorable Yeas 5 Nays 0
12	<b>SB 1148</b> Stargel (Similar CS/H 1025)	Firesafety; Exempting nonresidential farm buildings, rather than specified structures located on agricultural property, from the Florida Fire Prevention Code under specified circumstances; requiring the State Fire Marshal to conduct a study addressing certain secondary uses of nonresidential farm buildings; authorizing a local fire official to consider a specified publication when identifying an alternative to a firesafety code, etc.  BI 03/17/2015 Favorable AGG 04/02/2015 Fav/CS AP	Fav/CS Yeas 5 Nays 0
13	<b>CS/SB 1190</b> Banking and Insurance / Lee (Similar H 1085, Compare H 635)	Insurer Solvency; Revising the amount of surplus which must be possessed by insurers applying for an original certificate of authority and to retain a certificate of authority; providing that a health maintenance organization is considered an insurer for purposes of specified provisions of law relating to insolvent insurers, requirements for the directors of domestic insurers, the payment of dividends and distributions of other property by domestic stock insurers, penalties for domestic and mutual stock insurers that illegally pay dividends, and certain restrictions on premiums written, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Not Considered FP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Thursday, April 2, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	<b>CS/SB 1222</b> Banking and Insurance / Richter (Similar CS/CS/H 1133)	Division of Insurance Agent and Agency Services; Revising examination requirements and exemptions for applicants for certain agent and adjuster licenses; requiring an insurance agent to provide and retain certain information upon surrender of an annuity or life insurance policy under certain circumstances; authorizing certain notices of insolvency to be delivered to policyholders by certain methods, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
15	<b>CS/SB 1304</b> Governmental Oversight and Accountability / Latvala (Similar CS/CS/H 371)	Inspectors General; Authorizing the Chief Inspector General or his or her designee to retain legal counsel and issue and enforce subpoenas under certain circumstances; revising the definitions of the terms "agency head" and "state agency" to include the State Board of Administration and the Office of Early Learning of the Department of Education; prescribing additional hiring requirements, employment qualifications, and terms of employment for inspectors general and staff of the office of inspector general, etc.  GO 03/23/2015 Fav/CS AGG 04/02/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
16	<b>CS/SB 1444</b> Commerce and Tourism / Richter (Similar CS/CS/H 995, Compare CS/H 997, Link CS/CS/S 1446)	Consumer Licensing; Requiring that the initial license application for private investigative, private security, and repossession services include payment of fingerprint processing and fingerprint retention fees; directing the Department of Law Enforcement to retain fingerprints submitted for private investigative, private security, and repossession service licenses, to enter such fingerprints into the statewide automated biometric identification system and the national retained print arrest notification program, and to report any arrest record information to the Department of Agriculture and Consumer Services; requiring notice of the suspension or revocation of a concealed weapon or firearm license or the suspension of the processing of an application for such license to be given by personal delivery, first- class mail, or e-mail; authorizing certain tax collector offices, upon approval and confirmation of license issuance by the Department of Agriculture and Consumer Services, to print and deliver concealed weapon or firearm licenses, etc.  CM 03/16/2015 Fav/CS AGG 04/02/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on General Government  
Thursday, April 2, 2015, 9:00 —11:00 a.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

---

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 338

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Engineers

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 338 amends existing law regulating engineers to specifically address the practice of structural engineering. Structural engineering, which is the analysis and design of threshold buildings and other structures of a certain height, size, or occupancy, is currently regulated as an aspect of engineering. The bill provides additional, more detailed regulation as significant injuries and loss of life occur when a structure fails or collapses due to the size and capacity of those structures.

The bill has a minimal fiscal impact on state funds.

The bill has an effective date of July 1, 2015.

**II. Present Situation:**

Regulation of the practice of engineering was reviewed and reenacted by the Legislature in 1979.<sup>1</sup> Professional engineers are regulated by the Board of Professional Engineers (FBPE) within the Department of Business and Professional Regulation (department) which enforces and administers the provisions of ch. 471, F.S. The Florida Engineers Management Corporation (FEMC) provides administrative, investigative, and prosecutorial services to the FBPE pursuant to ch. 455, F.S., and ch. 471, F.S.<sup>2</sup> The contract between the department and the FEMC for

---

<sup>1</sup> See ch. 471, F.S., and ch. 79-243, L.O.F.

<sup>2</sup> See s. 471.038, F.S.



beginning July 1, 2013, through June 30, 2017, provides that the FEMC's services apply to all licensees under the jurisdiction of the FBPE.<sup>3</sup>

Section 471.015, F.S., requires applicants have certain qualifications in order to become licensed as an engineer, including passing a fundamentals examination and a principles and practice examination, having good moral character, obtaining a degree from a four year engineering curriculum at a school, college or university approved by the FBPE, and having four years of engineering experience.

According to industry representatives, there is a need to specifically license the practice of structural engineering as a separate component of engineering. The Florida Structural Engineers Association supports the creation of an additional license requirement for structural engineers in the state due to the increasingly technical nature of the work, and decreasing redundancies and safety measures in project design resulting from the effort to reduce construction costs.<sup>4</sup> In the event of failure of a threshold building, its mere size and capacity create a significant potential for injuries and loss of human life.<sup>5</sup>

### III. Effect of Proposed Changes:

The bill defines "structural engineering" as service or creative work that includes analysis and design of threshold structures.<sup>6</sup> The term includes services and work defined as "engineering."<sup>7</sup>

Beginning March 1, 2019, no person other than a licensed structural engineer may practice structural engineering or use the title of structural engineer, or variations prefaced by the terms "licensed," "professional," "registered," or any other term indicating that a person is actively licensed as a structural engineer. Similar to licensed engineers, structural engineers are required to pay fees, be of good moral character, and meet requirements for continuing education and the use of seals.

The requirements for licensure are set forth in **Section 5** of the bill. Section 471.015, F.S., is amended to direct the Florida Engineers Management Corporation to issue a structural engineer

---

<sup>3</sup> See <http://www.fbpe.org/index.php/2014-12-08-17-12-31/corporate-contract/send/51-corporate-contracts/165-contract-2012-2013-dbpr-femc> (last visited Mar. 9, 2015).

<sup>4</sup> See <http://www.flsea.com/Structural-Engineering-Licensure> (last visited Mar. 9, 2015).

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

<sup>6</sup> The committee substitute references "threshold buildings" in lieu of "significant buildings" for which structural analysis and design must be performed by a licensed structural engineer beginning March 1, 2019. A threshold building is defined in s. 553.71, F.S., as one that is greater than three stories or 50 feet in height, or has occupancy measurements exceeding 5,000 square feet or 500 persons.

<sup>7</sup> Section 471.005(7), F.S., provides the following definition of "engineering:" any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

license to applicants certified by the Florida Board of Engineers, who must:

- Be licensed as an engineer or be qualified for licensure as an engineer in Florida;
- Submit an application with the required fee;
- Provide evidence of good moral character as defined by the FBPE;<sup>8</sup>
- Provides a record of four years of active structural engineering experience, as defined by the FBPE board, under the supervision of a licensed engineer; and
- Pass the structural examination offered by the National Council of Examiners for Engineering and Surveying.

To allow for licensure as a structural engineer, the bill provides a “grandfather” provision or an exception to the examination requirement to those applicants who, before February 28, 2019, are licensed as an engineer or qualified to be licensed as an engineer in Florida, have submitted an application with the required fee and are of good moral character as determined by the FBPE. The applicant must also submit a signed affidavit in the format prescribed by the FBPE indicating the applicant is currently a licensed engineer in the state and has been engaged in the practice of structural engineering with a record of at least four years of active structural engineering experience. The bill requires the applicant to attest that they are willing to meet with the FBPE or its representative, upon request, for the purpose of evaluating the applicant’s qualifications for licensure as a structural engineer.

The bill allows for simultaneous application for both an engineer license and a structural engineer license. An applicant who is qualified for licensure as an engineer under the chapter’s licensing and qualifications provisions may simultaneously apply for licensure as a structural engineer if all requirements of s. 471.013, F.S., and s. 471.015(3), F.S., are met.

The bill includes structural engineering in the provisions that provide for licensure of applicants currently licensed as structural engineers in other states.

The bill amends s. 471.031(1), F.S., to prohibit the practice of structural engineering by any person beginning March 1, 2019, unless the person is licensed as a structural engineer, or exempt from licensure. With respect to exemption from licensure as a structural engineer, the bill amends s. 471.031(1)(b)2., F.S. First, it adds additional terms to the listing of terms that may not be used by persons legally exempt from licensure as an engineer in Florida, such as certain defense, space, or aerospace employees.<sup>9</sup> In addition to terms already prohibited to be used by exempt persons, the terms “licensed engineer,” “licensed professional engineer,” “licensed structural engineer,” “professional structural engineer,” “registered structural engineer,” and “structural engineer” may not be used by those exempted from licensure as engineers under Florida law. Second, those terms may also not be used by those persons exempted from licensure who work for a manufacturer on a full-time basis on the design or fabrication of products, or are employees working in a company under the supervision of a licensed person.<sup>10</sup>

---

<sup>8</sup> Section 471.005(1), F.S., provides that a reference to “board” means the Board of Professional Engineers, as contrasted with the term “board of directors,” which is defined in s. 471.005(2), F.S., as the board of directors of the Florida Engineers Management Corporation (FEMC).

<sup>9</sup> See s. 471.003(2)(j), F.S.

<sup>10</sup> See s. 471.003(2)(c) and (e), F.S.

The bill also provides that licensed structural engineers are subject to the same disciplinary proceedings and consequences that exist for engineers in current law. It includes the services of structural engineers to those services subject to local building codes, zoning codes, or ordinances, which are more restrictive than the provisions of ch. 471, F.S.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

As provided in s. 471.011, F.S., CS/SB 338 authorizes the FBPE to establish fees relating to the licensure of structural engineers for applications, licensing and renewals, temporary registrations, late renewals, licensure by endorsement, reactivation fees, and replacement of certificate.

B. Private Sector Impact:

According to the FEMC, which provides administrative, investigative, and prosecutorial services to the FBPE pursuant to ch. 455, F.S., and ch. 471, F.S., the bill will restrict the performance of structural engineering to those licensed professional engineers who obtain licenses to perform structural engineering. In addition, the bill provides for a “grandfather” period through February 28, 2019, to allow licensed engineers to qualify for licensure as a structural engineer, if desired.

C. Government Sector Impact:

The new structural engineer license classification and fee require minimal information system program changes to the department’s information technology system. The department and the FEMC indicate the additional programming costs can be handled within existing resources.<sup>11</sup>

---

<sup>11</sup> Department of Business and Professional Regulation, 2015 Agency Legislative Bill Analysis: SB 338 (March 9, 2015).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 471.003, 471.005, 471.011, 471.013, 471.015, 471.019, 471.025, 471.031, 471.033, and 471.037.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 11, 2015:**

CS/SB 338 mandates that beginning March 1, 2019, no person other than a licensed structural engineer shall practice structural engineering or use the title of structural engineer, or variations prefaced by the terms “licensed,” “professional,” “registered,” or any other term indicating that a person is actively licensed as a structural engineer.

The committee substitute references “threshold buildings,” which are greater than three stories or 50 feet in height, or have occupancy measurements exceeding 5,000 square feet or 500 persons, for which structural analysis and design must be performed by a licensed structural engineer beginning March 1, 2019.

The committee substitute provides that structural engineering education, training, experience and examination will be defined by the Board of Professional Engineers. It provides for fees, licensure by endorsement, use of seals, licensure beginning March 1, 2019, discipline, and applicability of local ordinances to licensed structural engineers. The committee substitute allows certain applicants for licensure as structural engineers prior to February 28, 2019 to be licensed based on their prior experience and evaluation by the Board of Professional Engineers or its designee.

**B. Amendments:**

None.

By the Committee on Regulated Industries; and Senator Altman

580-02173-15

2015338c1

1 A bill to be entitled  
 2 An act relating to engineers; amending s. 471.003,  
 3 F.S.; prohibiting a person who is not licensed as an  
 4 engineer or a structural engineer from using specified  
 5 names and titles or practicing engineering or  
 6 structural engineering; exempting certain persons from  
 7 the licensing requirements; amending s. 471.005, F.S.;  
 8 providing definitions; amending s. 471.011, F.S.;  
 9 establishing various fees for the examination and  
 10 licensure of structural engineers; amending s.  
 11 471.013, F.S.; revising provisions authorizing the  
 12 Board of Professional Engineers to refuse to certify  
 13 an applicant due to lack of good moral character to  
 14 include structural engineer licensure applicants, to  
 15 conform; amending s. 471.015, F.S.; providing  
 16 licensure and application requirements for a  
 17 structural engineer license; exempting under certain  
 18 conditions a structural engineer who applies for  
 19 licensure before a specified date from passage of a  
 20 certain national examination; requiring the board to  
 21 certify certain applicants for licensure by  
 22 endorsement; amending ss. 471.019 and 471.025, F.S.;  
 23 revising continuing education requirements for  
 24 reactivation of a license and provisions requiring an  
 25 engineer with a revoked or suspended license to  
 26 surrender his or her seal, respectively, to include  
 27 structural engineers, to conform; amending s. 471.031,  
 28 F.S.; prohibiting specified persons from using  
 29 specified names and titles; amending s. 471.033, F.S.;

Page 1 of 12

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

30 providing various acts which constitute grounds for  
 31 disciplinary action against a structural engineer, to  
 32 which penalties apply; amending s. 471.037, F.S.;  
 33 revising applicability, to conform to changes made by  
 34 the act; providing an effective date.  
 35  
 36 Be It Enacted by the Legislature of the State of Florida:  
 37  
 38 Section 1. Subsection (1) and paragraphs (f) and (i) of  
 39 subsection (2) of section 471.003, Florida Statutes, are amended  
 40 to read:  
 41 471.003 Qualifications for practice; exemptions.-  
 42 (1) (a) No person other than a duly licensed engineer shall  
 43 practice engineering or use the name or title of "licensed  
 44 engineer," "professional engineer," "registered engineer," or  
 45 any other title, designation, words, letters, abbreviations, or  
 46 device tending to indicate that such person holds an active  
 47 license as an engineer in this state.  
 48 (b) Beginning March 1, 2019, no person other than a duly  
 49 licensed structural engineer shall practice structural  
 50 engineering or use the name or title of "licensed structural  
 51 engineer," "professional structural engineer," "registered  
 52 structural engineer," "structural engineer," or any other title,  
 53 designation, words, letters, abbreviations, or device tending to  
 54 indicate that such person holds an active license as a  
 55 structural engineer in this state.  
 56 (2) The following persons are not required to be licensed  
 57 under the provisions of this chapter as a licensed engineer or  
 58 structural engineer:

Page 2 of 12

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

59 (a) Any person practicing engineering for the improvement  
60 of, or otherwise affecting, property legally owned by her or  
61 him, unless such practice involves a public utility or the  
62 public health, safety, or welfare or the safety or health of  
63 employees. This paragraph shall not be construed as authorizing  
64 the practice of engineering through an agent or employee who is  
65 not duly licensed under the provisions of this chapter.

66 (b)1. A person acting as a public officer employed by any  
67 state, county, municipal, or other governmental unit of this  
68 state when working on any project the total estimated cost of  
69 which is \$10,000 or less.

70 2. Persons who are employees of any state, county,  
71 municipal, or other governmental unit of this state and who are  
72 the subordinates of a person in responsible charge licensed  
73 under this chapter, to the extent that the supervision meets  
74 standards adopted by rule of the board.

75 (c) Regular full-time employees of a corporation not  
76 engaged in the practice of engineering as such, whose practice  
77 of engineering for such corporation is limited to the design or  
78 fabrication of manufactured products and servicing of such  
79 products.

80 (d) Regular full-time employees of a public utility or  
81 other entity subject to regulation by the Florida Public Service  
82 Commission, Federal Energy Regulatory Commission, or Federal  
83 Communications Commission.

84 (e) Employees of a firm, corporation, or partnership who  
85 are the subordinates of a person in responsible charge, licensed  
86 under this chapter.

87 (f) Any person as contractor in the execution of work

Page 3 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

88 designed by a professional engineer or structural engineer or in  
89 the supervision of the construction of work as a foreman or  
90 superintendent.

91 (g) A licensed surveyor and mapper who takes, or contracts  
92 for, professional engineering services incidental to her or his  
93 practice of surveying and mapping and who delegates such  
94 engineering services to a licensed professional engineer  
95 qualified within her or his firm or contracts for such  
96 professional engineering services to be performed by others who  
97 are licensed professional engineers under the provisions of this  
98 chapter.

99 (h) Any electrical, plumbing, air-conditioning, or  
100 mechanical contractor whose practice includes the design and  
101 fabrication of electrical, plumbing, air-conditioning, or  
102 mechanical systems, respectively, which she or he installs by  
103 virtue of a license issued under chapter 489, under part I of  
104 chapter 553, or under any special act or ordinance when working  
105 on any construction project which:

106 1. Requires an electrical or plumbing or air-conditioning  
107 and refrigeration system with a value of \$125,000 or less; and

108 2.a. Requires an aggregate service capacity of 600 amperes  
109 (240 volts) or less on a residential electrical system or 800  
110 amperes (240 volts) or less on a commercial or industrial  
111 electrical system;

112 b. Requires a plumbing system with fewer than 250 fixture  
113 units; or

114 c. Requires a heating, ventilation, and air-conditioning  
115 system not to exceed a 15-ton-per-system capacity, or if the  
116 project is designed to accommodate 100 or fewer persons.

Page 4 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

117 (i) Any general contractor, certified or registered  
 118 pursuant to the provisions of chapter 489, when negotiating or  
 119 performing services under a design-build contract as long as the  
 120 engineering services offered or rendered in connection with the  
 121 contract are offered and rendered by an engineer or structural  
 122 engineer licensed in accordance with this chapter.

123 (j) Any defense, space, or aerospace company, whether a  
 124 sole proprietorship, firm, limited liability company,  
 125 partnership, joint venture, joint stock association,  
 126 corporation, or other business entity, subsidiary, or affiliate,  
 127 or any employee, contract worker, subcontractor, or independent  
 128 contractor of the defense, space, or aerospace company who  
 129 provides engineering for aircraft, space launch vehicles, launch  
 130 services, satellites, satellite services, or other defense,  
 131 space, or aerospace-related product or services, or components  
 132 thereof.

133 Section 2. Subsections (14) and (15) are added to section  
 134 471.005, Florida Statutes, to read:

135 471.005 Definitions.—As used in this chapter, the term:

136 (14) "Licensed structural engineer," "professional  
 137 structural engineer," "registered structural engineer," or  
 138 "structural engineer" means a person who is licensed to engage  
 139 in the practice of structural engineering under this chapter.

140 (15) "Structural engineering" means an engineering service  
 141 or creative work that includes the structural analysis and  
 142 design of structural components or systems for threshold  
 143 buildings as defined in s. 553.71. The term includes  
 144 engineering, as defined in subsection (7), that requires  
 145 significant structural engineering education, training,

580-02173-15

2015338c1

146 experience, and examination, as defined by the board.

147 Section 3. Subsections (1) and (6) of section 471.011,  
 148 Florida Statutes, are amended to read:

149 471.011 Fees.—

150 (1) The board by rule may establish fees to be paid for  
 151 applications, examination, reexamination, licensing and renewal,  
 152 inactive status application and reactivation of inactive  
 153 licenses, and recordmaking and recordkeeping. The board may also  
 154 establish by rule a delinquency fee. The board shall establish  
 155 fees that are adequate to ensure the continued operation of the  
 156 board. Fees shall be based on department estimates of the  
 157 revenue required to implement this chapter and the provisions of  
 158 law with respect to the regulation of engineers and structural  
 159 engineers.

160 (6) The fee for a temporary registration or certificate to  
 161 practice engineering or structural engineering shall not exceed  
 162 \$25 for an individual or \$50 for a business firm.

163 Section 4. Paragraph (a) of subsection (2) of section  
 164 471.013, Florida Statutes, is amended to read:

165 471.013 Examinations; prerequisites.—

166 (2) (a) The board may refuse to certify an applicant for  
 167 failure to satisfy the requirement of good moral character only  
 168 if:

169 1. There is a substantial connection between the lack of  
 170 good moral character of the applicant and the professional  
 171 responsibilities of a licensed engineer or structural engineer;  
 172 and

173 2. The finding by the board of lack of good moral character  
 174 is supported by clear and convincing evidence.

580-02173-15

2015338c1

175 Section 5. Subsections (3) through (7) of section 471.015,  
 176 Florida Statutes, are redesignated as subsections (4) through  
 177 (8), respectively, present subsection (3) is amended, and a new  
 178 subsection (3) is added to that section, to read:

179 471.015 Licensure.—

180 (3) (a) The management corporation shall issue a structural  
 181 engineer license to any applicant who the board certifies as  
 182 qualified to practice structural engineering and who:

183 1. Is licensed under this chapter as an engineer or is  
 184 qualified for licensure as an engineer.

185 2. Submits an application in the format prescribed by the  
 186 board.

187 3. Pays a fee established by the board under s. 471.011.

188 4. Provides satisfactory evidence of good moral character,  
 189 as defined by the board.

190 5. Provides a record of 4 years of active structural  
 191 engineering experience, as defined by the board, under the  
 192 supervision of a licensed professional engineer.

193 6. Has successfully passed the National Council of  
 194 Examiners for Engineering and Surveying structural engineering  
 195 examination.

196 (b) Before February 28, 2019, an applicant who satisfies  
 197 subparagraphs (a)1.-5. may satisfy subparagraph (a)6. by  
 198 submitting a signed affidavit in the format prescribed by the  
 199 board that states:

200 1. The applicant is currently a licensed engineer in this  
 201 state and has been engaged in the practice of structural  
 202 engineering with a record of at least 4 years of active  
 203 structural engineering experience.

Page 7 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

204 2. The applicant is willing to meet with the board or a  
 205 representative of the board, upon its request, for the purpose  
 206 of evaluating the applicant's qualifications for licensure.

207 (c) An applicant who is qualified for licensure as an  
 208 engineer under s. 471.013 may simultaneously apply for licensure  
 209 as a structural engineer if all requirements of s. 471.013 and  
 210 this subsection are met.

211 (4)(3) The board shall certify as qualified for a license  
 212 by endorsement an applicant who:

213 (a) Qualifies to take the fundamentals examination and the  
 214 principles and practice examination as set forth in s. 471.013,  
 215 has passed a United States national, regional, state, or  
 216 territorial licensing examination that is substantially  
 217 equivalent to the fundamentals examination and principles and  
 218 practice examination required by s. 471.013, and has satisfied  
 219 the experience requirements set forth in s. 471.013; or

220 (b) Holds a valid license to practice engineering or, for  
 221 structural engineer applicants, a license to practice structural  
 222 engineering issued by another state or territory of the United  
 223 States, if the criteria for issuance of the license were  
 224 substantially the same as the licensure criteria that existed in  
 225 this state at the time the license was issued.

226 Section 6. Section 471.019, Florida Statutes, is amended to  
 227 read:

228 471.019 Reactivation.—The board shall prescribe by rule  
 229 continuing education requirements for reactivating a license.  
 230 The continuing education requirements for reactivating a license  
 231 for a licensed engineer or structural engineer may not exceed 12  
 232 classroom hours for each year the license was inactive.

Page 8 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



580-02173-15

2015338c1

233 Section 7. Subsection (2) of section 471.025, Florida  
234 Statutes, is amended to read:

235 471.025 Seals.—

236 (2) It is unlawful for any person to seal or digitally sign  
237 any document with a seal or digital signature after his or her  
238 license has expired or been revoked or suspended, unless such  
239 license ~~is has been~~ reinstated or reissued. When an engineer's  
240 ~~or structural engineer's~~ license ~~is has been~~ revoked or  
241 suspended by the board, the licensee shall, within a period of  
242 30 days after the revocation or suspension has become effective,  
243 surrender his or her seal to the executive director of the board  
244 and confirm to the executive director the cancellation of the  
245 licensee's digital signature in accordance with ss. 668.001-  
246 668.006. In the event the engineer's license has been suspended  
247 for a period of time, his or her seal shall be returned to him  
248 or her upon expiration of the suspension period.

249 Section 8. Paragraphs (b) through (g) of subsection (1) of  
250 section 471.031, Florida Statutes, are redesignated as  
251 paragraphs (c) through (h), respectively, present paragraph (b)  
252 is amended, and a new paragraph (b) is added to that subsection,  
253 to read:

254 471.031 Prohibitions; penalties.—

255 (1) A person may not:

256 (b) Beginning March 1, 2019, practice structural  
257 engineering unless the person is licensed as a structural  
258 engineer or exempt from licensure under this chapter.

259 ~~(c)~~1. Except as provided in subparagraph 2. or  
260 subparagraph 3., use the name or title "professional engineer"  
261 or any other title, designation, words, letters, abbreviations,

Page 9 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

262 or device tending to indicate that such person holds an active  
263 license as an engineer when the person is not licensed under  
264 this chapter, including, but not limited to, the following  
265 titles: "agricultural engineer," "air-conditioning engineer,"  
266 "architectural engineer," "building engineer," "chemical  
267 engineer," "civil engineer," "control systems engineer,"  
268 "electrical engineer," "environmental engineer," "fire  
269 protection engineer," "industrial engineer," "manufacturing  
270 engineer," "mechanical engineer," "metallurgical engineer,"  
271 "mining engineer," "minerals engineer," "marine engineer,"  
272 "nuclear engineer," "petroleum engineer," "plumbing engineer,"  
273 "structural engineer," "transportation engineer," "software  
274 engineer," "computer hardware engineer," or "systems engineer."

275 2. Any person who is exempt from licensure under s.  
276 471.003(2)(j) may use the title or personnel classification of  
277 "engineer" in the scope of his or her work under that exemption  
278 if the title does not include or connote the term "licensed  
279 engineer," "professional engineer," "registered engineer,"  
280 "licensed professional engineer," "~~licensed engineer~~,"  
281 "registered professional engineer," "licensed structural  
282 engineer," "professional structural engineer," "registered  
283 structural engineer," or "structural engineer." or "~~licensed~~  
284 ~~professional engineer~~."

285 3. Any person who is exempt from licensure under s.  
286 471.003(2)(c) or (e) may use the title or personnel  
287 classification of "engineer" in the scope of his or her work  
288 under that exemption if the title does not include or connote  
289 the term "licensed engineer," "professional engineer,"  
290 "registered engineer," "licensed professional engineer,"

Page 10 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

291 ~~"licensed engineer,"~~ "registered professional engineer,"  
 292 "licensed structural engineer," "professional structural  
 293 engineer," "registered structural engineer," or "structural  
 294 engineer," or ~~"licensed professional engineer"~~ and if that  
 295 person is a graduate from an approved engineering curriculum of  
 296 4 years or more in a school, college, or university which has  
 297 been approved by the board.

298 Section 9. Paragraph (e) of subsection (1) and subsection  
 299 (4) of section 471.033, Florida Statutes, are amended to read:

300 471.033 Disciplinary proceedings.—

301 (1) The following acts constitute grounds for which the  
 302 disciplinary actions in subsection (3) may be taken:

303 (e) Making or filing a report or record that the licensee  
 304 knows to be false, willfully failing to file a report or record  
 305 required by state or federal law, willfully impeding or  
 306 obstructing such filing, or inducing another person to impede or  
 307 obstruct such filing. Such reports or records include only those  
 308 that are signed in the capacity of a licensed engineer or  
 309 structural engineer.

310 (4) The management corporation shall reissue the license of  
 311 a disciplined engineer, structural engineer, or business upon  
 312 certification by the board that the disciplined person has  
 313 complied with all of the terms and conditions set forth in the  
 314 final order.

315 Section 10. Subsection (1) of section 471.037, Florida  
 316 Statutes, is amended to read:

317 471.037 Effect of chapter locally.—

318 (1) Nothing contained in this chapter shall be construed to  
 319 repeal, amend, limit, or otherwise affect any local building

Page 11 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-02173-15

2015338c1

320 code or zoning law or ordinance, now or hereafter enacted, which  
 321 is more restrictive with respect to the services of licensed  
 322 engineers or structural engineers than the provisions of this  
 323 chapter.

324 Section 11. This act shall take effect July 1, 2015.

Page 12 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.2.15

Meeting Date

338

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DOUGLAS BARKLEY

Job Title PRESIDENT - BARKLEY CONSULTING ENGINEERS

Address 3494 MARTIN HURST RD

Phone 850.297.0440

Street

TALLAHASSEE, FL

32312

Email DOUGLAS.BARKLEY@

City

State

Zip

BCKET.US

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA INSTITUTE OF CONSULTING ENGINEERS / FLORIDA ENGINEERING SOCIETY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.2.15

Meeting Date

338

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name THOMAS (TOM) GROWAN

Job Title CHIEF STRUCTURAL ENGINEER

Address 1598 COUNTRY WALK DR

Phone 904.635.2699

Street

FLEMING ISLAND, FL

32003

Email THOMAS.GROWAN@HASKELL.COM

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA STRUCTURAL ENGINEERS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 612

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Cosmetic Product Registration

DATE: April 1, 2015                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

---

<p><b>Please see Section IX. for Additional Information:</b></p> <p>COMMITTEE SUBSTITUTE - Technical Changes</p>
--

---

**I. Summary:**

The Department of Business and Professional Regulation (DBPR or department), Division of Drugs, Devices, and Cosmetics, (division) regulates cosmetics that are manufactured and repackaged in Florida. Cosmetic manufacturers physically located in Florida are required to hold an active cosmetic manufacturer permit issued by the division. Each product produced or repackaged by such manufacturers is required to be registered with the division.

CS/SB 612 amends ch. 499, F.S., to remove the requirement that Florida cosmetic manufacturers register cosmetic products with the division. The bill removes registration and renewal requirements for cosmetic products, including the requirements to submit registration applications, product labels, and registration and renewal fees. The bill also removes the division's authority to issue certificates of free sale for registered cosmetic products in s. 499.003(6), F.S.

For the 2015-2016 fiscal year, the bill is estimated to have a negative fiscal impact of \$176,166 on the Professional Regulation Trust Fund within the DBPR and a \$14,089 reduction in the service charge paid to the General Revenue Fund.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### State and Federal Regulation

Section 499.003(12), F.S., defines “cosmetic” as an article other than soap, which is either:

- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance; or
- Intended for use as a component of the article.

The regulation of cosmetics is addressed in ch. 499, F.S., which regulates drugs, devices, and cosmetics by the department.<sup>1</sup> The Florida Drug and Cosmetic Act (the act),<sup>2</sup> is intended to safeguard public health and promote public welfare by protecting against injuries and merchandising deceit involving drugs, devices, and cosmetics or the use of such products.

Administration of the act must conform to the Federal Food, Drug, and Cosmetic Act (the federal act)<sup>3</sup> and the applicable portions of the Federal Trade Commission Act<sup>4</sup> which prohibit the false advertising of drugs, devices, and cosmetics. According to an industry representative, eight billion personal care products are sold in the United States annually, constituting over \$60 billion in annual sales.<sup>5</sup>

The act authorizes the division to issue permits to Florida cosmetic manufacturers and register cosmetic products manufactured or repackaged in Florida. Cosmetic manufacturers physically located in Florida must obtain a cosmetic manufacturer permit through the division. Manufacture in this context means the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any cosmetic.<sup>6</sup> Cosmetic manufacturers also repackage products by changing the container, wrapper, or label of a product, which may include altering the quantity of a product into different containers. A person that only labels or changes the label of a cosmetic, but does not open the container sealed by the manufacturer of the product, is exempt from obtaining a permit.<sup>7</sup>

Florida law requires any person who manufactures, packages, repackages, labels, or relabels a cosmetic in Florida to register “each separate and distinct” cosmetic every two years.<sup>8</sup> New cosmetic products must be registered prior to sale. If a manufacturer has existing registered products, its registered product list must be updated through the formal application process to

---

<sup>1</sup> The Drug, Device, and Cosmetic program was transferred to the Department of Business and Professional Regulation from the Department of Health effective November 1, 2012. See ch. 2012-184, L.O.F., s. 122, at <http://laws.flrules.org/2012/184> (last visited Mar. 3, 2015) and ch. 2012-143, L.O.F., s. 3, at <http://laws.flrules.org/2012/143> (last visited Mar. 3, 2015).

<sup>2</sup> See ss. 499.001-499.081, F.S.

<sup>3</sup> Section 499.003(20), F.S., defines the federal act referencing 21 U.S.C. ss. 301 *et seq.* and 52 Stat. 1040 *et seq.*

<sup>4</sup> See 15 U.S.C. §§ 41-58, as amended.

<sup>5</sup> Conversation with John Ray on behalf of the Florida Cosmetic Manufacturers Coalition (November 12, 2014).

<sup>6</sup> Florida Department of Business and Professional Regulation, *Cosmetic Manufacturer*, accessible at <http://www.myfloridalicense.com/dbpr/ddc/CosmeticManufacturer.html> (last viewed March 27, 2015).

<sup>7</sup> Section 499.01(2)(o), F.S.

<sup>8</sup> See s. 499.015, F.S., and Application for Product Registration - Cosmetics, Form No.: DBPR-DDC-228 at <http://www.myfloridalicense.com/dbpr/ddc/documents/ProductRegistrationCosmetics.pdf> (last accessed Mar. 3, 2015).

include any new products.<sup>9</sup> The registration and biennial renewal fee for cosmetic products is \$30.

Manufacturers often produce similar products or slightly alter products from an outside manufacturer. For example, they may use a different brand name, container, or scent for an almost identical product. In these instances, for registration purposes, the product is not considered separate and distinct. The DBPR requires by rule that the different variations be listed and registered on an Identical Product Certification form.<sup>10</sup> The process for “identical products” requires submission of an application and a \$15 fee and biennial renewal fee for each additional size, quantity, color, flavor, and scent of a registered cosmetic product.<sup>11</sup>

Because registration is a prerequisite to sales of a cosmetic, Florida’s registration system is a pre-market reporting system that is handled by the division.<sup>12</sup> This is in contrast with the system of the United States Food and Drug Administration (FDA), which is a post-market reporting system for use by manufacturers, packers, and distributors of cosmetic products that are in commercial distribution in the United States.<sup>13</sup> Under the FDA’s system, any representation in labeling or advertising that creates an impression of official approval because of registration or possession of a registration number is considered misleading. Misleading labeling makes a cosmetic misbranded, and marketing a misbranded cosmetic violates federal law.<sup>14</sup> Enforcement of the federal act is initiated by a complaint by a consumer, which may be accomplished by mail, fax, through their health provider, pharmacist, or via an online report.<sup>15</sup> The division, in a Helpful Links and Resources section on its website,<sup>16</sup> provides a link to the FDA website.

### **Renewal Registrations**

According to the division, cosmetic product renewals are not reviewed by the department for compliance with the FDA’s regulations, because the cosmetic products were “initially reviewed, compared with the FDA regulations, and approved for registration.”<sup>17</sup>

---

<sup>9</sup> Rule 61N-1.016(4)(b), F.A.C.

<sup>10</sup> See Rule 61N-1.016(1)(b), F.A.C., and Application for Identical Product Registration, Form No.: DBPR-DDC-230 at <http://www.myfloridalicense.com/dbpr/ddc/documents/IdenticalProductRegistration.pdf> (last accessed Mar. 3, 2015).

<sup>11</sup> Rule 61N-1.016(1)(b), F.A.C.

<sup>12</sup> See <http://www.myfloridalicense.com/dbpr/ddc/index.html> (last visited Mar. 3, 2015).

<sup>13</sup> See the FDA’s description of its Voluntary Cosmetics Registration Program and its benefits at <http://www.fda.gov/Cosmetics/RegistrationProgram/default.htm> (last visited Mar. 3, 2015). The program does not apply to cosmetic products for professional use only, such as products used in beauty salons, spas, or skin care clinics, nor to products that are not for sale, such as hotel samples, free gifts, or cosmetic products made at home and given to family and friends.

<sup>14</sup> *Id.*

<sup>15</sup> See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm354560.htm> (last visited Mar. 3, 2015).

<sup>16</sup> See [http://www.myfloridalicense.com/dbpr/ddc/ddc\\_helpful\\_links.html](http://www.myfloridalicense.com/dbpr/ddc/ddc_helpful_links.html) (last visited Mar. 3, 2015).

<sup>17</sup> See Letter from Reginald D. Dixon, Director, Division of Drugs, Devices and Cosmetics to Florida Cosmetic Manufacturers Coalition c/o John Ray (November 26, 2014 (on file with the Senate Committee on Regulated Industries) at paragraph 4.

### **Certificates of Free Sale**

The department issues certificates of free sale (COFS)<sup>18</sup> for a fee of \$25 to certify that a cosmetic that is registered with the department may be legally sold in Florida. A COFS is required by many foreign countries before a product may be sent into the country. A COFS need not be obtained from the department, but may be obtained from the FDA,<sup>19</sup> and other organizations, including the Miami Beach Chamber of Commerce.<sup>20</sup>

### **III. Effect of Proposed Changes:**

The bill removes the requirement that Florida cosmetic manufacturers register cosmetic products with the division. The bill eliminates all registration and renewal fees for new cosmetics and for identical products.<sup>21</sup> The bill eliminates the authorization to the department to issue a “certificate of free sale” certifying that a cosmetic is registered with the department and may be legally sold in Florida.<sup>22</sup> All references to “cosmetic products” are amended in favor of “cosmetic,” which is a defined term in current law.<sup>23</sup>

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

---

<sup>18</sup> Section 499.041(7), F.S., uses the term “free-sale certificate,” and imposes a fee of \$25, with \$2 for each copy obtained at the same time that the certificate is issued by the department.

<sup>19</sup> See [http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are\\_there\\_other](http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other) (last visited Mar. 3, 2015).

<sup>20</sup> According to the FDA, some foreign governments accept certificates issued by a state or local health department, board of trade, or trade association. Due to limited resources, the FDA recommends that firms pursue such alternative sources for export certificates whenever possible, provided they are acceptable to the country requiring a certificate. See [http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are\\_there\\_other](http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other) (last visited Mar. 3, 2015). These online sites offer certificates of free sale services: <http://icmad.org/programs/certificates-of-free-sale> (last visited Mar. 3, 2015), <http://www.personalcarecouncil.org/member-industry-resources/certificates-free-sale> (last visited Mar. 3, 2015), and <http://www.miamibeachchamber.com/Certificate-of-Free-Sale.php> (last visited Mar. 3, 2015).

<sup>21</sup> See s. 499.041(6), F.S.

<sup>22</sup> See s. 499.003(6), F.S.

<sup>23</sup> See s. 499.003(12), F.S.



**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

CS/SB 612 eliminates fees for cosmetic product registrations and renewals, as well as fees for the issuance of certificates of free sale for cosmetic products.

**B. Private Sector Impact:**

The bill has a positive fiscal impact for cosmetic manufacturers due to the elimination of the fees associated with product registration and renewal fees. The elimination of premarket registration requirements in Florida may require manufacturers who have relied upon issuance by the department of certificates of free sale to obtain that service from third parties.

**C. Government Sector Impact:**

It is estimated by the DBPR that the bill will reduce the annual revenue to the division’s account within the Professional Regulation Trust Fund by \$176,116<sup>24</sup> in Fiscal Year 2015-2016, \$190,464 in Fiscal Year 2016-2017 and \$207,530 in Fiscal Year 2017-2018. As a result, the loss of revenue will accelerate the timeline for a deficit to occur in the separate account associated with the Drugs, Devices, and Cosmetics program division in the Professional Regulation Trust Fund (see chart below).

**Drugs, Devices, and Cosmetics Account in the Professional Regulation Trust Fund**

	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
July 1 Beginning Fund Balance	1,068,456	571,493	11,436	(680,413)
Estimated Revenues	2,755,362	2,686,781	2,543,529	2,643,938
Estimated Expenditures	(3,252,325)	(3,246,838)	(3,235,378)	(3,243,411)
June 30 Year-End Balance	571,493	11,436	(680,413)	(1,279,886)

Due to the revenue reduction, there will be a reduced service charge<sup>25</sup> amount payable to the General Revenue Fund of approximately \$14,090 in Fiscal Year 2015-2016.

**VI. Technical Deficiencies:**

None.

<sup>24</sup> The total amount of cosmetic products revenue to the Department, \$176,115.50, is the sum of \$93,637.50 (annual renewal fees), \$72,450.00 (initial product registration fees), and \$10,028.00 (fees for issuance of certificates of free sale (COFS)). See 2015 Department of Business and Professional Regulation Legislative Bill Analysis for SB 612, February 23, 2015 (on file with Senate Committee on Regulated Industries) at pages 4-5.

<sup>25</sup> The service charge to the Department is 8%, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, that is appropriated from all revenue not otherwise exempted. See [s. 215.20, F.S.](#) regarding the service charge, and [s. 215.37, F.S.](#), regarding the Professional Regulation Trust Fund. Section 215.37(2), F.S., provides that the regulation of professions defined in [s. 455.01, F.S.](#) be solely financed from fees and charges deposited in the Professional Regulation Trust Fund, but that each profession operate within its anticipated fees (last visited Mar. 3, 2015).

**VII. Related Issues:**

The committee substitute incorporates language amending a reference in s. 499.051(2), F.S.,<sup>26</sup> to the term “cosmetic product,” in favor of the term “cosmetic.” The term “cosmetic product” is not defined in ch. 499, F.S.; but the term “cosmetic” is defined in s. 499.003(12), F.S.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 499.015, 499.003, 499.041, and 499.051.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 4, 2015:**

CS/SB 612 addresses a conforming change in a cross-reference, for consistent use of the defined term “cosmetic” in existing law, rather than the undefined term “cosmetic product.”

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

---

---

<sup>26</sup> Section 499.051, F.S., addresses the authority granted to the Department of Business and Professional Regulation and its employees to inspect any establishment to determine compliance with ch. 499, F.S.

By the Committee on Regulated Industries; and Senator Brandes

580-01939-15

2015612c1

1 A bill to be entitled  
 2 An act relating to cosmetic product registration;  
 3 amending s. 499.015, F.S.; removing the requirement  
 4 that a person who manufactures, packages, repackages,  
 5 labels, or relabels a cosmetic in this state must  
 6 register such cosmetic biennially with the Department  
 7 of Business and Professional Regulation; amending ss.  
 8 499.003, 499.041, and 499.051 F.S.; conforming  
 9 provisions to changes made by this act; providing an  
 10 effective date.

11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13

14 Section 1. Section 499.015, Florida Statutes, is amended to  
 15 read:

16 499.015 Registration of drugs and devices, ~~and cosmetics~~;  
 17 issuance of certificates of free sale.—

18 (1) (a) Except for those persons exempted from the  
 19 definition of manufacturer in s. 499.003, any person who  
 20 manufactures, packages, repackages, labels, or relabels a drug  
 21 or device, ~~or cosmetic~~ in this state must register such drug  
 22 or device, ~~or cosmetic~~ biennially with the department; pay a  
 23 fee in accordance with the fee schedule provided by s. 499.041;  
 24 and comply with this section. The registrant must list each  
 25 separate and distinct drug or device, ~~or cosmetic~~ at the time  
 26 of registration.

27 (b) The department may not register any product that does  
 28 not comply with the Federal Food, Drug, and Cosmetic Act, as  
 29 amended, or Title 21 C.F.R. Registration of a product by the

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

580-01939-15

2015612c1

30 department does not mean that the product does in fact comply  
 31 with all provisions of the Federal Food, Drug, and Cosmetic Act,  
 32 as amended.

33 (2) The department may require the submission of a catalog  
 34 and specimens of labels at the time of application for  
 35 registration of drugs or devices, ~~and cosmetics~~ packaged and  
 36 prepared in compliance with the federal act, which submission  
 37 constitutes a satisfactory compliance for registration of the  
 38 products. With respect to all other drugs and devices, ~~and~~  
 39 ~~cosmetics~~, the department may require the submission of a  
 40 catalog and specimens of labels at the time of application for  
 41 registration, but the registration will not become effective  
 42 until the department has examined and approved the label of the  
 43 drug or device, ~~or cosmetic product~~. This approval or denial  
 44 must include written notification to the manufacturer.

45 (3) Except for those persons exempted from the definition  
 46 of manufacturer in s. 499.003, a person may not sell any product  
 47 that he or she has failed to register in conformity with this  
 48 section. Such failure to register subjects such drug or device,  
 49 ~~or cosmetic product~~ to seizure and condemnation as provided in  
 50 s. 499.062, and subjects such person to the penalties and  
 51 remedies provided in this part.

52 (4) Unless a registration is renewed, it expires 2 years  
 53 after the last day of the month in which it was issued. The  
 54 department may issue a stop-sale notice or order against a  
 55 person that is subject to the requirements of this section and  
 56 that fails to comply with this section within 31 days after the  
 57 date the registration expires. The notice or order shall  
 58 prohibit such person from selling or causing to be sold any

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

580-01939-15

2015612c1

59 drugs or devices, ~~or cosmetics~~ covered by this part until he or  
60 she complies with the requirements of this section.

61 (5) A product regulated under this section which is not  
62 included in the biennial registration may not be sold until it  
63 is registered and complies with this section.

64 (6) The department may issue a certificate of free sale for  
65 any product that is required to be registered under this part.

66 (7) A product registration is valid only for the company  
67 named on the registration and located at the address on the  
68 registration. A person whose product is registered by the  
69 department under this section must notify the department before  
70 any change in the name or address of the establishment to which  
71 the product is registered. If a person whose product is  
72 registered ceases conducting business, the person must notify  
73 the department before closing the business.

74 (8) Notwithstanding any requirements set forth in this  
75 part, a manufacturer of medical devices that is registered with  
76 the federal Food and Drug Administration is exempt from this  
77 section and s. 499.041(6) if:

78 (a) The manufacturer's medical devices are approved for  
79 marketing by, or listed with the federal Food and Drug  
80 Administration in accordance with federal law for commercial  
81 distribution; or

82 (b) The manufacturer subcontracts with a manufacturer of  
83 medical devices to manufacture components of such devices.

84 (9) However, the manufacturer must submit evidence of such  
85 registration, listing, or approval with its initial application  
86 for a permit to do business in this state, as required in s.  
87 499.01 and any changes to such information previously submitted

Page 3 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-01939-15

2015612c1

88 at the time of renewal of the permit. Evidence of approval,  
89 listing, and registration by the federal Food and Drug  
90 Administration must include:

91 (a) For Class II devices, a copy of the premarket  
92 notification letter (510K);

93 (b) For Class III devices, a federal Food and ~~Federal~~ Drug  
94 Administration premarket approval number;

95 (c) For a manufacturer who subcontracts with a manufacturer  
96 of medical devices to manufacture components of such devices, a  
97 federal Food and ~~Federal~~ Drug Administration registration  
98 number; or

99 (d) For a manufacturer of medical devices whose devices are  
100 exempt from premarket approval by the federal Food and ~~Federal~~  
101 Drug Administration, a federal Food and ~~Federal~~ Drug  
102 Administration registration number.

103 Section 2. Subsection (6) of section 499.003, Florida  
104 Statutes, is amended to read:

105 499.003 Definitions of terms used in this part.—As used in  
106 this part, the term:

107 (6) "Certificate of free sale" means a document prepared by  
108 the department which certifies a drug or device, ~~or cosmetic~~,  
109 that is registered with the department, as one that can be  
110 legally sold in the state.

111 Section 3. Subsection (6) of section 499.041, Florida  
112 Statutes, is amended to read:

113 499.041 Schedule of fees for drug, device, and cosmetic  
114 applications and permits, product registrations, and free-sale  
115 certificates.—

116 (6) A person that is required to register drugs or

Page 4 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-01939-15

2015612c1

117 devices, ~~or cosmetic products~~ under s. 499.015 shall pay an  
118 annual product registration fee of not less than \$5 or more than  
119 \$15 for each separate and distinct product in package form. The  
120 registration fee is in addition to the fee charged for a free-  
121 sale certificate.

122 Section 4. Subsection (2) of section 499.051, Florida  
123 Statutes, is amended to read:

124 499.051 Inspections and investigations.-

125 (2) In addition to the authority set forth in subsection  
126 (1), the department and any duly designated officer or employee  
127 of the department may enter and inspect any other establishment  
128 for the purpose of determining compliance with this chapter and  
129 rules adopted under this chapter regarding any drug, device, or  
130 cosmetic ~~product~~.

131 Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 2, 2015  
Meeting Date

612  
Bill Number (if applicable)

Topic Cosmetic Registration

Amendment Barcode (if applicable)

Name Alan Suskey

Job Title Consultant

Address PO Box 102  
Street

Phone 850 510 8314

Tallahassee FL 32311  
City State Zip

Email AS@soskeyconsulting.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Dermazone Solutions

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

*Meeting Date*

SB 612

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name John Ray

Job Title \_\_\_\_\_

Address 310 W. College, Suite 212

Phone 850.445.5044

*Street*

Tallahassee

FL 32301

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Seychelles Organics / Florida Cosmetic Manufacturers Coalition

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

**To:** Senator Alan Hays, Chair  
Appropriations Subcommittee on General Government

**Subject:** Committee Agenda Request

**Date:** March 4, 2015

---

I respectfully request that **Senate Bill #612**, relating to **Cosmetic Product Registration**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/SB 618 (554766)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Grimsley

SUBJECT: Secondary Metals Recyclers

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 618 transfers regulatory authority over secondary metals recyclers from the Department of Revenue (DOR) to the Department of Agriculture and Consumer Services (DACS), and makes a number of regulatory changes to provide increased oversight of secondary metals recyclers.

Specifically, the bill:

- Allows law enforcement officials to contract with a third party vendor for the purpose of receiving purchase reports from secondary metals recyclers;
- Requires a secondary metals recycler to maintain workers' compensation insurance and \$100,000 general liability insurance;
- Dictates that the DACS shall immediately suspend or deny the registration of a secondary metals recycler if it or its owner, officer, director, or trustee is convicted of certain felonies;
- Allows the DACS to suspend, revoke, or restrict a secondary metals recycler's registration if it or its owner, officer, director, or trustee was convicted of certain crimes or violated certain regulations in the previous ten years;
- Expands the prohibited acts related to secondary metals recyclers which constitute third-degree felonies;
- Specifies that a person who knowingly provides false information and then receives payment from a secondary metals recycler in return for regulated metals commits a second- or third-degree felony, and makes it a second-degree felony if the payment received is for restricted regulated metals;

- Prohibits the purchase of regulated metals, restricted regulated metals, or ferrous metals on Sundays;
- Revises the restricted regulated metals for which the seller must show proper authorization to sell;
- Authorizes a DACS' investigator to inspect a secondary metals recyclers' property and records;
- Authorizes the DACS to seek an inspection warrant under ch. 933, if the DACS personnel who seek to verify registration are denied access to a registrant's place of business;
- Authorizes the DACS to levy administrative penalties for certain violations of the secondary metals recycler regulations; and
- Appropriates \$450,755 from the General Revenue Fund and authorizes four positions for the DACS to implement this act.

The bill has an effective date of July 1, 2015.

## II. Present Situation:

Secondary metals recyclers are currently regulated by the Department of Revenue (DOR) under Part II of ch. 538, F.S. A secondary metals recycler is a person or company engaged in the business of obtaining used ferrous<sup>1</sup> or nonferrous<sup>2</sup> metals or converting such metals into raw material products.<sup>3</sup> Current law requires secondary metals recyclers to register with the DOR prior to engaging in business, provides for the inspection of regulated metals and records kept by the recycler, regulates methods of payment, and provides certain prohibitions and penalties.

The DACS is charged with protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices involving products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

## III. Effect of Proposed Changes:

**Section 1** transfers by a type two transfer, the authority, responsibility, and funding for regulating secondary metals recyclers from the DOR to the DACS.<sup>4</sup>

---

<sup>1</sup> "Ferrous metals" are defined as those metals containing significant quantities of iron or steel. Section 538.18(3), F.S.

<sup>2</sup> "Nonferrous metals" are defined as those metals not containing significant quantities of iron or steel, including copper, brass, aluminum, lead, zinc, and nickel. Section 538.18(6), F.S.

<sup>3</sup> Section 538.18(11), F.S.

<sup>4</sup> Section 20.06(2), F.S., defines a type two transfer as the merger of an existing agency or department or a program, activity, or function thereof into another agency or department. Any program transferred by this transfer retains all its statutory powers, duties, and functions. Unless provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed.

## Confidentiality

Current law makes confidential, except for official purposes, and exempt from section 119.07(1), F.S., the following information received or created by the DOR:<sup>5</sup>

- Tax Returns,
- Reports,
- Accounts,
- Declarations received by the department,
- Investigative reports and information, and
- Letters of technical advice.

Pursuant to a written agreement between the DOR and the division, the DOR is also specifically permitted to reveal names, addresses, and sales tax registration information to the division.<sup>6</sup>

**Section 2** extends the DOR's authority to share information, to include all information relative to ch. 212, F.S.,<sup>7</sup> and part II of ch. 538, F.S.,<sup>8</sup> pursuant to a written agreement with the DACS. This section also transfers from the DOR to the DACS the authority to disclose the status of a secondary metals recycler's certificate of registration, and the name of the certificate holder to law enforcement officers.<sup>9</sup>

## Registration

Currently, s. 538.25, F.S., requires secondary metals recyclers to register with the DOR and to pay a \$6, per-annum, per-location fee. An applicant's request for registration with the DOR must include the applicant's recent photo identification card, the applicant's fingerprints, and the costs for processing the fingerprints.<sup>10</sup> The DOR forwards the applicant's costs and fingerprints to the Florida Department of Law Enforcement (FDLE) for a criminal background check on the applicant. An applicant's request for registration may be denied by the DOR if, within the last 24 months:

- The applicant was convicted of or pled guilty or nolo contendere to a felony involving property or drugs;
- The applicant was convicted of or pled guilty or nolo contendere to any crime relating to registration as a secondary metals recycler;
- The applicant failed to pay sales tax within 30 days of receipt of written notice from the DOR of his failure to do so;
- The applicant violated provisions related to business inspections<sup>11</sup> or hold notices;<sup>12</sup>
- The applicant engaged in a pattern of failing to keep business records;<sup>13</sup>
- The applicant made a material false statement on the request for registration; or

---

<sup>5</sup>Section 213.053(1), (2), F.S.

<sup>6</sup> Section 213.053(8), F.S.

<sup>7</sup> Chapter 212, F.S., "Tax on Sales, Use, and Other Transactions."

<sup>8</sup> Part II, ch. 538, F.S., "Secondary Metals Recyclers."

<sup>9</sup> Section 213.053911), F.S.

<sup>10</sup> Section 538.24, F.S.

<sup>11</sup> Section 538.20, F.S.

<sup>12</sup> Section 538.21, F.S.

<sup>13</sup> Section 538.19, F.S.

- The applicant engaged in fraud in connection with the purchase or sale of regulated metals.
- In addition, the DOR may currently impose a fine of up to \$10,000 for each knowing and intentional violation of the registration requirements.

**Section 10** amends s. 538.25, F.S., to require a secondary metals recycler to register on an application form prescribed by the DACS. Registrants must submit their fingerprints and processing fees to an approved agency, entity, or vendor for state and national background checks. The FDLE must retain those fingerprints and enroll them in the Federal Bureau of Investigation's (FBI) national retained print arrest notification program upon participation in the program by the FDLE.

Upon a registrant's request for renewal as a secondary metals recycler, the DACS must request another fingerprint-based criminal history background report from the FDLE. The DACS must collect from the renewal registrant any fees related to the renewal fingerprinting process, which the DACS shall forward to the FDLE. The DACS must notify the FDLE if a registrant is no longer registered as a secondary metals recycler with the DACS.

Upon receipt of the background check's results, the DACS must screen the results to determine if the applicant meets registration requirements. The registration requirements are generally the same as those stated above. The DACS would be authorized to deny, suspend, revoke, or restrict a registration if, the registrant or applicant, or owner, director, or trustee was convicted of certain crimes within the last 10 years. The DACS is authorized to immediately suspend a registration or application for registration, if the registrant or applicant has been convicted of knowingly and intentionally committing certain acts.

A secondary metals recycler's registration shall be immediately suspended upon notice to the DACS that the applicant has been convicted of specific felonies under ch. 817,<sup>14</sup> F.S.

Secondary metals recyclers must also maintain workers' compensation insurance and \$100,000 in general liability insurance under the bill.

The DACS may impose administrative penalties against a secondary metals recycler if he or she fails to maintain valid insurance during its registration period.

Secondary metals recyclers must show proof of an active registration with the DACS before a local business tax receipt may be issued.

In addition to the right of certain DACS employees to inspect a secondary metals recycler's property and records, **section 10** of the bill authorizes all department personnel to enter a secondary metals recycler's place of business to verify that a valid registration is properly displayed. If the DACS employee is denied entry for this purpose, the DACS may seek an inspection warrant pursuant to ch 933.<sup>15</sup>

---

<sup>14</sup> Ch. 817, F.S., relating to "Fraudulent Practices."

<sup>15</sup> Section 933.20-933.30, F.S.

The fine of up to \$10,000 for each knowing and intentional violation of the registration requirements is repealed.<sup>16</sup>

### Inspections

A law enforcement officer who properly identifies himself during usual business hours may inspect any purchased regulated metals property in the secondary metals recycler's possession, and all records required to be maintained by the recycler.<sup>17,18</sup> A violation of this section constitutes a third-degree felony.<sup>19</sup> **Section 7** amends s. 538.20, F.S., to allow non-sworn trained regulatory investigators employed by the DACS, in addition to law enforcement officers, to inspect secondary metals recyclers' required records, and regulated materials in the secondary metals recyclers' possession.

### Violations

Section 538.19, F.S., dictates that a secondary metals recycler must maintain both a paper and electronic record of all purchases made and electronically transmit that record to an appropriate law enforcement official. **Section 6** transfers authority to approve the form of these purchase records from the FDLE to the DACS and allows law enforcement agencies to contract with qualified third party vendors who may receive purchase records from the secondary metal recyclers. A secondary metals recyclers' repeated failures to maintain this documentation subjects him or her to a third degree felony under s. 538.23, F.S.

**Section 8** clarifies that a secondary metals recycler may not dispose of property subject to a hold notice<sup>20</sup> until the hold notice expires. A violation of this section constitutes a third-degree felony.<sup>21</sup>

Currently, s. 538.23, F.S., makes it a third-degree felony for a secondary metals recycler to knowingly and intentionally violate s. 538.26(2), F.S., which prohibits a secondary metals recycler from purchasing regulated metals, restricted regulated metals, or ferrous metals from a seller when the items were not transported in a motor vehicle. Although s. 538.26, F.S. lists several prohibited acts, this is the only one punishable as a third-degree felony. The remaining acts prohibited under s. 538.26, F.S., are currently first-degree misdemeanors with a fine of up to \$10,000.<sup>22</sup>

Section 538.23(3), F.S., also prohibits persons from knowingly providing false verification of ownership or providing false or altered identification and receiving payment from a secondary

---

<sup>16</sup> A secondary metals recycler who does not register still commits a third-degree felony, pursuant to s. 538.23(5), F.S., and may also be subject to additional administrative fines under s. 538.27, F.S., which is created in section 11 of this bill.

<sup>17</sup> Section 538.20, F.S.

<sup>18</sup> See, *Moore v. State*, 442 So. 2d 215 (Fla. 1983), allowing warrantless administrative searches of business property where the business could easily be involved in theft, and the inspection is restricted to normal business hours.

<sup>19</sup> Section 528.23(1)(a), F.S.

<sup>20</sup> A law enforcement officer may issue a hold notice on an item she has reasonable cause to believe has been stolen. See section 538.21, F.S.

<sup>21</sup> Section 538.23(1)(a), F.S.

<sup>22</sup> Section 538.07, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed 1 year. Section 775.082, F.S.

metals recycler in return for regulated materials. If the person receives less than \$300 as payment, he is guilty of a third-degree felony. If the payment is \$300 or more, it is a second-degree felony.<sup>23</sup>

**Section 9** amends 538.23(1)(a), F.S., to make any knowing and intentional violation of the prohibitions listed in s. 538.26, F.S., (see Prohibited Acts, below) by a secondary metals recycler a third-degree felony. The bill also makes the knowing provision of false information a third-degree felony if the value of the money or other consideration is less than \$300. If the person who provides false information receives \$300 or more, the violation is a second-degree felony. In addition, the bill adds that a person commits a second-degree felony if the payment received is for restricted regulated metals.<sup>24</sup>

### Prohibited Acts

Currently, s. 538.26, F.S., contains a number of unlawful acts that a secondary metals recycler may not commit, including:

- Purchasing regulated metals<sup>25</sup>, restricted regulated metals<sup>26</sup>, or ferrous metals before 7 a.m. or after 7 p.m.; and
- Purchasing restricted regulated metals without proper proof that the seller is authorized to sell them, including:
  - An electric light pole or other utility structure and its fixtures, wires, and hardware that are identifiable as connected to a utility structure;
  - A guard rail, street sign, traffic sign, or traffic signal and its fixtures and hardware;
  - A funeral marker or vase or historical marker;
  - Railroad equipment;
  - A stainless steel beer keg;
  - Two or more lead-acid batteries, in a single purchase or from the same individual during one day.

**Section 11** amends s. 538.26, F.S., to prohibit the purchase of regulated metals property, restricted regulated metals property, or ferrous metals on Sunday. The bill amends the restriction related to utility poles to instead restrict the purchase of a *metal electric light* pole and its fixtures and hardware that is readily identifiable as connected to a *metal electric light* structure; it removes the utility structures' *wires* from this restriction. Additionally, the bill increases the number of lead-acid batteries that a secondary metals recycler may purchase without proof of ownership from two to three.

**Section 12** authorizes the DACS to take the following actions for violations of ss. 538.19, 538.235, 538.25, or 538.26, F.S.:

- Issue a notice of noncompliance pursuant to s. 120.695, F.S.;

<sup>23</sup> A second-degree felony is punishable by up to 15 years in prison, or up to 30 years for a habitual offender, and a \$10,000 fine. Sections 775.082(3)(c), 775.083(1)(b), and 775.084(4)(a), F.S.

<sup>24</sup> "Restricted regulated metals" are defined in s. 538.18(10) and 538.26(5), F.S., as regulated metals such as manhole covers, electrical wiring, and railroad equipment.

<sup>25</sup> Section 538.18(9), F.S.

<sup>26</sup> Section 538.18(10), F.S.

- Impose an administrative fine up to \$200 per violation, but not to exceed a total of \$5,000 per inspection; and
- Issue a cease and desist order.

Administrative proceedings initiated by DACS must be conducted in accordance with the Administrative Procedures Act.<sup>27</sup> Any fines collected by DACS under this section must be deposited into the General Inspection Trust Fund.

**Sections 4 and 5** amend ss. 319.30 and 538.18, F.S., respectively, to correct references to the DACS.

**Section 13** grants the DACS rulemaking authority to implement the bill, and directs that such rules must include tiered penalties for violations.

**Section 14** appropriates \$263,223 in recurring and \$187,532 in nonrecurring funds from the General Revenue Fund and authorizes four positions for the DACS to implement this act.

**Section 15** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

See Private Sector Impact Section.

B. Private Sector Impact:

Under PCS/SB 618, secondary metals recyclers will be required to maintain current and valid workers' compensation insurance and \$100,000 in general liability coverage.

Secondary metals recyclers may incur greater costs due to fines levied by the DACS and any litigation related to criminal prosecutions by the Attorney General or State Attorney.

---

<sup>27</sup> Chapter 120, F.S.

Additionally, some secondary metals recyclers may lose revenue from a loss of business on Sundays.

**C. Government Sector Impact:**

The bill appropriates \$263,223 in recurring and \$187,532 in nonrecurring funds from the General Revenue Fund and authorizes four positions for the DACS to implement this act. The revenue in administrative penalties is undetermined by the DACS.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 213.05, 213.053, 319.30, 538.18, 538.19, 538.20, 538.21, 538.23, 538.25, and 538.26.

This bill creates the following sections of the Florida Statutes: 538.27 and 538.29.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute:

- Allows law enforcement agencies to contract with third-party vendors for the purpose of receiving purchase reports from secondary metals recyclers;
- Requires a secondary metals recycler to show proof of an active registration with the DACS before a local business tax receipt may be issued; and
- Provides an appropriation to the DACS of \$263,223 in recurring and \$187,532 in nonrecurring general revenue and authorizes four positions to implement this act.

**B. Amendments:**

None.





305438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 86 - 584

and insert:

Section 2. Section 213.05, Florida Statutes, is amended to  
read

213.05 Department of Revenue; control and administration of  
revenue laws.—The Department of Revenue shall have only those  
responsibilities for ad valorem taxation specified to the  
department in chapter 192, taxation, general provisions; chapter



305438

11 193, assessments; chapter 194, administrative and judicial  
12 review of property taxes; chapter 195, property assessment  
13 administration and finance; chapter 196, exemption; chapter 197,  
14 tax collections, sales, and liens; chapter 199, intangible  
15 personal property taxes; and chapter 200, determination of  
16 millage. The Department of Revenue shall have the responsibility  
17 of regulating, controlling, and administering all revenue laws  
18 and performing all duties as provided in s. 125.0104, the Local  
19 Option Tourist Development Act; s. 125.0108, tourist impact tax;  
20 chapter 198, estate taxes; chapter 201, excise tax on documents;  
21 chapter 202, communications services tax; chapter 203, gross  
22 receipts taxes; chapter 206, motor and other fuel taxes; chapter  
23 211, tax on production of oil and gas and severance of solid  
24 minerals; chapter 212, tax on sales, use, and other  
25 transactions; chapter 220, income tax code; ss. 336.021 and  
26 336.025, taxes on motor fuel and special fuel; s. 376.11,  
27 pollutant spill prevention and control; s. 403.718, waste tire  
28 fees; s. 403.7185, lead-acid battery fees; s. 538.09,  
29 registration of secondhand dealers; ~~s. 538.25, registration of~~  
30 ~~secondary metals recyclers;~~ s. 624.4621, group self-insurer's  
31 fund premium tax; s. 624.5091, retaliatory tax; s. 624.475,  
32 commercial self-insurance fund premium tax; ss. 624.509-624.511,  
33 insurance code: administration and general provisions; s.  
34 624.515, State Fire Marshal regulatory assessment; s. 627.357,  
35 medical malpractice self-insurance premium tax; s. 629.5011,  
36 reciprocal insurers premium tax; and s. 681.117, motor vehicle  
37 warranty enforcement.

38 Section 3. Paragraph (cc) is added to subsection (8) of  
39 section 213.053, Florida Statutes, and subsection (11) of that



305438

40 section is amended, to read:

41 213.053 Confidentiality and information sharing.—

42 (8) Notwithstanding any other provision of this section,  
43 the department may provide:

44 (cc) Information relative to chapter 212 and part II of  
45 chapter 538 to the Department of Agriculture and Consumer  
46 Services in the conduct of its official duties.

47

48 Disclosure of information under this subsection shall be  
49 pursuant to a written agreement between the executive director  
50 and the agency. Such agencies, governmental or nongovernmental,  
51 shall be bound by the same requirements of confidentiality as  
52 the Department of Revenue. Breach of confidentiality is a  
53 misdemeanor of the first degree, punishable as provided by s.  
54 775.082 or s. 775.083.

55 (11) Notwithstanding any other provision of this section,  
56 with respect to a request for verification of a certificate of  
57 registration issued pursuant to s. 212.18 to a specified dealer  
58 or taxpayer or with respect to a request by a law enforcement  
59 officer for verification of a certificate of registration issued  
60 pursuant to s. 538.09 to a specified secondhand dealer ~~or~~  
61 ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~  
62 the department may disclose whether the specified person holds a  
63 valid certificate, ~~or~~ whether a specified certificate number is  
64 valid, ~~or~~ whether a specified certificate number has been  
65 canceled or is inactive or invalid, and the name of the holder  
66 of the certificate. This subsection may ~~shall~~ not be construed  
67 to create a duty to request verification of any certificate of  
68 registration.



305438

69 Section 4. Paragraph (b) of subsection (1) of section  
70 319.30, Florida Statutes, is amended to read:

71 319.30 Definitions; dismantling, destruction, change of  
72 identity of motor vehicle or mobile home; salvage.—

73 (1) As used in this section, the term:

74 (b) "Certificate of registration number" means the  
75 certificate of registration number issued by the Department of  
76 Agriculture and Consumer Services Revenue of the State of  
77 Florida pursuant to s. 538.25.

78 Section 5. Subsection (2) of section 538.18, Florida  
79 Statutes, is amended to read:

80 538.18 Definitions.—As used in this part, the term:

81 (2) "Department" means the Department of Agriculture and  
82 Consumer Services Revenue.

83 Section 6. Subsections (1), (2), and (3) of section 538.19,  
84 Florida Statutes, are amended to read:

85 538.19 Records required; limitation of liability.—

86 (1) A secondary metals recycler shall maintain a legible  
87 paper record of all purchase transactions to which such  
88 secondary metals recycler is a party. A secondary metals  
89 recycler shall also maintain a legible electronic record, in the  
90 English language, of all such purchase transactions. The  
91 appropriate law enforcement official may provide data  
92 specifications regarding the electronic record format, but such  
93 format must be approved by the department ~~of Law Enforcement~~. An  
94 electronic record of a purchase transaction shall be  
95 electronically transmitted to the appropriate law enforcement  
96 official or to a qualified third party vendor pursuant to a  
97 valid contract with a law enforcement agency no later than 10



305438

98 a.m. of the business day following the date of the purchase  
99 transaction. The record transmitted to the appropriate law  
100 enforcement official or its qualified third party designee must  
101 not contain the price paid for the items. A secondary metals  
102 recycler who transmits such records electronically is not  
103 required to also deliver the original or paper copies of the  
104 transaction forms to the appropriate law enforcement official.  
105 However, ~~such~~ an appropriate law enforcement official may, for  
106 purposes of a criminal investigation, request the secondary  
107 metals recycler to make available the original transaction form  
108 that was electronically transmitted. This original transaction  
109 form must include the price paid for the items. The secondary  
110 metals recycler shall make the form available to the appropriate  
111 law enforcement official within 24 hours after receipt of the  
112 request.

113 (2) The following information must be maintained on the  
114 form approved by the department ~~of Law Enforcement~~ for each  
115 purchase transaction:

116 (a) The name and address of the secondary metals recycler.

117 (b) The name, initials, or other identification of the  
118 individual entering the information on the ticket.

119 (c) The date and time of the transaction.

120 (d) The weight, quantity, or volume, and a description of  
121 the type of regulated metals property purchased in a purchase  
122 transaction.

123 (e) The amount of consideration given in a purchase  
124 transaction for the regulated metals property.

125 (f) A signed statement from the person delivering the  
126 regulated metals property stating that she or he is the rightful



305438

127 owner of, or is entitled to sell, the regulated metals property  
128 being sold. If the purchase involves a stainless steel beer keg,  
129 the seller must provide written documentation from the  
130 manufacturer that the seller is the owner of the stainless steel  
131 beer keg or is an employee or agent of the manufacturer.

132 (g) The distinctive number from the personal identification  
133 card of the person delivering the regulated metals property to  
134 the secondary metals recycler.

135 (h) A description of the person from whom the regulated  
136 metals property was acquired, including:

137 1. Full name, current residential address, workplace, and  
138 home and work phone numbers.

139 2. Height, weight, date of birth, race, gender, hair color,  
140 eye color, and any other identifying marks.

141 3. The right thumbprint, free of smudges and smears.

142 4. Vehicle description to include the make, model, and tag  
143 number of the vehicle and trailer of the person selling the  
144 regulated metals property.

145 5. Any other information required by the form approved by  
146 the department ~~of Law Enforcement~~.

147 (i) A photograph, videotape, or digital image of the  
148 regulated metals being sold.

149 (j) A photograph, videotape, or similar likeness of the  
150 person receiving consideration in which such person's facial  
151 features are clearly visible.

152 (3) A secondary metals recycler complies with the  
153 requirements of this section if it maintains an electronic  
154 database containing the information required by subsection (2)  
155 as long as the electronic information required by subsection



305438

156 (2), along with an electronic oath of ownership with an  
157 electronic signature of the seller of the secondary metals being  
158 purchased by the secondary metals recyclers and an electronic  
159 image of the seller's right thumbprint that has no smudges and  
160 smears, can be downloaded onto a paper form in the image of the  
161 form approved by the department ~~of Law Enforcement~~ as provided  
162 in subsection (2).

163 Section 7. Section 538.20, Florida Statutes, is amended to  
164 read:

165 538.20 Inspection of regulated metals property and  
166 records.—During the usual and customary business hours of a  
167 secondary metals recycler, a law enforcement officer or employee  
168 of the department who is a nonsworn trained regulatory  
169 investigator shall, after properly identifying herself or  
170 himself as such ~~a law enforcement officer~~, have the right to  
171 inspect:

172 (1) Any and all purchased regulated metals property in the  
173 possession of the secondary metals recycler, ~~and~~

174 (2) Any and all records required to be maintained under s.  
175 538.19.

176 Section 8. Subsection (3) of section 538.21, Florida  
177 Statutes, is amended to read:

178 538.21 Hold notice.—

179 (3) A secondary metals recycler may not dispose of any  
180 property identified by a hold notice or extended hold notice  
181 until the applicable hold period expires. At the expiration of  
182 the hold period or, if extended in accordance with this section,  
183 at the expiration of the extended hold period, the hold is  
184 automatically released and the secondary metals recycler may



305438

185 dispose of the regulated metals property unless other  
186 disposition has been ordered by a court of competent  
187 jurisdiction.

188 Section 9. Paragraph (a) of subsection (1) and subsection  
189 (3) of section 538.23, Florida Statutes, are amended to read:

190 538.23 Violations and penalties.—

191 (1) (a) Except as provided in paragraph (b), a secondary  
192 metals recycler who knowingly and intentionally:

- 193 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;  
194 2. Engages in a pattern of failing to keep records required  
195 by s. 538.19;  
196 3. Violates s. 538.26(2); or  
197 4. Violates s. 538.235,

198  
199 commits a felony of the third degree, punishable as provided in  
200 s. 775.082, s. 775.083, or s. 775.084.

201 (3) Any person who knowingly provides false information,  
202 gives false verification of ownership, or ~~who~~ gives a false or  
203 altered identification and who receives money or other  
204 consideration from a secondary metals recycler in return for  
205 regulated metals property commits:

206 (a) A felony of the third degree, punishable as provided in  
207 s. 775.082, s. 775.083, or s. 775.084, if the value of the money  
208 or other consideration received is less than \$300.

209 (b) A felony of the second degree, punishable as provided  
210 in s. 775.082, s. 775.083, or s. 775.084, if the value of the  
211 money or other consideration received is \$300 or more or if the  
212 money or other consideration received is for restricted  
213 regulated metals.





305438

214 Section 10. Section 538.25, Florida Statutes, is amended to  
215 read:

216 538.25 Registration.—

217 (1) A person may not engage in business as a secondary  
218 metals recycler at any location without registering with the  
219 department on an application form prescribed by the department.  
220 An application for registration must state the full name of the  
221 applicant, the place where the business is to be conducted, and  
222 any other relevant information required by the department. If  
223 the applicant is not an individual, the applicant must state the  
224 full name and address of each direct or beneficial owner of at  
225 least 10-percent equity interest in the business. If the  
226 applicant is a corporation, the application must state the full  
227 name and address of each officer and director. The department  
228 shall accept applications only from a fixed business address.  
229 The department may not accept an application that provides an  
230 address of a hotel room or motel room, a vehicle, or a post  
231 office box.

232 (a) Fingerprint fees, as provided for in subparagraph  
233 (b)2., ~~A fee equal to the federal and state costs for processing~~  
234 ~~required fingerprints~~ must be submitted to the department with  
235 each application for registration. One application is required  
236 for each secondary metals recycler. If a secondary metals  
237 recycler is the owner of more than one secondary metals  
238 recycling location, the application must list each location, and  
239 the department shall issue a duplicate registration for each  
240 location. For purposes of subsections (3) ~~and,~~ (4) ~~,~~ and ~~(5),~~  
241 these duplicate registrations shall be deemed individual  
242 registrations. A secondary metals recycler shall pay a fee of \$6



305438

243 per location at the time of registration and an annual renewal  
244 fee of \$6 per location on October 1 of each year. All fees  
245 collected, less costs of administration, shall be transferred  
246 into the Operating Trust Fund.

247 (b)1. An applicant shall submit a full set of fingerprints  
248 to the department or an entity or vendor authorized by s.  
249 943.053(13). The fingerprints shall be forwarded to the  
250 Department of Law Enforcement for state processing, and the  
251 Department of Law Enforcement shall forward the fingerprints to  
252 the Federal Bureau of Investigation for national processing.

253 2. Fees for state and federal fingerprint processing and  
254 fingerprint retention fees shall be borne by the applicant. The  
255 state cost for fingerprint processing is that authorized in s.  
256 943.053(3) (b) for records provided to persons or entities other  
257 than those specified as exceptions therein.

258 3. Fingerprints submitted to the Department of Law  
259 Enforcement pursuant to this paragraph shall be retained by the  
260 Department of Law Enforcement as provided in s. 943.05(2) (g) and  
261 (h) and enrolled in the Federal Bureau of Investigation's  
262 national retained print arrest notification program. when the  
263 Department of Law Enforcement begins participation in the  
264 program. Fingerprints shall be submitted to the Department of  
265 Law Enforcement for a state criminal history record check, and  
266 to the Federal Bureau of Investigation for a national criminal  
267 history check. Any arrest record identified shall be reported to  
268 the department by the Department of Law Enforcement.

269 4. For a renewal of an applicant's registration, the  
270 department shall request the Department of Law Enforcement to  
271 forward the retained fingerprints of the applicant to the



305438

272 Federal Bureau of Investigation unless the applicant is enrolled  
273 in the national retained print arrest notification program  
274 described in subparagraph 3. The fee for the national criminal  
275 history check shall be paid as part of the renewal fee to the  
276 department and shall be forwarded to the Department of Law  
277 Enforcement. If an applicant's fingerprints are retained in the  
278 national retained print arrest notification program, the  
279 applicant shall pay the state and national retention fee to the  
280 department, and the department shall forward the fee to the  
281 Department of Law Enforcement.

282 5. The department shall notify the Department of Law  
283 Enforcement regarding a person whose fingerprints have been  
284 retained but who is no longer registered under this chapter.

285 6. The department shall screen background results to  
286 determine whether an applicant meets registration requirements.  
287 ~~The department shall forward the full set of fingerprints to the~~  
288 ~~Department of Law Enforcement for state and federal processing,~~  
289 ~~provided the federal service is available, to be processed for~~  
290 ~~any criminal justice information as defined in s. 943.045. The~~  
291 ~~cost of processing such fingerprints shall be payable to the~~  
292 ~~Department of Law Enforcement by the department. The department~~  
293 ~~may issue a temporary registration to each location pending~~  
294 ~~completion of the background check by state and federal law~~  
295 ~~enforcement agencies but shall revoke such temporary~~  
296 ~~registration if the completed background check reveals a~~  
297 ~~prohibited criminal background. The Department of Law~~  
298 ~~Enforcement shall report its findings to the Department of~~  
299 ~~Revenue within 30 days after the date the fingerprints are~~  
300 ~~submitted for criminal justice information.~~



305438

301 (c) An applicant for a secondary metals recycler  
302 registration must be a natural person who has reached the age of  
303 18 years or a corporation organized or qualified to do business  
304 in the state.

305 1. If the applicant is a natural person, the registration  
306 must include a complete set of her or his fingerprints,  
307 certified by an authorized law enforcement officer, and a valid  
308 ~~recent~~ fullface photographic identification card of herself or  
309 himself.

310 2. If the applicant is a partnership, all the partners must  
311 make application for registration.

312 3. If the applicant is a corporation, the registration must  
313 include the name and address of such corporation's registered  
314 agent for service of process in the state and a certified copy  
315 of statement from the Secretary of State that the corporation is  
316 duly organized in the state or, if the corporation is organized  
317 in a state other than Florida, a certified copy of the statement  
318 that the corporation is duly qualified to do business in this  
319 state.

320 (d) In addition to maintaining workers' compensation  
321 insurance, each secondary metals recycler must maintain a  
322 minimum of \$100,000 general liability insurance coverage  
323 throughout the registration period.

324 (e) A person applying for or renewing a local business tax  
325 receipt to engage in business as a secondary metals recycler  
326 must exhibit an active registration certificate from the  
327 department before the local business tax receipt may be issued  
328 or renewed.

329 (2) A secondary metals recycler's registration shall be



305438

330 conspicuously displayed at the place of business set forth on  
331 the registration. A secondary metals recycler must allow  
332 department personnel to enter the secondary metals recycler's  
333 place of business in order to verify that a registration is  
334 valid. If department personnel are refused entry for this  
335 purpose, the department may seek an inspection warrant as  
336 provided for in chapter 933 to obtain compliance with this  
337 requirement ~~shall not dispose of property at any location until~~  
338 ~~any holding period has expired.~~

339 ~~(3) The Department of Revenue may impose a civil fine of up~~  
340 ~~to \$10,000 for each knowing and intentional violation of this~~  
341 ~~section, which fine shall be transferred into the General~~  
342 ~~Revenue Fund. If the fine is not paid within 60 days, the~~  
343 ~~department may bring a civil action under s. 120.69 to recover~~  
344 ~~the fine.~~

345 ~~(3)(4)~~ In addition to the penalties ~~fine~~ provided in s.  
346 538.27 subsection (3), a registration under this section may be  
347 denied or any registration granted may be revoked, restricted,  
348 or suspended by the department if, after October 2, 1989, and  
349 within a 10-year ~~24-month~~ period immediately preceding such  
350 denial, revocation, restriction, or suspension:

351 (a) The applicant or registrant, or an owner, officer,  
352 director, or trustee of the applicant or registrant, has been  
353 convicted of knowingly and intentionally:

- 354 1. Violating s. 538.20, or s. 538.21, or s. 538.26;  
355 2. Engaging in a pattern of failing to keep records as  
356 required by s. 538.19;  
357 3. Making a material false statement in the application for  
358 registration; or



305438

359 4. Engaging in a fraudulent act in connection with any  
360 purchase or sale of regulated metals property;

361 (b) The applicant or registrant, or an owner, officer,  
362 director, or trustee of the applicant or registrant, has been  
363 convicted of, or entered a plea of guilty or nolo contendere to,  
364 a felony ~~committed by the secondary metals recycler~~ against the  
365 laws of the state or of the United States involving theft,  
366 larceny, dealing in stolen property, receiving stolen property,  
367 burglary, embezzlement, obtaining property by false pretenses,  
368 possession of altered property, or any felony drug offense or of  
369 knowingly and intentionally violating the laws of the state  
370 relating to registration as a secondary metals recycler; or

371 (c) The applicant has, after receipt of written notice from  
372 the Department of Revenue of failure to pay sales tax, failed or  
373 refused to pay, within 30 days after the secondary metals  
374 recycler's receipt of such written notice, any sales tax owed to  
375 the Department of Revenue.

376 ~~(4)-(5)~~ A denial of an application, or a revocation,  
377 restriction, or suspension of a registration, by the department  
378 shall be probationary for a period of 12 months in the event  
379 that the secondary metals recycler subject to such action has  
380 not had any other application for registration denied, or any  
381 registration revoked, restricted, or suspended, by the  
382 department within the previous 24-month period.

383 (a) If, during the 12-month probationary period, the  
384 department does not again deny an application or revoke,  
385 restrict, or suspend the registration of the secondary metals  
386 recycler, the action of the department shall be dismissed and  
387 the record of the secondary metals recycler cleared thereof.



305438

388 (b) If, during the 12-month probationary period, the  
389 department, for reasons other than those existing before ~~prior~~  
390 ~~to~~ the original denial or revocation, restriction, or  
391 suspension, again denies an application or revokes, restricts,  
392 or suspends the registration of the secondary metals recycler,  
393 the probationary nature of such original action shall terminate  
394 and both the original action of the department and the action of  
395 the department causing the termination of the probationary  
396 nature thereof shall immediately be reinstated against the  
397 secondary metals recycler.

398 (5) The department shall suspend the registration or deny  
399 the application for registration of a registrant or applicant if  
400 the registrant or applicant or any of its owners, officers,  
401 directors, or trustees have been convicted of a felony under s.  
402 817.67, s. 817.705, or s. 817.806 immediately upon receiving  
403 written verification of the conviction from a law enforcement  
404 agency, court, or state attorney's office or the Department of  
405 Law Enforcement.

406 (6) Upon the request of a law enforcement official, the  
407 department ~~of Revenue~~ shall release to the official the name and  
408 address of any secondary metals recycler registered to do  
409 business within the official's jurisdiction.

410 Section 11. Subsection (1) and paragraph (b) of subsection  
411 (5) of section 538.26, Florida Statutes, are amended to read:

412 538.26 Certain acts and practices prohibited.—It is  
413 unlawful for a secondary metals recycler to do or allow any of  
414 the following acts:

415 (1) Purchase regulated metals property, restricted  
416 regulated metals property, or ferrous metals between the hours



305438

417 of 7 p.m. and before 7 a.m. or any time on Sunday after 7 p.m.

418 (5)

419 (b) The purchase of any of the following regulated metals  
420 property is subject to the restrictions provided in paragraph  
421 (a):

422 1. A manhole cover.

423 2. A metal ~~An~~ electric light pole ~~or other utility~~  
424 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is are  
425 readily identifiable as connected to a metal electric light ~~the~~  
426 ~~utility~~ structure.

427 3. A guard rail.

428 4. A street sign, traffic sign, or traffic signal and its  
429 fixtures and hardware.

430 5. Communication, transmission, distribution, and service  
431 wire from a utility, including copper or aluminum bus bars,  
432 connectors, grounding plates, or grounding wire.

433 6. A funeral marker or funeral vase.

434 7. A historical marker.

435 8. Railroad equipment, including, but not limited to, a tie  
436 plate, signal house, control box, switch plate, E clip, or rail  
437 tie junction.

438 9. Any metal item that is observably marked upon reasonable  
439 inspection with any form of the name, initials, or logo of a  
440 governmental entity, utility company, cemetery, or railroad.

441 10. A copper, aluminum, or aluminum-copper condensing or  
442 evaporator coil, including its tubing or rods, from an air-  
443 conditioning or heating unit, excluding coils from window air-  
444 conditioning or heating units and motor vehicle air-conditioning  
445 or heating units.





305438

- 446           11. An aluminum or stainless steel container or bottle  
447 designed to hold propane for fueling forklifts.
- 448           12. A stainless steel beer keg.
- 449           13. A catalytic converter or any nonferrous part of a  
450 catalytic converter unless purchased as part of a motor vehicle.
- 451           14. Metallic wire that has been burned in whole or in part  
452 to remove insulation.
- 453           15. A brass or bronze commercial valve or fitting, referred  
454 to as a "fire department connection and control valve" or an  
455 "FDC valve," that is commonly used on structures for access to  
456 water for the purpose of extinguishing fires.
- 457           16. A brass or bronze commercial potable water backflow  
458 preventer valve that is commonly used to prevent backflow of  
459 potable water from commercial structures into municipal domestic  
460 water service systems.
- 461           17. A shopping cart.
- 462           18. A brass water meter.
- 463           19. A storm grate.
- 464           20. A brass sprinkler head used in commercial agriculture.
- 465           21. Three or more ~~than two~~ lead-acid batteries, or any part  
466 or component thereof, in a single purchase or from the same  
467 individual in a single day.

468           Section 12. Section 538.27, Florida Statutes, is created to  
469 read:

470           538.27 Administrative penalties.-

471           (1) Upon a determination that a violation of s. 538.19, s.  
472 538.235, s. 538.25, or s. 538.26 has occurred, the department  
473 may take one or more of the following actions:

474           (a) Issue a notice of noncompliance pursuant to s. 120.695.



305438

475 (b) Impose an administrative fine up to \$200 per violation,  
476 but not to exceed \$5,000 per inspection. Any fine collected  
477 shall be deposited in the General Inspection Trust Fund. If a  
478 fine is not paid within 60 days after imposition, the department  
479 may bring a civil action under s. 120.69 to recover the fine.

480 (c) Direct that the secondary metals recycler cease and  
481 desist specified activities.

482 (2) The administrative proceedings under this section that  
483 could result in the entry of an order imposing any of the  
484 penalties specified in this section shall be conducted in  
485 accordance with chapter 120.

486 Section 13. Section 538.29, Florida Statutes, is created to  
487 read:

488 538.29 Rulemaking authority.—The department may adopt rules  
489 to implement this part. Such rules shall include tiered  
490 penalties for violations of this part.

491 Section 14. For the 2015-2016 fiscal year, there is  
492 appropriated to the Department of Agriculture and Consumer  
493 Services, the sum of \$263,223 in recurring and \$187,532 in  
494 nonrecurring funds from the General Revenue Fund, and 4 full-  
495 time equivalent positions with associated salary rate of  
496 \$138,181, are authorized for the purpose of implementing this  
497 act.

498  
499  
500 ===== T I T L E A M E N D M E N T =====

501 And the title is amended as follows:

502 Delete lines 11 - 55

503 and insert:



305438

504 An act relating to secondary metals recyclers;  
505 transferring administration of part II of chapter 538,  
506 F.S., relating to secondary metals recyclers, from the  
507 Department of Revenue to the Department of Agriculture  
508 and Consumer Services; providing for applicability  
509 with respect to pending actions, orders, and rules;  
510 amending s. 213.053, F.S.; authorizing the Department  
511 of Revenue to share certain confidential information  
512 with the Department of Agriculture and Consumer  
513 Services; amending ss. 213.05, 319.30, and 538.18  
514 F.S.; conforming provisions to changes made by the  
515 act; amending 538.19, F.S.; providing for transmission  
516 of specific reports to a law enforcement official or  
517 an authorized third party; making conforming changes;  
518 amending s. 538.20, F.S.; authorizing specified  
519 persons to inspect regulated metals property and  
520 records; amending s. 538.21, F.S.; prohibiting a  
521 secondary metals recycler from disposing of certain  
522 property for a specified period; amending s. 538.23,  
523 F.S.; revising violations subject to criminal  
524 penalties; amending s. 538.25, F.S.; revising  
525 application requirements for registration as a  
526 secondary metals recycler; requiring applicants to  
527 submit fingerprints and pay a fee for fingerprint  
528 processing and retention; providing for the  
529 submission, retention, and use of collected  
530 fingerprints; requiring secondary metals recyclers to  
531 maintain specified insurance coverage; requiring  
532 secondary metals recyclers to exhibit active



305438

533 registration certificates from the Department of  
534 Agriculture and Consumer Services before applying for  
535 or renewing a local business tax receipt; requiring  
536 secondary metals recyclers to allow department  
537 personnel to enter certain places of business for a  
538 specified purpose; authorizing the department to seek  
539 a warrant if such access is denied; revising penalties  
540 for noncompliance; requiring the department to suspend  
541 certain registrations or applications for registration  
542 under certain circumstances; amending s. 538.26, F.S.;  
543 prohibiting secondary metals recyclers from purchasing  
544 regulated metals property, restricted regulated metals  
545 property, or ferrous metals between certain hours or  
546 on Sundays; prohibiting the purchase of specified  
547 restricted regulated metals property without obtaining  
548 certain proof of the seller's ownership of, or  
549 authority to sell, the regulated metals property;  
550 revising the number of lead-acid batteries purchased  
551 in a single purchase by the same individual in a  
552 single day which makes a purchase subject to certain  
553 restrictions; creating s. 538.27, F.S.; providing  
554 penalties for noncompliance; creating s. 538.29, F.S.;  
555 authorizing the department to adopt rules; providing  
556 an appropriation; providing an effective date.

By Senator Grimsley

21-00404-15

2015618\_\_

1 A bill to be entitled  
 2 An act relating to secondary metals recyclers;  
 3 transferring administration of part II of chapter 538,  
 4 F.S., relating to secondary metals recyclers, from the  
 5 Department of Revenue to the Department of Agriculture  
 6 and Consumer Services; providing for applicability  
 7 with respect to pending actions, orders, and rules;  
 8 amending s. 213.053, F.S.; authorizing the Department  
 9 of Revenue to share certain confidential information  
 10 with the Department of Agriculture and Consumer  
 11 Services; amending ss. 319.30, 538.18, and 538.19,  
 12 F.S.; conforming provisions to changes made by the  
 13 act; amending s. 538.20, F.S.; authorizing specified  
 14 persons to inspect regulated metals property and  
 15 records; amending s. 538.21, F.S.; prohibiting a  
 16 secondary metals recycler from disposing of certain  
 17 property for a specified period; amending s. 538.23,  
 18 F.S.; revising violations subject to criminal  
 19 penalties; amending s. 538.25, F.S.; revising  
 20 application requirements for registration as a  
 21 secondary metals recycler; revising registration fees;  
 22 requiring such fees to be transferred into the General  
 23 Inspection Trust Fund; requiring applicants to submit  
 24 fingerprints and pay a fee for fingerprint processing  
 25 and retention; providing for the submission,  
 26 retention, and use of collected fingerprints;  
 27 requiring secondary metals recyclers to maintain  
 28 specified insurance coverage; authorizing the  
 29 department to suspend the registration or eligibility

Page 1 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

30 for registration of a secondary metal recycler that  
 31 does not maintain the required coverage; requiring  
 32 secondary metals recyclers to exhibit active  
 33 registration certificates from the Department of  
 34 Agriculture and Consumer Services before applying for  
 35 or renewing a local business tax receipt; requiring  
 36 secondary metals recyclers to allow department  
 37 personnel to enter certain places of business for a  
 38 specified purpose; authorizing the department to seek  
 39 a warrant if such access is denied; revising penalties  
 40 for noncompliance; requiring the department to suspend  
 41 certain registrations or applications for registration  
 42 under certain circumstances; amending s. 538.26, F.S.;  
 43 prohibiting secondary metals recyclers from purchasing  
 44 regulated metals property, restricted regulated metals  
 45 property, or ferrous metals between certain hours or  
 46 on Sundays; prohibiting the purchase of specified  
 47 restricted regulated metals property without obtaining  
 48 certain proof of the seller's ownership of, or  
 49 authority to sell, the regulated metals property;  
 50 revising the number of lead-acid batteries purchased  
 51 in a single purchase by the same individual in a  
 52 single day which makes a purchase subject to certain  
 53 restrictions; creating s. 538.27, F.S.; providing  
 54 penalties for noncompliance; creating s. 538.29, F.S.;  
 55 authorizing the department to adopt rules; providing  
 56 an effective date.

57  
 58 Be It Enacted by the Legislature of the State of Florida:

Page 2 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

59  
60 Section 1. (1) All powers, duties, functions, records,  
61 personnel, property, pending issues, existing contracts,  
62 administrative authority, administrative rules, and unexpended  
63 balances of appropriations, allocations, and other funds of the  
64 Department of Revenue relating to the administration of part II  
65 of chapter 538, Florida Statutes, are transferred by a type two  
66 transfer, pursuant to s. 20.06(2), Florida Statutes, to the  
67 Department of Agriculture and Consumer Services.

68 (2) This section does not affect the validity of any  
69 judicial or administrative action pending as of 11:59 p.m. on  
70 the day before the effective date of this act to which the  
71 Department of Revenue is at that time a party, and the  
72 Department of Agriculture and Consumer Services shall be  
73 substituted as a party in interest in any such action.

74 (3) All lawful orders issued by the Department of Revenue  
75 relating to the administration of part II of chapter 538,  
76 Florida Statutes, issued before the effective date of this act  
77 shall remain in effect and be enforceable after the effective  
78 date of this section unless thereafter modified in accordance  
79 with law.

80 (4) The rules of the Department of Revenue relating to the  
81 administration of part II of chapter 538, Florida Statutes,  
82 which were in effect at 11:59 p.m. on the day before the  
83 effective date of this act shall remain in effect and be  
84 enforceable after the effective date of this section unless  
85 thereafter modified in accordance with law.

86 Section 2. Paragraph (cc) is added to subsection (8) of  
87 section 213.053, Florida Statutes, and subsection (11) of that

Page 3 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

88 section is amended, to read:

89 213.053 Confidentiality and information sharing.—

90 (8) Notwithstanding any other provision of this section,  
91 the department may provide:

92 (cc) Information relative to chapter 212 and part II of  
93 chapter 538 to the Department of Agriculture and Consumer  
94 Services in the conduct of its official duties.

95  
96 Disclosure of information under this subsection shall be  
97 pursuant to a written agreement between the executive director  
98 and the agency. Such agencies, governmental or nongovernmental,  
99 shall be bound by the same requirements of confidentiality as  
100 the Department of Revenue. Breach of confidentiality is a  
101 misdemeanor of the first degree, punishable as provided by s.  
102 775.082 or s. 775.083.

103 (11) Notwithstanding any other provision of this section,  
104 with respect to a request for verification of a certificate of  
105 registration issued pursuant to s. 212.18 to a specified dealer  
106 or taxpayer or with respect to a request by a law enforcement  
107 officer for verification of a certificate of registration issued  
108 pursuant to s. 538.09 to a specified secondhand dealer ~~or~~  
109 ~~pursuant to s. 538.25 to a specified secondary metals recycler,~~  
110 the department may disclose whether the specified person holds a  
111 valid certificate, ~~or~~ whether a specified certificate number is  
112 valid, ~~or~~ whether a specified certificate number has been  
113 canceled or is inactive or invalid, and the name of the holder  
114 of the certificate. This subsection may ~~shall~~ not be construed  
115 to create a duty to request verification of any certificate of  
116 registration.

Page 4 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

117 Section 3. Paragraph (b) of subsection (1) of section  
 118 319.30, Florida Statutes, is amended to read:  
 119 319.30 Definitions; dismantling, destruction, change of  
 120 identity of motor vehicle or mobile home; salvage.—  
 121 (1) As used in this section, the term:  
 122 (b) "Certificate of registration number" means the  
 123 certificate of registration number issued by the Department of  
 124 Agriculture and Consumer Services Revenue of the State of  
 125 ~~Florida~~ pursuant to s. 538.25.  
 126 Section 4. Subsections (2) and (11) of section 538.18,  
 127 Florida Statutes, are amended to read:  
 128 538.18 Definitions.—As used in this part, the term:  
 129 (2) "Department" means the Department of Agriculture and  
 130 Consumer Services Revenue.  
 131 (11) "Secondary metals recycler" means any person that who:  
 132 (a) Is engaged, from a fixed location, in the business of  
 133 purchase transactions or gathering or obtaining ferrous or  
 134 nonferrous metals that have served their original economic  
 135 purpose or is in the business of performing the manufacturing  
 136 process by which ferrous metals or nonferrous metals are  
 137 converted into raw material products consisting of prepared  
 138 grades and having an existing or potential economic value; or  
 139 (b) Has facilities for performing the manufacturing process  
 140 by which ferrous metals or nonferrous metals are converted into  
 141 raw material products consisting of prepared grades and having  
 142 an existing or potential economic value, other than by the  
 143 exclusive use of hand tools, by methods including, without  
 144 limitation, processing, sorting, cutting, classifying, cleaning,  
 145 baling, wrapping, shredding, shearing, or changing the physical

Page 5 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

146 form or chemical content thereof.  
 147 Section 5. Subsections (1), (2), and (3) of section 538.19,  
 148 Florida Statutes, are amended to read:  
 149 538.19 Records required; limitation of liability.—  
 150 (1) A secondary metals recycler shall maintain a legible  
 151 paper record of all purchase transactions to which such  
 152 secondary metals recycler is a party. A secondary metals  
 153 recycler shall also maintain a legible electronic record, in the  
 154 English language, of all such purchase transactions. The  
 155 appropriate law enforcement official may provide data  
 156 specifications regarding the electronic record format, but such  
 157 format must be approved by the department ~~of Law Enforcement~~. An  
 158 electronic record of a purchase transaction shall be  
 159 electronically transmitted to the appropriate law enforcement  
 160 official no later than 10 a.m. of the business day following the  
 161 date of the purchase transaction. The record transmitted to the  
 162 appropriate law enforcement official must not contain the price  
 163 paid for the items. A secondary metals recycler that who  
 164 transmits such records electronically is not required to also  
 165 deliver the original or paper copies of the transaction forms to  
 166 the appropriate law enforcement official. However, such official  
 167 may, for purposes of a criminal investigation, request the  
 168 secondary metals recycler to make available the original  
 169 transaction form that was electronically transmitted. This  
 170 original transaction form must include the price paid for the  
 171 items. The secondary metals recycler shall make the form  
 172 available to the appropriate law enforcement official within 24  
 173 hours after receipt of the request.  
 174 (2) The following information must be maintained on the

Page 6 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15 2015618\_\_

175 form approved by the department ~~of Law Enforcement~~ for each  
 176 purchase transaction:

177 (a) The name and address of the secondary metals recycler.  
 178 (b) The name, initials, or other identification of the  
 179 individual entering the information on the ticket.  
 180 (c) The date and time of the transaction.  
 181 (d) The weight, quantity, or volume, and a description of  
 182 the type of regulated metals property purchased in a purchase  
 183 transaction.  
 184 (e) The amount of consideration given in a purchase  
 185 transaction for the regulated metals property.  
 186 (f) A signed statement from the person delivering the  
 187 regulated metals property stating that she or he is the rightful  
 188 owner of, or is entitled to sell, the regulated metals property  
 189 being sold. If the purchase involves a stainless steel beer keg,  
 190 the seller must provide written documentation from the  
 191 manufacturer that the seller is the owner of the stainless steel  
 192 beer keg or is an employee or agent of the manufacturer.  
 193 (g) The distinctive number from the personal identification  
 194 card of the person delivering the regulated metals property to  
 195 the secondary metals recycler.  
 196 (h) A description of the person from whom the regulated  
 197 metals property was acquired, including:  
 198 1. Full name, current residential address, workplace, and  
 199 home and work phone numbers.  
 200 2. Height, weight, date of birth, race, gender, hair color,  
 201 eye color, and any other identifying marks.  
 202 3. The right thumbprint, free of smudges and smears.  
 203 4. Vehicle description to include the make, model, and tag

21-00404-15 2015618\_\_

204 number of the vehicle and trailer of the person selling the  
 205 regulated metals property.

206 5. Any other information required by the form approved by  
 207 the department ~~of Law Enforcement~~.

208 (i) A photograph, videotape, or digital image of the  
 209 regulated metals being sold.  
 210 (j) A photograph, videotape, or similar likeness of the  
 211 person receiving consideration in which such person's facial  
 212 features are clearly visible.

213 (3) A secondary metals recycler complies with the  
 214 requirements of this section if it maintains an electronic  
 215 database containing the information required by subsection (2)  
 216 as long as the electronic information required by subsection  
 217 (2), along with an electronic oath of ownership with an  
 218 electronic signature of the seller of the secondary metals being  
 219 purchased by the secondary metals recyclers and an electronic  
 220 image of the seller's right thumbprint that has no smudges and  
 221 smears, can be downloaded onto a paper form in the image of the  
 222 form approved by the department ~~of Law Enforcement~~ as provided  
 223 in subsection (2).

224 Section 6. Section 538.20, Florida Statutes, is amended to  
 225 read:  
 226 538.20 Inspection of regulated metals property and  
 227 records.—During the usual and customary business hours of a  
 228 secondary metals recycler, a law enforcement officer or employee  
 229 of the department who is a nonsworn trained regulatory  
 230 investigator shall, after properly identifying herself or  
 231 himself as such a law enforcement officer, have the right to  
 232 inspect:



21-00404-15

2015618\_\_

233 (1) Any and all purchased regulated metals property in the  
234 possession of the secondary metals recycler, ~~and~~

235 (2) Any and all records required to be maintained under s.  
236 538.19.

237 Section 7. Subsection (3) of section 538.21, Florida  
238 Statutes, is amended to read:

239 538.21 Hold notice.—

240 (3) A secondary metals recycler may not dispose of any  
241 property identified by a hold notice or extended hold notice  
242 until the applicable hold period expires. At the expiration of  
243 the hold period or, if extended in accordance with this section,  
244 at the expiration of the extended hold period, the hold is  
245 automatically released and the secondary metals recycler may  
246 dispose of the regulated metals property unless other  
247 disposition has been ordered by a court of competent  
248 jurisdiction.

249 Section 8. Subsection (1), (3), (4), and (5) of section  
250 538.23, Florida Statutes, are amended to read:

251 538.23 Violations and penalties.—

252 (1)(a) Except as provided in paragraph (b), a secondary  
253 metals recycler that ~~who~~ knowingly and intentionally:

- 254 1. Violates s. 538.20, ~~or~~ s. 538.21, or s. 538.26;  
255 2. Engages in a pattern of failing to keep records required  
256 by s. 538.19;  
257 3. Violates s. 538.26(2); or  
258 4. Violates s. 538.235,

259  
260 commits a felony of the third degree, punishable as provided in  
261 s. 775.082, s. 775.083, or s. 775.084.

Page 9 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

262 (b) A secondary metals recycler that ~~who~~ commits a third or  
263 subsequent violation of paragraph (a) commits a felony of the  
264 second degree, punishable as provided in s. 775.082, s. 775.083,  
265 or s. 775.084.

266 (3) Any person who knowingly provides false information,  
267 gives false verification of ownership, ~~or who~~ gives a false or  
268 altered identification and who receives money or other  
269 consideration from a secondary metals recycler in return for  
270 regulated metals property commits:

271 (a) A felony of the third degree, punishable as provided in  
272 s. 775.082, s. 775.083, or s. 775.084, if the value of the money  
273 or other consideration received is less than \$300.

274 (b) A felony of the second degree, punishable as provided  
275 in s. 775.082, s. 775.083, or s. 775.084, if the value of the  
276 money or other consideration received is \$300 or more or if the  
277 money or other consideration received is for restricted  
278 regulated metals.

279 (4) If a lawful owner recovers stolen regulated metals  
280 property from a secondary metals recycler that ~~who~~ has complied  
281 with this part, and the person who sold the regulated metals  
282 property to the secondary metals recycler is convicted of theft,  
283 a violation of this section, or dealing in stolen property, the  
284 court shall order the defendant to make full restitution,  
285 including, without limitation, attorneys' fees, court costs, and  
286 other expenses to the secondary metals recycler pursuant to s.  
287 775.089.

288 (5) A person acting as a secondary metals recycler that ~~who~~  
289 is not registered with the department under s. 538.25 commits a  
290 felony of the third degree, punishable as provided in s.

Page 10 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

291 775.082, s. 775.083, or s. 775.084.

292 Section 9. Section 538.25, Florida Statutes, is amended to  
293 read:

294 538.25 Registration; renewal.-

295 (1) A person may not engage in business as a secondary  
296 metals recycler at any location without registering with the  
297 department on an application form prescribed by the department.  
298 An application for registration must state the full name of the  
299 applicant, the physical address where business will be  
300 conducted, and any other relevant information required by the  
301 department. If the applicant is not an individual, the  
302 application must state the full name and address of each direct  
303 or beneficial owner of at least a 10 percent equity interest in  
304 the business. If the applicant is a corporation, the application  
305 must state the full name and address of each officer and  
306 director of the corporation. The department shall accept  
307 applications only from a fixed business address. The department  
308 may not accept an application that provides an address of a  
309 hotel room or motel room, a vehicle, or a post office box.

310 (a) Fingerprint fees shall be assessed and paid as  
311 specified in subparagraph (b)2. and A fee equal to the federal  
312 and state costs for processing required fingerprints must be  
313 submitted to the department with each application for  
314 registration. One application is required for each secondary  
315 metals recycler. If a secondary metals recycler is the owner of  
316 more than one secondary metals recycling location, the  
317 application must list each location, and the department shall  
318 issue a duplicate registration for each location. For purposes  
319 of subsections (3) ~~and~~, (4), ~~and (5)~~, these duplicate

Page 11 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15

2015618\_\_

320 registrations shall be deemed individual registrations. A  
321 secondary metals recycler shall remit an annual registration fee  
322 of \$350 to the department at the time of registration for each  
323 of its business locations pay a fee of \$6 per location at the  
324 time of registration and an annual renewal fee of \$6 per  
325 location on October 1 of each year. All fees collected, ~~less~~  
326 ~~costs of administration,~~ shall be transferred into the General  
327 Inspection Operating Trust Fund.

328 (b)1. An applicant must submit a full set of fingerprints  
329 to the department or to a vendor, entity, or agency authorized  
330 by s. 943.053(13). The department, vendor, entity, or agency  
331 shall forward the fingerprints to the Department of Law  
332 Enforcement for state processing, and the Department of Law  
333 Enforcement shall forward the fingerprints to the Federal Bureau  
334 of Investigation for national processing.

335 2. Fees for state and federal fingerprint processing and  
336 retention shall be borne by the applicant. The state cost for  
337 fingerprint processing shall be as provided in s. 943.053(3) (b)  
338 for records provided to persons or entities other than those  
339 specified as exceptions therein.

340 3. Fingerprints submitted to the Department of Law  
341 Enforcement pursuant to this paragraph shall be retained by the  
342 Department of Law Enforcement as provided in s. 943.05(2) (g) and  
343 (h) and, when the Department of Law Enforcement begins  
344 participation in the program, enrolled in the Federal Bureau of  
345 Investigation's national retained print arrest notification  
346 program. The fingerprints shall be submitted to the Department  
347 of Law Enforcement for a state criminal history record check and  
348 to the Federal Bureau of Investigation for a national criminal

Page 12 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

21-00404-15 2015618\_\_

349 ~~history check. Any arrest record identified shall be reported to~~  
350 ~~the department.~~

351 4. For a renewal of an applicant's registration, the  
352 department shall request the Department of Law Enforcement to  
353 forward his or her retained fingerprints to the Federal Bureau  
354 of Investigation unless they are enrolled in the national  
355 retained print arrest notification program as described in  
356 subparagraph 3. The fee for the national criminal history check  
357 shall be recovered from the applicant as part of the  
358 department's registration renewal fee and shall be forwarded by  
359 the department to the Department of Law Enforcement upon  
360 receipt. If an applicant's fingerprints are retained in the  
361 national notification program, the applicant must pay the state  
362 and national retention fees to the department, which shall  
363 forward them to the Department of Law Enforcement.

364 5. The department shall notify the Department of Law  
365 Enforcement regarding a person whose fingerprints have been  
366 retained but who is no longer registered under this chapter.

367 6. The department shall consider the background screening  
368 results in determining whether an applicant meets registration  
369 or registration renewal requirements.  
370 ~~The department shall forward the full set of fingerprints to the~~  
371 ~~Department of Law Enforcement for state and federal processing,~~  
372 ~~provided the federal service is available, to be processed for~~  
373 ~~any criminal justice information as defined in s. 943.045. The~~  
374 ~~cost of processing such fingerprints shall be payable to the~~  
375 ~~Department of Law Enforcement by the department. The department~~  
376 ~~may issue a temporary registration to each location pending~~  
377 ~~completion of the background check by state and federal law~~

21-00404-15 2015618\_\_

378 ~~enforcement agencies but shall revoke such temporary~~  
379 ~~registration if the completed background check reveals a~~  
380 ~~prohibited criminal background. The Department of Law~~  
381 ~~Enforcement shall report its findings to the Department of~~  
382 ~~Revenue within 30 days after the date the fingerprints are~~  
383 ~~submitted for criminal justice information.~~

384 (c) An applicant for a secondary metals recycler  
385 registration must be a natural person who has reached the age of  
386 18 years or a corporation organized or qualified to do business  
387 in the state.

388 1. If the applicant is a natural person, the registration  
389 must include a complete set of her or his fingerprints,  
390 certified by an authorized law enforcement officer, and a valid  
391 ~~recent~~ fullface photographic identification card of herself or  
392 himself.

393 2. If the applicant is a partnership, all the partners must  
394 make application for registration.

395 3. If the applicant is a corporation, the registration must  
396 include the name and address of such corporation's registered  
397 agent for service of process in the state and a certified copy  
398 of statement from the Secretary of State that the corporation is  
399 duly organized in the state or, if the corporation is organized  
400 in a state other than Florida, a certified copy of the statement  
401 that the corporation is duly qualified to do business in this  
402 state.

403 (d) Each secondary metals recycler shall maintain workers'  
404 compensation insurance and general liability insurance coverage  
405 throughout the registration period as required by the department  
406 by rule and shall provide the department with written evidence

21-00404-15 2015618\_\_  
 407 of such coverage as a condition of registration with the  
 408 department under this section. Failure to maintain such coverage  
 409 constitutes an immediate threat to the public health, safety,  
 410 and welfare, and the department may immediately suspend the  
 411 registration or eligibility for registration of a noncompliant  
 412 secondary metals recycler, which must immediately cease  
 413 operating in this state.

414 (e) A person applying for or renewing a local business tax  
 415 receipt to engage in business as a secondary metals recycler  
 416 must exhibit an active registration certificate from the  
 417 department before the local business tax receipt may be issued  
 418 or renewed pursuant to s. 205.194.

419 (2) A secondary metals recycler's registration shall be  
 420 conspicuously displayed at the place of business identified set  
 421 forth on the registration. A secondary metals recycler shall  
 422 allow department personnel to enter its place of business in  
 423 order to verify that it has displayed a valid registration. If a  
 424 secondary metals recycler refuses to grant department personnel  
 425 entry for this purpose, the department may seek a warrant from a  
 426 court of competent jurisdiction authorizing such inspection  
 427 shall not dispose of property at any location until any holding  
 428 period has expired.

429 ~~(3) The Department of Revenue may impose a civil fine of up~~  
 430 ~~to \$10,000 for each knowing and intentional violation of this~~  
 431 ~~section, which fine shall be transferred into the General~~  
 432 ~~Revenue Fund. If the fine is not paid within 60 days, the~~  
 433 ~~department may bring a civil action under s. 120.69 to recover~~  
 434 ~~the fine.~~

435 (3)(4) In addition to the penalties fine provided in s.

21-00404-15 2015618\_\_  
 436 538.27 subsection (3), registration or registration renewal  
 437 under this section may be denied or any registration granted may  
 438 be revoked, restricted, or suspended by the department if, after  
 439 October 2, 1989, and within a 10-year 24-month period  
 440 immediately preceding such denial, revocation, restriction, or  
 441 suspension:

442 (a) The applicant or registrant, or an owner, officer,  
 443 director, or trustee of the applicant or registrant, was ~~has~~  
 444 ~~been~~ convicted of knowingly and intentionally:

- 445 1. Violating s. 538.20, ~~or~~ s. 538.21, or s. 538.26;
- 446 2. Engaging in a pattern of failing to keep records as
- 447 required by s. 538.19;
- 448 3. Making a material false statement in the application for
- 449 registration; or
- 450 4. Engaging in a fraudulent act in connection with any
- 451 purchase or sale of regulated metals property;

452 (b) The applicant or registrant, or an owner, officer,  
 453 director, or trustee of the applicant or registrant, was ~~has~~  
 454 ~~been~~ convicted of, or entered a plea of guilty or nolo  
 455 contendere to, a felony ~~committed by the secondary metals~~  
 456 ~~recycler~~ against the laws of the state or of the United States  
 457 involving theft, larceny, dealing in stolen property, receiving  
 458 stolen property, burglary, embezzlement, obtaining property by  
 459 false pretenses, possession of altered property, or any felony  
 460 drug offense or of knowingly and intentionally violating the  
 461 laws of the state relating to registration as a secondary metals  
 462 recycler; or

463 (c) The applicant ~~has~~, after receipt of written notice from  
 464 the Department of Revenue of failure to pay sales tax, failed or

21-00404-15

2015618\_\_

465 refused to pay, within 30 days after the secondary metals  
466 recycler's receipt of such written notice, any sales tax owed to  
467 the Department of Revenue.

468 ~~(4)-(5)~~ A denial of an application, or a revocation,  
469 restriction, or suspension of a registration, by the department  
470 shall be probationary for a period of 12 months in the event  
471 that the secondary metals recycler subject to such action has  
472 not had any other application for registration denied, or any  
473 registration revoked, restricted, or suspended, by the  
474 department within the previous 24-month period.

475 (a) If, during the 12-month probationary period, the  
476 department does not again deny an application or revoke,  
477 restrict, or suspend the registration of the secondary metals  
478 recycler, the action of the department shall be dismissed and  
479 the record of the secondary metals recycler cleared thereof.

480 (b) If, during the 12-month probationary period, the  
481 department, for reasons other than those existing ~~before~~ prior  
482 ~~to~~ the original denial or revocation, restriction, or  
483 suspension, again denies an application or revokes, restricts,  
484 or suspends the registration of the secondary metals recycler,  
485 the probationary nature of such original action shall terminate  
486 and both the original action of the department and the action of  
487 the department causing the termination of the probationary  
488 nature thereof shall immediately be reinstated against the  
489 secondary metals recycler.

490 (5) The department shall suspend a registration or deny an  
491 application for registration if the registrant or applicant, or  
492 any of the owners, officers, directors, or trustees of the  
493 registrant or applicant, has been convicted of a felony under

21-00404-15

2015618\_\_

494 chapter 812 or chapter 817. The department shall suspend such  
495 registration or application immediately upon receiving written  
496 verification of the conviction from a law enforcement agency, a  
497 court, a state attorney's office, or the Department of Law  
498 Enforcement.

499 (6) Upon the request of a law enforcement official, the  
500 department ~~of Revenue~~ shall release to the official the name and  
501 address of any secondary metals recycler registered to do  
502 business within the official's jurisdiction.

503 Section 10. Subsection (1) and paragraph (b) of subsection  
504 (5) of section 538.26, Florida Statutes, are amended to read:

505 538.26 Certain acts and practices prohibited.—It is  
506 unlawful for a secondary metals recycler to do or allow any of  
507 the following acts:

508 (1) Purchase regulated metals property, restricted  
509 regulated metals property, or ferrous metals between the hours  
510 of 7 p.m. and before 7 a.m. or at any time on Sunday after 7  
511 p.m.

512 (5)  
513 (b) The purchase of any of the following regulated metals  
514 property is subject to the restrictions provided in paragraph  
515 (a):

- 516 1. A manhole cover.
- 517 2. A metal ~~An~~ electric light pole ~~or other utility~~  
518 ~~structure~~ and its fixtures, ~~wires,~~ and hardware that is are  
519 readily identifiable as connected to a metal electric light the  
520 ~~utility~~ structure.
- 521 3. A guard rail.
- 522 4. A street sign, traffic sign, or traffic signal and its

21-00404-15 2015618\_\_

523 fixtures and hardware.

524 5. Communication, transmission, distribution, and service

525 wire from a utility, including copper or aluminum bus bars,

526 connectors, grounding plates, or grounding wire.

527 6. A funeral marker or funeral vase.

528 7. A historical marker.

529 8. Railroad equipment, including, but not limited to, a tie

530 plate, signal house, control box, switch plate, E clip, or rail

531 tie junction.

532 9. Any metal item that is observably marked upon reasonable

533 inspection with any form of the name, initials, or logo of a

534 governmental entity, utility company, cemetery, or railroad.

535 10. A copper, aluminum, or aluminum-copper condensing or

536 evaporator coil, including its tubing or rods, from an air-

537 conditioning or heating unit, excluding coils from window air-

538 conditioning or heating units and motor vehicle air-conditioning

539 or heating units.

540 11. An aluminum or stainless steel container or bottle

541 designed to hold propane for fueling forklifts.

542 12. A stainless steel beer keg.

543 13. A catalytic converter or any nonferrous part of a

544 catalytic converter unless purchased as part of a motor vehicle.

545 14. Metallic wire that has been burned in whole or in part

546 to remove insulation.

547 15. A brass or bronze commercial valve or fitting, referred

548 to as a "fire department connection and control valve" or an

549 "FDC valve," that is commonly used on structures for access to

550 water for the purpose of extinguishing fires.

551 16. A brass or bronze commercial potable water backflow

21-00404-15 2015618\_\_

552 preventer valve that is commonly used to prevent backflow of

553 potable water from commercial structures into municipal domestic

554 water service systems.

555 17. A shopping cart.

556 18. A brass water meter.

557 19. A storm grate.

558 20. A brass sprinkler head used in commercial agriculture.

559 21. Three or more ~~than two~~ lead-acid batteries, or any part

560 or component thereof, in a single purchase or from the same

561 individual in a single day.

562 Section 11. Section 538.27, Florida Statutes, is created to

563 read:

564 538.27 Administrative penalties.—The department may take

565 one or more of the following actions against a secondary metals

566 recycler found to be in violation of s. 538.19, s. 538.235, s.

567 538.25, or s. 538.26:

568 (1) Issuance of a notice of noncompliance pursuant to s.

569 120.695.

570 (2) Imposition of an administrative fine of up to \$200 per

571 violation, not to exceed \$5,000 per inspection. Collected fines

572 shall be deposited in the General Inspection Trust Fund. If a

573 fine is not paid within 60 days after imposition, the department

574 may bring a civil action under s. 120.69 to recover the fine.

575 (3) Issuing a directive to the secondary metals recycler to

576 cease and desist specified activities.

577

578 Administrative proceedings initiated under this section shall be

579 conducted in accordance with chapter 120.

580 Section 12. Section 538.29, Florida Statutes, is created to

21-00404-15

2015618\_\_

581  
582  
583  
584  
585

read:

538.29 Rulemaking authority.—The department may adopt rules  
to implement this part. Such rules shall include tiered  
penalties for violations of this part.

Section 13. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/18  
Meeting Date

618  
Bill Number (if applicable)

Topic Recycling

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 181 N. MONROE ST  
Street

Phone 545-8911

TM 32301  
City State Zip

Email JAMES.MAGILL@RIPE.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLA. RECYCLERS ASSOS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2

Meeting Date

618

Bill Number (if applicable)

Topic Secondary Metal Recycling

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title \_\_\_\_\_

Address PO Box 10011

Phone 850-228-1296

Street

TALLAHASSEE

FL

32302

City

State

Zip

Email Jim@magnoliastrategiesllc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Allied Scrap

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 2, 2015  
Meeting Date

SB619  
Bill Number (if applicable)

Topic SB619

Amendment Barcode (if applicable)

Name MATTHEW BEEBE

Job Title SECRETARY

Address PO BOX 66056  
Street

Phone 863-294-9656

ORANGE PARK FL 32065  
City State Zip

Email mbeebe@polksheriff.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA LAW ENFORCEMENT Property Recovery Unit.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

## Committee Agenda Request

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 18 AM 9:58  
STAFF DIR. \_\_\_\_\_  
STAFF \_\_\_\_\_  
CHAIRMAN \_\_\_\_\_

**To:** Senator Alan Hays, Chair  
Appropriations Subcommittee on General Government

**Subject:** Committee Agenda Request

**Date:** March 17, 2015

---

I respectfully request that **Senate Bill #618**, relating to Secondary Metals Recyclers, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Denise Grimsley".

---

Senator Denise Grimsley  
Florida Senate, District 21

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 680 (556478)

INTRODUCER: Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

PCS/CS/SB 680 amends provisions relating to the Fish and Wildlife Conservation Commission (FWC). Specifically, the bill:

- Removes specific labeling requirements for personal floatation devices (PFDs) and allows the use of PFDs labeled in accordance with the U.S. Coast Guard (Coast Guard) rules concerning an upcoming new labeling system;
- Revises the effective dates for tarpon tags from July 1 through June 30 to the calendar year;
- Removes a requirement for tax collectors to submit forms relating to the number of unissued Convention on the International Trade of Endangered Species (CITES) tags every year;
- Removes reporting requirements for tarpon landings;
- Corrects the scientific name for tarpon from *megalops atlantica* to the correct name, *Megalops atlanticus*;
- Removes statutory qualifying requirements to receive a Restricted Species Endorsement on a Saltwater Products License;
- Removes rulemaking authority to implement an alligator management and trapping program;
- Ensures all uncured alligator hides are identified as originally intended;
- Removes reporting and shipping details for dealers and buyers of alligator hides;
- Clarifies that a person may not take or possess an alligator or alligator eggs without an alligator license, rather than a “trapping license”;

- Rephrases “Alligator Management and Trapping Program” to “Alligator Management Program”;
- Removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or their eggs from the wild;
- Provides exemptions to fee requirements related to hunting alligators;
- Removes statutory requirements to provide the Department of Agriculture and Consumer Services with funds from certain activities related to alligators and makes the transfer of such funds dependent on an annual appropriation;
- Removes rulemaking authority to establish appropriate qualifications for permitting alligator collectors;
- Removes a requirement to use certain funds for alligator husbandry research;
- Removes a requirement to attach CITES tags to the hide of any alligator taken from the wild;
- Removes a requirement to limit the number of CITES tags to the estimated safe yield of alligators in the state;
- Changes penalties for feeding wildlife and freshwater fish;
- Removes definitions of “alligator,” “process or processing,” and “alligator hatchling”;
- Removes a provision relating to alligator study requirements;
- Removes provisions relating to penalties for unlawfully selling certain alligator products;
- Removes a provision relating to penalties for using the words “alligator” and “gator” in certain situations; and
- Reenacts certain sections of statute to incorporate changes made in the bill.

The bill has an estimated negative fiscal impact of \$27,500 relating to the changes in alligator trapping and trapping agent licenses.

The bill is effective upon becoming law.

## II. Present Situation:

### Personal Floatation Devices (PFD)

The Coast Guard labels personal floatation devices (PFDs) five different ways based on their intended use:

- Type I PFDs are off-shore life jackets that are good for all waters, including rough seas and remote water, where rescue might be slow to arrive;
- Type II PFDs are near-shore buoyant vests for general boating. They are good for calm, inland waters, or where there is a good chance of a quick rescue;
- Type III PFDs are for general boating or some specialized activity that is marked on the PFD for activities such as water skiing, hunting, fishing, canoeing, kayaking, etc. They are designed to complement the activity they are used for;
- Type IV PFDs include throwable devices such as ring buoys and boat cushions; and
- Type V PFDs are only for special uses or conditions.<sup>1</sup>

---

<sup>1</sup> U. S. Coast Guard, *PFD Selection, Use, Wear & Care*, <http://www.uscg.mil/hq/cg5/cg5214/PFDselection.asp#recreational> (last visited Mar. 16, 2015).

Florida law requires PFDs to be either on hand or worn depending on the situation. Each situation has different requirements:

- All vessels are required to have wearable Coast Guard-approved PFDs for each person onboard. They must be the appropriate size for the people on the vessel, be in serviceable condition, and within easy access;
- Vessels 16 feet in length or longer must also have at least one Coast Guard-approved throwable Type IV PFD that is immediately available in case someone falls overboard;
- Children under the age of six must wear a Coast Guard-approved Type I, II, or III Coast Guard approved PFD while onboard vessels less than 26 feet in length while the vessel is underway; and
- Anyone who is water skiing; parasailing; aquaplaning; operating, riding on, or being towed behind a personal watercraft; or some similar activity, must wear a non-inflatable Coast Guard-approved Type I, II, III, or V PFD.<sup>2</sup>

Currently, the Coast Guard is working to revise the classification and labeling of PFDs. When the process is completed, the intent is to have labels for PFDs that are easier to understand.

According to the final regulation promulgated by the Coast Guard, removing the type code system from regulations “will facilitate future incorporation by reference of new industry consensus standards for PFD labeling that more effectively convey safety information and is a step toward harmonization of our regulations with PFD requirements in Canada and other countries.”<sup>3</sup>

The Coast Guard has indicated that there will be a transition period until the end of 2016 to allow manufacturers time to come into compliance with the new standards and to allow states the time to modify their laws.<sup>4</sup>

### **Tarpon Tags**

In June 2013, the FWC approved a series of changes to the state’s tarpon tag rules. In particular, the FWC voted to manage tarpon as a catch-and-release only species.<sup>5</sup> However, the FWC does allow the use of tarpon tags to harvest tarpon while in pursuit of an International Game Fish Association record. In conjunction with designating tarpon as a catch-and-release only species, the former recreational bag limit of two was eliminated and harvest and unnecessary destruction of the fish was prohibited.<sup>6</sup>

In addition to these changes, Rule 68B-32.004, F.A.C., now provides that “a person may temporarily possess a tarpon within or without Florida waters only for the purposes of photography, measuring length and girth, and taking a scientific sample.” The rule provides that tarpon of a certain length may not be removed from the water.<sup>7</sup> Additional changes to rule that

---

<sup>2</sup> FWC, *Boating Regulations*, <http://myfwc.com/boating/regulations/#nogo> (last visited Mar. 16, 2015).

<sup>3</sup> Personal Flotation Devices Labeling and Standards, 79 Fed. Reg. 56491 (Oct. 22, 2014).

<sup>4</sup> FWC, *Senate Bill 680 Agency Analysis*, 7, (Feb. 2, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>5</sup> Rule 68B-32.001, F.A.C.

<sup>6</sup> *Supra* note 4, at 17.

<sup>7</sup> Rule 68B-32.004(3), F.A.C.

need to be addressed in Florida Statutes include eliminating the reporting requirements for the tarpon tag,<sup>8</sup> and modifying the dates tags are issued from July 1 to June 30 to the calendar year to coincide with the height of the tarpon fishing season.<sup>9</sup>

Tax collectors are required to return all unused tarpon tags to the FWC by August 15 each year. Since tarpon tags have the effective date printed on them, they cannot be used outside of the tag year. The FWC reports that there is no need recover any unused tags.

Lastly, s. 379.357, F.S., refers to the tarpon scientifically as the *megalops atlantica*. The correct scientific name of the tarpon is *Megalops atlanticus*.

**Commercial Fishing Licensing**

In Florida, a Saltwater Products License (SPL) is required to commercially harvest or sell all saltwater products, harvest over the recreational bag limit, harvest over 100 pounds or two saltwater fish per person per day (whichever is greater) for species that do not have an established bag limit, or use certain gear or equipment as specified by law. Saltwater products harvested under an SPL may only be sold to a licensed Florida wholesale dealer.<sup>10</sup>

Florida offers three types of SPLs:<sup>11</sup>

- An individual SPL authorizes one person to engage in commercial fishing activities from the shore or a vessel. The individual SPL is not tied to any one vessel and is issued in the individual’s name;
- A crew SPL is also issued in an individual’s name and authorizes the named individual to engage in commercial fishing activities from shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew as well; and
- A vessel SPL is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. Unlike the first two SPLs, the vessel SPL is tied to a vessel rather than a person.<sup>12</sup>

The cost for each license is:<sup>13</sup>

SPL Type	Florida Resident	Non-resident	Alien
Individual	\$50	\$200	\$300
Crew	\$150	\$600	\$900
Vessel	\$100	\$400	\$600

<sup>8</sup> *Supra* note 4, at 17.

<sup>9</sup> *Supra* note 4, at 17.

<sup>10</sup> FWC, *Commercial Saltwater Product Licenses – Introduction*, <http://www.myfwc.com/license/saltwater/commercial-fishing/new-applicants/#spl> (last visited Mar. 15, 2015).

<sup>11</sup> Section 379.361(2)(e)1.-3., F.S.

<sup>12</sup> Section 379.361(2)(e), F.S.

<sup>13</sup> FWC, *Commercial Saltwater products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Mar. 15, 2015).

Requirements for other commercial licenses vary depending on what species are being harvested. In particular, the Restricted Species Endorsement (RS) is required to commercially harvest and sell species designated as “restricted” by the FWC.<sup>14</sup>

The RS was created by the Legislature in 1987 when marine fisheries management was under the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC. The primary purpose of the RS is to help ensure the sustainability of Florida’s most important commercially harvested species. Prior to the creation of the RS, some of the state’s recreational fishermen were purchasing commercial licenses to enable them to harvest commercial quantities of their favorite species and then keep them for their own personal use, thus circumventing the recreational bag limits.<sup>15</sup>

The species currently designated as restricted species are: several species of amberjack, bluefish, cobia, dolphin, drum (black), several species of flounder, several species of grouper, hogfish, almaco jack, Spanish and king mackerel, several species of mullet, permit, Florida and African pompano, red porgy, banded rudderfish, several species of sea bass, spotted seatrout, sheepshead, several species of snapper, tripletail, golden tilefish, wahoo, blue crab, stone crab, spiny lobster, and several species of shrimp.<sup>16</sup>

To qualify for an RS on an SPL, a person must:

- Be 16 years of age or older; and either
- Have over 25 percent or \$5,000 of income attributable to the sale of saltwater products under an SPL; or
- Be a charter boat operator with at least 50 percent of income attributable to charter fishing, at least \$2,500 must be attributable to the sale of saltwater products under an SPL.

The income requirements must apply to at least one of the previous three years, and marine aquaculture producers with an SPL can apply income from the sale of marine aquaculture products.<sup>17</sup>

Exceptions to these requirements are:

- A permanent RS is available to those who are 62 or older who have qualified for an RS for at least three of the last five years;
- The income requirement for those who are 62 or older is reduced to \$2,500;
- Active military duty time will not be counted against the time required to qualify;
- The purchaser of a commercial vessel associated with an RS will have a complete license year after the purchase to qualify for an RS;
- An immediate family member wishing to carry on the fishing operation of an individual who has died or become permanently disabled will have one complete license year to qualify for an RS;

---

<sup>14</sup> FWC, *Qualifying for the Restricted Species Endorsement*, <http://www.myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Mar. 14, 2015).

<sup>15</sup> *Supra* note 4, at 18.

<sup>16</sup> FWC, *Restricted Species List*, <http://www.myfwc.com/license/saltwater/commercial-fishing/restricted-species/> (last visited Mar. 14, 2015).

<sup>17</sup> *Supra* note 14.



- The income requirement is waived for residents holding an SPL for three of the previous five years before a disability, if the individual is certified totally and permanently disabled by the U.S. Department of Veterans Affairs, any branch of the U.S. Armed Services, or the Railroad Board, or an individual who is certified disabled by the Social Security Administration or a licensed physician;
- An honorably discharged resident military veteran who is certified to be permanently disabled with a rating of at least 10 percent has one full license year to qualify for an RS, in addition to an income requirement of \$2,500; and
- An honorably discharged resident military veteran who applies for an RS within 48 months after discharge has one full license year to qualify for an RS.<sup>18</sup>

The creation of the RS was supported by Florida's commercial fishing industry, which coordinated with the legislatively created Marine Fisheries Commission, a predecessor agency to the FWC, in developing the endorsement. It is meant to ensure that fish harvested under Florida's commercial licenses, with the higher bag limits typically associated with the commercial fishery, are being harvested for commercial purposes and ultimately ending up in the seafood market.<sup>19</sup>

Qualifying requirements for the RS are currently in statute, but, since all aspects of the RS program fall under the FWC's constitutional authority, the requirements have been incorporated into FWC rule, allowing it to respond to stakeholder needs or requests for changes. According to the FWC, some of the existing statutory requirements are confusing and out of date.<sup>20</sup>

### Alligators

The American alligator may be found in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.<sup>21</sup> They prefer freshwater lakes and slow-moving rivers and their associated wetlands, but they also can be found in brackish water habitats as well. There are approximately 1.3 million alligators throughout Florida.<sup>22</sup>

Due to concerns over declining populations, legal alligator harvesting was halted in 1962. The American alligator was included on the first list of endangered species under the law that preceded the Endangered Species Act in 1967.<sup>23</sup> By the mid-1970s, indications were that the Florida population was recovering rapidly. In 1977, Florida's alligator population was reclassified from endangered to threatened by the U.S. Fish and Wildlife Service. This allowed

---

<sup>18</sup> *Supra* note 14.

<sup>19</sup> *Supra* note 4, at 18.

<sup>20</sup> *Supra* note 4, at 18

<sup>21</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>22</sup> FWC, *Statewide Nuisance Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/> (last visited Mar. 3, 2015).

<sup>23</sup> U.S. Fish and Wildlife Service, *American Alligator: Alligator mississippiensis* (Feb. 2008), available at <http://www.fws.gov/endangered/esa-library/pdf/alligator.pdf> (last visited Mar. 3, 2015).

for management of the growing nuisance alligator problem through harvest, which continues today under the Statewide Nuisance Alligator Program.<sup>24</sup>

Despite its recovery, the Florida alligator is still federally listed. However, since 1979, its status has been “Similarity of Appearance (Threatened).”<sup>25</sup> This provides safeguards to other imperiled crocodylians, such as the American crocodile, which may be found in south Florida, and the black caiman, which occurs in South America. The listing allows for state-approved management and control programs.<sup>26</sup>

Currently, the FWC implements three programs that provide for harvesting non-hatchling alligators from the wild. They are the:

- Statewide Alligator Harvest Program;
- Private Lands Alligator Management Program; and
- Statewide Nuisance Alligator Program.

### ***Statewide Alligator Harvest Program***

Each year, the FWC establishes alligator management units based on surveys to establish appropriate harvest quotas to provide recreational opportunities for the public to harvest alligators. Anyone may participate, but the number of harvest permits awarded are typically much fewer than the number of people applying for them. According to the FWC, in 2014, 18,000 applications were received for 6,000 permits.<sup>27</sup>

Through a three-phase program, harvest permits are made available to individuals through a random selection process. Awarded permits that are not purchased in Phase I by the appointed deadline will be made available in Phase II. The second phase of the program is only open to people who were not issued a harvest permit during Phase I. All permits that are not purchased in Phase II by the appointed deadline are sold on a first-come, first-served basis during Phase III. Phase III is open to anyone, including those who already have a harvest permit from either of the two preceding phases. Those who are selected to receive a permit must purchase an Alligator Trapping License. Each permit authorizes taking two alligators, specifies where the alligators may be taken, and comes with two hide validation tags, referred to as CITES tags.<sup>28</sup>

Another option for participating in the Alligator Harvest Program is to purchase an Alligator Trapping Agent License, which allows those individuals to assist someone who was selected for a harvest permit and has an Alligator Trapping License.

---

<sup>24</sup> *Supra* note 6. (FWC ANALYSIS – REMOVE IN FINAL) POINT TO PAGE 7 agency analysis

<sup>25</sup> U.S. Fish and Wildlife Service, *Environmental Conservation Online System, American alligator (Alligator mississippiensis)*, <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C000#recovery> (last visited Mar. 3, 2015).

<sup>26</sup> *Supra* note 4, at 8.

<sup>27</sup> *Supra* note 4, at 9.

<sup>28</sup> FWC, *Statewide Alligator Hunt Permit: General Information*, <http://myfwc.com/license/limited-entry-hunts/general-info/alligator-hunt-permit/> (last visited Mar. 17, 2015).

### ***Private Lands Alligator Management Program***

The Private Lands Alligator Management Program was established as a mechanism for landowners to sustainably harvest alligators on their properties. To participate in the program, applicants must own or lease a parcel that contains an alligator habitat. Public lands, other than sovereignty submerged lands, for which a governmental entity can demonstrate an ownership or leasehold interest and with approval of the governmental entity that owns the property are also eligible for inclusion in the program.<sup>29</sup>

Once the FWC evaluates the property for the sustainable yield of alligators, it issues the required permits and CITES tags up to the sustainable yield. Unlike the Statewide Alligator Harvest Program, participants in this program may take alligators year round, rather than during designated seasons.<sup>30</sup> The person permitted to harvest on private lands may be absent when someone with either an Alligator Trapping License or an Alligator Trapping Agent License harvests alligators on the parcel.<sup>31</sup>

### ***Statewide Nuisance Alligator Program***

Generally, an alligator may be deemed a nuisance if it is at least four feet long and the person reporting the alligator believes it poses a threat to people, pets, or property. The state does not allow for the relocation of nuisance alligators.<sup>32</sup> According to the FWC, they tend to return to where they were initially captured. Smaller alligators, however, are usually relocated to nearby wetland habitats.<sup>33</sup>

The FWC contracts with nuisance alligator trappers to remove problem alligators.<sup>34</sup> Nuisance alligator trappers must purchase an Alligator Trapping License.<sup>35</sup> When a nuisance alligator is reported, the FWC issues a permit to the trapper authorizing the removal of the specific alligator. The public may not hire or provide authorization to a nuisance alligator trapper to remove a nuisance alligator. They may only be handled by FWC-contracted nuisance alligator trappers. Trappers are issued CITES tags at the beginning of each year which are attached to each trapped alligator. Nuisance alligator trappers receive \$30 per captured alligator, until all funds are expended. According to the FWC, there is a recurring annual allocation in the FWC's budget of \$210,000 to pay trappers for capturing nuisance alligators.<sup>36</sup>

Contract trappers are allowed to use designated agents who can operate independently of them, but the agent must be in possession of the harvest permit and tags issued to the nuisance alligator trapper under contract. Trappers are ultimately responsible for their agents, and the trappers' agents must possess either an Alligator Trapping or Alligator Trapping Agent License.<sup>37</sup>

---

<sup>29</sup> FWC, *Private Lands Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/private-lands/> (last visited Mar. 3, 2015).

<sup>30</sup> *Supra* note 4, at 11.

<sup>31</sup> *Supra* note 4, at 11.

<sup>32</sup> *Supra* note 22.

<sup>33</sup> *Supra* note 4, at 12.

<sup>34</sup> FWC, *How to be a Nuisance Alligator Trapper*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/trapper/> (last visited Mar. 3, 2015).

<sup>35</sup> *Supra* note 4, at 13.

<sup>36</sup> *Supra* note 4, at 13.

<sup>37</sup> *Supra* note 4, at 13.

### ***Alligator Trapping Guides***

Alligator trapping guides sell packaged hunts to people who would like to hunt an alligator. They must be properly licensed and permitted under one of the FWC's three programs. The guides solicit clients and provide assistance and equipment to any unskilled participants they are accompanying who have been issued their own harvest permits. The guide may operate with an Alligator Trapping Agent License when guiding a person with an Alligator Trapping License or may operate with the Alligator Trapping License with clients who have either type of license.<sup>38</sup>

### ***Public Waters Alligator Egg Collection Program***

The Public Waters Alligator Egg Collection Program permits the collection of alligator eggs from public waters by up to 30 licensed and permitted alligator farmers in order to provide a consistent source of rearing stock. The number of farms is restricted due to the limited availability of eggs in the wild.<sup>39</sup>

Areas are established annually by the Alligator Management Program staff. Staff members assess the area and set a quota of 25 to 100 percent of non-depredated, non-flooded nests. Collections are conducted under the direct supervision of FWC biologists. Those eggs are then transferred to the 30 farmers who incubate and hatch the eggs or transfer them to other persons permitted to receive alligator eggs from the wild. The FWC issues an alligator egg collection permit before eggs can be collected under the program. The fee for the permit is limited to \$5 per egg.<sup>40</sup>

### ***Alligator Farming***

Alligator farming has been performed in Florida since the 1970s. Despite fluctuations in the market for alligator hides in the last decade, the number of alligator farms has remained fairly constant since 2002 with about 60 farms. Inventories have stayed above 80,000 animals with almost 20,000 alligators harvested annually for their hides and meat. Alligator farmers must obtain an Alligator Farming License. They may employ assistants who must obtain an Alligator Farming Agent's License.<sup>41</sup>

### ***Hide and Fur Dealers***

Alligator hide dealers solicit, broker, or otherwise buy unpreserved lawfully acquired and tagged alligator hides for the purpose of selling the hides to commercial tanneries or manufacturers of alligator hide products. Under the required Fur and Hide Dealer's License, they do not harvest any part of the alligator. They instead play a role in the final disposition of alligator hides. They must abide by record keeping requirements set by the FWC.<sup>42</sup>

---

<sup>38</sup> *Supra* note 4, at 14.

<sup>39</sup> Rule 68A-25.004, F.A.C. See also *supra* note 6. POINTS TO PAGE 14 agency analysis

<sup>40</sup> *Supra* note 4, at 14.

<sup>41</sup> *Supra* note 4, at 14.

<sup>42</sup> Rule 68A-25.004, F.A.C.

**Alligator Meat Processors**

Alligator meat processors are issued a no-cost Alligator Meat Processing Facility Permit by the FWC after being inspected and approved by the Department of Agriculture and Consumer Services (DACS). They must also purchase an Alligator Processor’s License, if the processor is not already in possession of an Alligator Farming License or an Alligator Trapping License.<sup>43</sup> The processors buy carcasses from other alligator meat processors, alligator farmers, and program participants permitted to take alligators from the wild. In addition, they import lawfully acquired alligator meat from out of state for reprocessing and repackaging for wholesale and retail sale.<sup>44</sup>

**Alligator Marketing and Education – The Department of Agriculture and Consumer Services**

Under a contract executed in 1993, \$5 for every CITES tag attached to an alligator taken from the wild through the private lands and nuisance alligator harvest programs is transferred to the DACS.<sup>45</sup> Also, \$1 for every alligator egg taken from public waters is transferred to the DACS. The transfers are in support of alligator marketing and education activities overseen by the Division of Marketing, Bureau of Seafood and Aquaculture, within the DACS.

Alligator Related Licenses and Fees for the 2014 Season<sup>46</sup>

<b>License</b>	<b>Fee</b>
Resident Alligator Trapping License	\$250
Non-Resident Alligator Trapping License	\$1,000
Alligator Trapping Agent’s License (resident and non-resident)	\$50
Alligator Hide Validation (CITES) Tag	Up to \$30 per tag
Resident Fur and Hide Dealer’s License	\$100
Non-Resident Fur and Hide Dealer’s License	\$500
Egg Permit	Up to \$5 per egg
Alligator Farming License (resident and non-resident)	\$250
Alligator Farming Agent’s License (resident and non-resident)	\$50
Alligator Processor’s License (resident and non-resident)	\$250

Violations of alligator management strategies include:

- The unlawful sale, possession, or transporting of alligators or alligator skins;<sup>47</sup>
- Prima facie evidence of intent to violate laws protecting alligators (use of firearms and light at night where alligators might be known to be present);<sup>48</sup>
- Unlawfully selling alligator products;<sup>49</sup>
- Using the words “alligator” or “gator” in certain sales;<sup>50</sup>

<sup>43</sup> *Supra* note 4, at 15.

<sup>44</sup> *Supra* note 4, at 15.

<sup>45</sup> *Supra* note 4, at 15.

<sup>46</sup> See generally Part VII of ch. 379, F.S., for alligator licenses and fees.

<sup>47</sup> Section 379.3014, F.S.

<sup>48</sup> Section 379.3015, F.S.

<sup>49</sup> Section 379.3016, F.S.

<sup>50</sup> Section 379.3017, F.S.

- Not possessing a Fur and Hide Dealer’s License, when necessary;<sup>51</sup>
- Taking and possessing alligators without a trapping license;<sup>52</sup>
- Not tagging alligators and hides when required;<sup>53</sup>
- Violating rules or orders of the FWC;<sup>54</sup> and
- Illegally killing, possessing, or capturing alligators, other crocodilian, or eggs.<sup>55</sup>

Additionally, the Wildlife Violator Compact Act authorizes reciprocal license suspensions in participating states.<sup>56</sup>

**Wildlife Feeding Rules**

The FWC has adopted rules that prohibit feeding certain species of wildlife. Those rules, along with types of feeding that are common for the species for which feeding is prohibited, are:

Species	Rule	Common Types of Feeding
Bear, Fox, and Raccoon	Intentionally placing food or garbage, allowing the placement of food or garbage, or offering food or garbage in such a manner that it attracts black bears, foxes, or raccoons and in a manner that is likely to create or creates a public nuisance is prohibited. <sup>57</sup>	Garbage, pet or livestock food, birdseed, or other foods left unsecured outside or placed out intentionally for these wildlife
Pelican	The intentional feeding or the placement of food that attracts pelicans and modifies the natural behavior of the pelican so as to be detrimental to the survival or health of a local population is prohibited. <sup>58</sup>	Fish and food scraps handed out or dumped in ways that allow the animals to feed on that material
Sandhill Crane	The intentional feeding of sandhill cranes is prohibited. <sup>59</sup>	Bird feeders or bread or corn that people leave out, whether for cranes or for other wildlife
Bald Eagle	No person shall take, feed, disturb, possess, sell, purchase or barter, or attempt to engage in any such conduct, any bald eagle or parts thereof, or their nests or eggs, except when authorized	Food scraps handed out or dumped in ways that allow the animals to feed on that material

<sup>51</sup> Section 379.364, F.S.

<sup>52</sup> Section 379.3751, F.S.

<sup>53</sup> Section 379.3752, F.S.

<sup>54</sup> Section 379.401, F.S.

<sup>55</sup> Section 379.409, F.S.

<sup>56</sup> Section 379.2255, F.S.

<sup>57</sup> Rule 68A-4.001(3), F.A.C.

<sup>58</sup> Rule 68A-4.001(4), F.A.C.

<sup>59</sup> Rule 68A-4.001(5), F.A.C.

	by permit or consistent with FWC Eagle Management Guidelines. <sup>60</sup>	
Alligator and Crocodile	No person shall intentionally feed, or entice with feed, any crocodylian unless held in captivity under a permit issued by the FWC or otherwise provided. <sup>61</sup>	Food scraps handed out or dumped in ways that allow the animals to feed on that material

The purpose of the rules is to protect both the species and the public. All wild animals have a natural fear of people, but when wild animals are fed by people, animals’ natural fear is diminished. This results in wildlife having more frequent and closer contact with people. Feeding wildlife also results in nuisance and aggressive behavior by the animals, which can pose a risk to public safety, danger to pets and small livestock, and property damage. Wildlife fed by humans also spend more time in developed areas, which exposes them to increased risks of being hit by vehicles, sickness from disrupted natural diets and behaviors, killing by the public, and euthanization by the FWC in order to protect public safety.<sup>62</sup>

Bear Related Incidences from 2007 to 2013<sup>63</sup>

Year	2007	2008	2009	2010	2011	2012	2013
Reports from public listing “Bear in Garbage”	848	916	1,347	1,626	1,329	2,064	2,363
Percent of total public reports listing “Bear in Garbage”	30%	33%	40%	39%	33%	33%	33%
Bears euthanized due to conflicts	15	14	19	14	13	22	25
Number of euthanizations that were food related (from intentional or unintentional feeding)	10	11	11	9	10	21	23
Percent of euthanizations that were food related	67%	79%	58%	64%	77%	95%	92%
Feeding rule warnings issued	6	7	10	25	29	22	28
Feeding rule citations issued	7	1	6	4	8	6	4

A first violation of the feeding prohibition rules listed above is a Level II offense, which is a second-degree misdemeanor resulting in punishment of up to 60 days in jail and/or up to a \$500 fine.

<sup>60</sup> Rule 68A-16.002, F.A.C.

<sup>61</sup> Rule 68A-25.001, F.A.C.

<sup>62</sup> In Dec. 2014, a woman in Lake Mary was attacked by a bear in her driveway. The event was widely reported and the attack resulted in the euthanization of several bears in the area. The attack and the events that followed resulted in significant exposure to the problem of bears in residential communities and the harm they can cause.

<sup>63</sup> *Supra* note 4, at 21.

A person convicted of a Level II violation within three years after a previous conviction of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$250.

A person convicted of a Level II violation within five years of two previous Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a mandatory minimum fine of \$500 and suspension of all recreational licenses for a year.

A person convicted of a Level II violation within 10 years of three previous convictions of a Level II or higher violation commits a first-degree misdemeanor, punishable by imprisonment of up to a year and/or a fine of up to \$1,000, with a minimum mandatory fine of \$750 and suspension of all recreational licenses for three years.<sup>64</sup>

According to the FWC, when FWC officers issue citations for violations of feeding rules, assistant state attorneys reject 28 percent of them and 25 percent of those charged have their adjudications withheld (meaning that there is no criminal misdemeanor, however, fines are assessed).

FWC officers' experiences, as well as adjudication results of citations issued for feeding prohibition rules, reveal that there are varying degrees of severity and willfulness in feeding violations despite the single criminal penalty of a second-degree misdemeanor. Discussions with assistant state attorneys have revealed that some believe a second-degree misdemeanor is too severe a penalty for some initial violations of animal feeding rules, and this may be the reason for the reluctance to prosecute some violations. On the other hand, some citations are prosecuted and violators have been issued significant sentences.

Since 2007, the FWC has recorded the highest levels of human-wildlife conflict in 2012 and 2013. Incidents of human injuries caused by bears and alligators have also been more prevalent. In 2013 and 2014, the FWC documented the most serious human injuries caused by bears since records have been kept, which began in 1976. Many of these human-wildlife interactions result from violations of the animal feeding rules. Since many violations of these rules are not prosecuted, the penalty may have little deterrent effect.

### III. Effect of Proposed Changes:

**Sections 1 through 3** amend ss. 327.37, 327.39, and 327.50, F.S., respectively, to remove current Personal Flotation Device (PFD) type codes and provide that when water skiing, parasailing, aquaplaning, operating a personal watercraft, and for every person under six years of age on board a vessel less than 26 feet, all of which require wearing a PFD, the PFD must be approved by the Coast Guard and used in accordance with the Coast Guard approval label.

**Section 4** amends s. 379.357, F.S., to correct the scientific name of tarpon in the statute from the incorrect *megalops atlantica* to the correct name, which is *Megalops atlanticus*.

---

<sup>64</sup> Section 379.401(2)(b)1.-4., F.S.



The bill changes the dates tarpon tags are valid from July 1 through June 30 to January 1 through December 31. Currently tarpon tags may have to be purchased twice during the height of the tarpon fishing season if they have not been used by July 1.

The bill repeals a requirement for tax collectors to submit any unissued tags for the previous fiscal year along with a written audit report as to the numbers of unissued tags.

The bill also repeals reporting requirements for tarpon landings.

**Section 5** amends s. 379.361, F.S., to repeal all statutory references to the qualifying requirements for acquiring a Restricted Species Endorsement (RS). Current requirements are found in Rule 68B-2.006, F.A.C.

**Section 6** amends s. 379.3012, F.S., to rephrase “Alligator Management and Trapping Program” to “Alligator Management Program”, which is the only place the phrase “Alligator Management and Trapping Program” is used in statute or rule.

The bill removes statutory rulemaking authority to implement an alligator management and trapping program. The Fish and Wildlife Conservation Commission (FWC) reports that provisions are no longer needed and removing them will not impact program participants, stakeholders, resource protection, or program implementation. Rule 68A-25.032, F.A.C., governs regulations concerning the establishment of alligator programs. Rule 68A-25.042, F.A.C., governs regulations concerning statewide alligator trapping, permitting, taking, and sale.

The bill also clarifies the word “hereunder” by replacing it with the phrase “alligator management program,” in reference to the existing provision that precludes the FWC’s alligator management program from superseding the regulatory authority or responsibilities of the Department of Agriculture and Consumer Services (DACS), the Department of Health, or any local governmental entity regarding the processing or handling of food products.

**Section 7** amends s. 379.364, F.S., to clarify that it is unlawful for a person to engage in the business of dealing or buying green or dried alligator hides, as opposed to alligator skins, to ensure all uncured alligator hides are identified as originally intended, according to the FWC.

The bill also removes reporting and shipping requirements for dealers and buyers for fur and hide dealers because they are found in Rule 68A-24.004, F.A.C.

**Section 8** amends s. 379.3751, F.S., to clarify that a person may not take or possess an alligator or alligator eggs without an “alligator license” rather than a “trapping license”

The bill removes statutory rulemaking authority to limit the number of participants engaged in the taking of alligators or alligator eggs because the provision is already incorporated in Rule 68A-25.002, F.A.C.

It deletes a mandatory requirement to transfer \$1 to the DACS for any alligator egg collected and retained, whether or not a fee is assessed for the egg. It makes the transfer of \$1 per egg contingent on an annual appropriation for alligator marketing and education activities.

It removes redundant rulemaking authority to establish appropriate qualifications for permitting alligator collectors.

It requires a person who assists a contracted nuisance alligator trapper to possess an alligator trapping agent's license.

The bill also provides the following exemptions:

- Contracted nuisance alligator trappers are not required to obtain an alligator trapping license;
- Children under 16 years of age taking an alligator under an alligator harvest program implemented by FWC rule are not required to obtain an alligator trapping agent license;
- People taking an alligator pursuant to an event permit issued under s. 379.353(2)(q), F.S., which contains exemptions for certain veterans, are not required to obtain an alligator trapping or trapping agent license;
- People who meet the disability requirements under s. 379.353(1), F.S., are not required to pay any fee for an alligator trapping or trapping agent license; and
- People engaged in taking an alligator under an FWC permit are not required to pay for an additional wildlife management area permit when hunting alligators under an FWC permit in such an area.

**Section 9** amends s. 379.3752, F.S., to reenact the section and remove a requirement for the FWC to use one-third of the revenue from issuing the alligator hatchling tag for alligator husbandry research. The FWC reports that the policy is obsolete and no longer needed to aid in the regulation or management of alligators.

The bill also removes a permissive requirement that CITES tags be attached to the hide of any alligator taken from the wild and that the hide must be possessed, purchased, sold, offered for sale, or transported in accordance with FWC rule. The FWC reports that it is redundant with Rule 68A-25.042, F.A.C.

The bill removes a mandatory transfer of \$5 for any validated hide to the General Inspection Trust Fund, to be used by DACS for the purpose of marketing and education services with respect to alligator products produced in the state. The bill makes the transfer contingent upon an annual appropriation for alligator marketing and education activities.

The bill removes a requirement to limit the number of CITES tags to what the FWC deems to be the safe yield of alligators in the state. The FWC reports that it is redundant with Rule 68A-25.032, F.A.C.

**Section 10** amends s. 379.401, F.S., to remove violations involving rules or orders of the FWC relating to the feeding of wildlife, freshwater fish, or feeding or enticement of alligators or crocodiles from the list of Level II violations. These violations are addressed in s. 379.412, which is created in section 11 of the bill.

**Section 11** creates s. 379.412, F.S., to provide penalties for feeding wildlife and freshwater fish.

The penalties apply to:

- Feeding wildlife or freshwater fish with food or garbage;
- Attracting or enticing wildlife or freshwater fish with food or garbage; or
- Allowing the placement of food or garbage in a manner that attracts or entices wildlife or freshwater fish.

The penalties do not apply to rules or orders of the FWC that:

- Relate to animals that are held in captivity;
- Restrict the taking or hunting of species over bait or other intentionally placed or deposited food; or
- Restrict the taking or hunting of species in proximity to feeding stations.

A first violation is a noncriminal infraction, punishable by a civil penalty of \$100 and anyone cited for a first violation is subject to the following requirements:

- A person cited for a violation must sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and must indicate the applicable civil penalty;
- If a person chooses to pay the civil penalty within 30 days, the person is deemed to have admitted to committing the violation and to have waived his or her right to a hearing before the county court. The admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations;
- If a person refuses to accept the citation, fails to pay the civil penalty, or fails to appear before the county court commits a second-degree misdemeanor; and
- If a person chooses or is required to appear before the county court, that person is deemed to have waived the \$100 civil penalty limitation. If the county court determines a violation has occurred, the court may impose a civil penalty of at least \$100. If a person has been found guilty of committing a violation, he or she may appeal to the circuit court. The bill provides that the commission of a violation must be proved by the legal standard of beyond a reasonable doubt.

A second or any subsequent violations, if all violations are related to freshwater fish or wildlife other than bears, alligators, or other crocodylians, is a second-degree misdemeanor.

Further violations, if all violations involve bears, alligators, or other crocodylians, are classified as second-degree misdemeanors for second violations, first-degree misdemeanors for third violations, and third-degree felonies for any fourth or subsequent violations

The bill defines “violations” as any judicial disposition other than acquittal or dismissal.

**Section 12** repeals s. 379.3011, F.S., which relates to alligator trapping program definitions. The FWC reports that the definitions of “alligator” and “process or processing” are unnecessary in aiding the regulation and management of alligator resources. The definition of “alligator hatchling” is in Rule 68A-1.004, F.A.C.

**Section 13** repeals s. 379.3013, F.S., which relates to alligator study requirements. It is incorporated in Rule 68A-25.042, F.A.C.

**Section 14** repeals s. 379.3016, F.S., which relates to penalties for unlawfully selling alligator products. The prohibition on selling any alligator product manufactured in the form of a stuffed baby alligator or other baby crocodilia, and the prohibition on selling any alligator product manufactured from an endangered species are now found in Rule 68A-25.002, F.A.C. Section 379.3016(3), F.S., provides that a violation of those two provisions is a first-degree misdemeanor. This will make those violations Level II violations, which reduces these violations to second-degree misdemeanors.

**Section 15** repeals s. 379.3017, F.S., which relates to a prohibition on the use of the word “alligator” or “gator” when used in connection with the sale of products made from some other crocodilian. This provision has been incorporated in Rule 68A-25.002, F.A.C.

**Sections 16 through 18** reenact sections of the Florida Statutes for the purpose of incorporating amendments made in the bill.

**Section 19** provides that the act will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/CS/SB 680, children under the age of 16 who wish to hunt alligators will save \$50 per year under the exemption for an Alligator Trapping Agent License.

Current members of the military and “wounded warriors” taking alligators as part of a FWC sanctioned event will save either the \$250 or \$50 normally required for an Alligator Trapping License or an Alligator Trapping Agent License, respectively. In addition, permanently disabled participants who wish to hunt alligators will experience similar savings.

Contracted nuisance alligator trappers will save \$250 annually because they no longer have to pay \$250 for the Alligator Trapping License when trapping nuisance alligators under contract with the FWC. This will not apply if a nuisance alligator trapper is hunting alligators recreationally or on private lands.

Modified penalties for violations of wildlife feeding rules may have a fiscal impact but it is indeterminate whether it will be negative or positive since initial violations will incur a lower fine but further violations will incur higher fines. Also, state attorneys may be more willing to prosecute violations leading to additional fines.

**C. Government Sector Impact:**

Fines assessed for convictions of violations of wildlife feeding rules are deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund. The bill lowers the maximum fine from \$500 to \$100. The fiscal impact is indeterminate, and given the number of citations issued in Fiscal Year 2013-2014 (12 for a total of \$1,623), it is likely to be minimal.

Fines imposed when adjudication is withheld for violations of wildlife feeding rules are remitted to the Department of Revenue for deposit in the General Revenue Fund. For the 2013-2014 fiscal year, \$270 was deposited. The fiscal impact is indeterminate and likely to be minimal.

The FWC estimates that it will experience a negative fiscal impact related to the exemptions on alligator trapping and trapping agent licenses of approximately \$27,500.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.37, 327.39, 327.50, 379.357, 379.361, 379.3012, 379.364, 379.3751, 379.3752, and 379.401.

This bill creates section 379.412 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 379.3011, 379.3013, 379.3016, and 379.3017.

This bill reenacts the following sections of the Florida Statutes: 327.73, 327.375, and 327.54.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The CS makes a technical change to statute reenactments.

**CS by Environmental Preservation and Conservation on March 19, 2015:**

The CS makes a technical change.

- B. **Amendments:**

None.



648972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 596 - 609

and insert:

Section 16. Paragraph (a) of subsection (1) of section  
327.50, Florida Statutes, is reenacted to read:

327.50 Vessel safety regulations; equipment and lighting  
requirements.—

(1) (a) The owner and operator of every vessel on the waters  
of this state shall carry, store, maintain, and use safety



648972

11 equipment in accordance with current United States Coast Guard  
12 safety equipment requirements as specified in the Code of  
13 Federal Regulations, unless expressly exempted by the  
14 department.

15

16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete lines 56 - 64

19 and insert:

20 "alligator" or "gator" in certain sales; reenacting s.  
21 327.50(1)(a), F.S., relating to vessel safety  
22 equipment, to incorporate changes to federal  
23 regulations; providing an effective date.



By the Committee on Environmental Preservation and Conservation;  
and Senator Dean

592-02520-15

2015680c1

1 A bill to be entitled  
2 An act relating to the Fish and Wildlife Conservation  
3 Commission; amending ss. 327.37, 327.39, and 327.50,  
4 F.S.; requiring personal flotation devices to be used  
5 in accordance with the United States Coast Guard  
6 approval labels; amending s. 379.357, F.S.; revising  
7 the dates for tarpon tag validity; deleting the  
8 requirement that tax collectors submit forms annually  
9 relating to the number of unissued tags; deleting the  
10 requirement for submitting forms relating to tarpon  
11 landed; amending s. 379.361, F.S.; removing the income  
12 requirement for a restricted species endorsement on a  
13 saltwater products license; amending s. 379.3012,  
14 F.S.; revising the rulemaking authority of the  
15 commission relating to the alligator management and  
16 trapping program; amending s. 379.364, F.S.; requiring  
17 resident dealers to pay a certain fee per annum;  
18 removing the requirement for dealers and buyers to  
19 forward reports relating to the number and kinds of  
20 hide bought; removing the requirement that common  
21 carriers only ship, transport, or receive hides or  
22 furs marked with certain identifying information;  
23 amending s. 379.3751, F.S.; removing the rulemaking  
24 authority of the commission to limit the number of  
25 participants engaged in the taking of alligators or  
26 their eggs from the wild and to establish appropriate  
27 qualifications for certain alligator collectors;  
28 providing exemptions for alligator trapping licenses;  
29 requiring certain licenses to be issued without fee to

Page 1 of 22

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

30 residents who meet the requirements for disability;  
31 clarifying that a management area permit is not  
32 required for a person engaged in the taking of an  
33 alligator under a permit that authorizes the taking of  
34 alligators; providing that the transfer of fees for  
35 marketing and education services is contingent upon  
36 annual appropriation; reenacting and amending s.  
37 379.3752, F.S.; removing the requirement that the  
38 commission expend one-third of the revenue from the  
39 issuance of alligator hatchling tags for alligator  
40 husbandry research; providing that the transfer of  
41 fees for marketing and education services is  
42 contingent upon annual appropriation; deleting the  
43 requirement that the number of tags pursuant to a  
44 collection permit be equal to a safe yield of  
45 alligators; amending s. 379.401, F.S.; conforming  
46 provisions to changes made by the act; creating s.  
47 379.412, F.S.; establishing penalties for the unlawful  
48 feeding of wildlife and freshwater fish; providing an  
49 exception; repealing s. 379.3011, F.S., relating to  
50 the alligator trapping program; repealing s. 379.3013,  
51 F.S., relating to alligator study requirements;  
52 repealing s. 379.3016, F.S., relating to the  
53 prohibition against the sale of alligator products and  
54 associated penalties; repealing s. 379.3017, F.S.,  
55 relating to the restricted use of the terms  
56 "alligator" or "gator" in certain sales; reenacting  
57 ss. 327.73(1)(i) and 327.375(1), F.S., to incorporate  
58 the amendment made by this act to s. 327.37, F.S., in

Page 2 of 22

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

59 references thereto; reenacting s. 327.73(1)(p), F.S.,  
 60 to incorporate the amendment made by this act to s.  
 61 327.39, F.S., in a reference thereto; reenacting ss.  
 62 327.54(1)(c) and 327.73(1)(m), F.S., to incorporate  
 63 the amendment made by this act to s. 327.50, F.S., in  
 64 references thereto; providing an effective date.

65  
 66 Be It Enacted by the Legislature of the State of Florida:

67 Section 1. Paragraph (b) of subsection (2) of section  
 68 327.37, Florida Statutes, is amended to read:

69 327.37 Water skis, parasails, aquaplanes, kiteboarding,  
 70 kitesurfing, and moored ballooning regulated.—

71 (2)

72 (b) A person may not engage in water skiing, parasailing,  
 73 aquaplaning, or any similar activity unless such person is  
 74 wearing a noninflatable ~~type I, type II, type III, or type V~~  
 75 personal flotation device approved by the United States Coast  
 76 Guard and used in accordance with the United States Coast Guard  
 77 approval label.

78  
 79 Section 2. Subsection (1) of section 327.39, Florida  
 80 Statutes, is amended to read:

81 327.39 Personal watercraft regulated.—

82 (1) A person may not operate a personal watercraft unless  
 83 each person riding on or being towed behind such vessel is  
 84 wearing a ~~type I, type II, type III, or type V~~ personal  
 85 flotation device, other than an inflatable device, approved by  
 86 the United States Coast Guard and used in accordance with the  
 87 United States Coast Guard approval label.

Page 3 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

88 Section 3. Paragraph (b) of subsection (1) of section  
 89 327.50, Florida Statutes, is amended to read:  
 90 327.50 Vessel safety regulations; equipment and lighting  
 91 requirements.—

92 (1)

93 (b) No person shall operate a vessel less than 26 feet in  
 94 length on the waters of this state unless every person under 6  
 95 years of age on board the vessel is wearing a United States type  
 96 I, type II, or type III Coast Guard approved personal flotation  
 97 device, used in accordance with the United States Coast Guard  
 98 approval label, while such vessel is underway. For the purpose  
 99 of this section, the term "underway" means shall mean at all  
 100 times except when a vessel is anchored, moored, made fast to the  
 101 shore, or aground.

102 Section 4. Subsections (1) and (3) of section 379.357,  
 103 Florida Statutes, are amended to read:

104 379.357 Fish and Wildlife Conservation Commission license  
 105 program for tarpon; fees; penalties.—

106 (1) The commission shall establish a license program for  
 107 the purpose of issuing tags to individuals desiring to harvest  
 108 tarpon (Megalops atlanticus) ~~(megalops atlantica)~~ from the  
 109 waters of the state. The tags shall be nontransferable, except  
 110 that the commission may allow for a limited number of tags to be  
 111 purchased by professional fishing guides for transfer to  
 112 individuals, and issued by the commission in order of receipt of  
 113 a properly completed application for a nonrefundable fee of \$50  
 114 per tag. The commission and any tax collector may sell the tags  
 115 and collect the fees therefor. Tarpon tags are valid from  
 116 January July 1 through December 31 ~~June 30. Before August 15 of~~

Page 4 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

117 each year, each tax collector shall submit to the commission all  
 118 unissued tags for the previous fiscal year along with a written  
 119 audit report, on forms prescribed or approved by the commission,  
 120 as to the numbers of the unissued tags. To defray the cost of  
 121 issuing any tag, the issuing tax collector shall collect and  
 122 retain as his or her costs, in addition to the tag fee  
 123 collected, the amount allowed under s. 379.352(6) for the  
 124 issuance of licenses.

125 (3) An ~~No~~ individual may not ~~shall~~ take, kill, or possess  
 126 any fish of the species Megalops atlanticus ~~megalops atlantica~~,  
 127 commonly known as tarpon, unless such individual has purchased a  
 128 tarpon tag and securely attached it through the lower jaw of the  
 129 fish. Said individual shall within 5 days after the landing of  
 130 the fish submit a form to the commission which indicates the  
 131 length, weight, and physical condition of the tarpon when  
 132 caught; the date and location of where the fish was caught; and  
 133 any other pertinent information which may be required by the  
 134 commission. The commission may refuse to issue new tags to  
 135 individuals or guides who fail to provide the required  
 136 information.

137 Section 5. Paragraph (b) of subsection (2) of section  
 138 379.361, Florida Statutes, is amended to read:

139 379.361 Licenses.—

140 (2) SALTWATER PRODUCTS LICENSE.—

141 (b) ~~1-~~ A restricted species endorsement on the saltwater  
 142 products license is required to sell to a licensed wholesale  
 143 dealer those species which the state, by law or rule, has  
 144 designated as "restricted species." ~~This endorsement may be~~  
 145 ~~issued only to a person who is at least 16 years of age, or to a~~

Page 5 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

146 ~~firm certifying that over 25 percent of its income or \$5,000 of~~  
 147 ~~its income, whichever is less, is attributable to the sale of~~  
 148 ~~saltwater products pursuant to a saltwater products license~~  
 149 ~~issued under this paragraph or a similar license from another~~  
 150 ~~state. This endorsement may also be issued to a for profit~~  
 151 ~~corporation if it certifies that at least \$5,000 of its income~~  
 152 ~~is attributable to the sale of saltwater products pursuant to a~~  
 153 ~~saltwater products license issued under this paragraph or a~~  
 154 ~~similar license from another state. However, if at least 50~~  
 155 ~~percent of the annual income of a person, firm, or for-profit~~  
 156 ~~corporation is derived from charter fishing, the person, firm,~~  
 157 ~~or for-profit corporation must certify that at least \$2,500 of~~  
 158 ~~the income of the person, firm, or corporation is attributable~~  
 159 ~~to the sale of saltwater products pursuant to a saltwater~~  
 160 ~~products license issued under this paragraph or a similar~~  
 161 ~~license from another state, in order to be issued the~~  
 162 ~~endorsement. Such income attribution must apply to at least 1 of~~  
 163 ~~the last 3 years. For the purpose of this section, "income"~~  
 164 ~~means that income that is attributable to work, employment,~~  
 165 ~~entrepreneurship, pensions, retirement benefits, and social~~  
 166 ~~security benefits.~~

167 ~~2. To renew an existing restricted species endorsement, a~~  
 168 ~~marine aquaculture producer possessing a valid saltwater~~  
 169 ~~products license with a restricted species endorsement may apply~~  
 170 ~~income from the sale of marine aquaculture products to licensed~~  
 171 ~~wholesale dealers.~~

172 ~~3. The commission may require verification of such income~~  
 173 ~~for all restricted species endorsements issued pursuant to this~~  
 174 ~~paragraph. Acceptable proof of income earned from the sale of~~

Page 6 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

175 saltwater products shall be:

176 a. ~~Copies of trip ticket records generated pursuant to this~~

177 ~~subsection (marine fisheries information system), documenting~~

178 ~~qualifying sale of saltwater products;~~

179 b. ~~Copies of sales records from locales other than Florida~~

180 ~~documenting qualifying sale of saltwater products;~~

181 c. ~~A copy of the applicable federal income tax return,~~

182 ~~including Form 1099 attachments, verifying income earned from~~

183 ~~the sale of saltwater products;~~

184 d. ~~Crew share statements verifying income earned from the~~

185 ~~sale of saltwater products; or~~

186 e. ~~A certified public accountant's notarized statement~~

187 ~~attesting to qualifying source and amount of income.~~

188 4. ~~Notwithstanding any other provision of law, any person~~

189 ~~who owns a retail seafood market or restaurant at a fixed~~

190 ~~location for at least 3 years, who has had an occupational~~

191 ~~license for 3 years before January 1, 1990, who harvests~~

192 ~~saltwater products to supply his or her retail store, and who~~

193 ~~has had a saltwater products license for 1 of the past 3 license~~

194 ~~years before January 1, 1990, may provide proof of his or her~~

195 ~~verification of income and sales value at the person's retail~~

196 ~~seafood market or restaurant and in his or her saltwater~~

197 ~~products enterprise by affidavit and shall thereupon be issued a~~

198 ~~restricted species endorsement.~~

199 5. ~~Exceptions from income requirements shall be as follows:~~

200 a. ~~A permanent restricted species endorsement shall be~~

201 ~~available to those persons age 62 and older who have qualified~~

202 ~~for such endorsement for at least 3 of the last 5 years.~~

203 b. ~~Active military duty time shall be excluded from~~

Page 7 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

204 ~~consideration of time necessary to qualify and shall not be~~

205 ~~counted against the applicant for purposes of qualifying.~~

206 e. ~~Upon the sale of a used commercial fishing vessel owned~~

207 ~~by a person, firm, or corporation possessing or eligible for a~~

208 ~~restricted species endorsement, the purchaser of such vessel~~

209 ~~shall be exempted from the qualifying income requirement for the~~

210 ~~purpose of obtaining a restricted species endorsement for a~~

211 ~~complete license year after purchase of the vessel.~~

212 d. ~~Upon the death or permanent disablement of a person~~

213 ~~possessing a restricted species endorsement, an immediate family~~

214 ~~member wishing to carry on the fishing operation shall be~~

215 ~~exempted from the qualifying income requirement for the purpose~~

216 ~~of obtaining a restricted species endorsement for a complete~~

217 ~~license year after the death or disablement.~~

218 e. ~~A restricted species endorsement may be issued on an~~

219 ~~individual saltwater products license to a person age 62 or~~

220 ~~older who documents that at least \$2,500 of such person's income~~

221 ~~is attributable to the sale of saltwater products.~~

222 f. ~~A permanent restricted species endorsement may also be~~

223 ~~issued on an individual saltwater products license to a person~~

224 ~~age 70 or older who has held a saltwater products license for at~~

225 ~~least 3 of the last 5 license years.~~

226 g. ~~Any resident who is certified to be totally and~~

227 ~~permanently disabled by the Railroad Retirement Board, by the~~

228 ~~United States Department of Veterans Affairs or its predecessor,~~

229 ~~or by any branch of the United States Armed Forces, or who holds~~

230 ~~a valid identification card issued by the Department of~~

231 ~~Veterans' Affairs pursuant to s. 295.17, upon proof of the same,~~

232 ~~or any resident certified to be disabled by the United States~~

Page 8 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

233 ~~Social Security Administration or a licensed physician, upon~~  
 234 ~~proof of the same, shall be exempted from the income~~  
 235 ~~requirements if he or she also has held a saltwater products~~  
 236 ~~license for at least 3 of the last 5 license years before the~~  
 237 ~~date of the disability. A restricted species endorsement issued~~  
 238 ~~under this paragraph may be issued only on an individual~~  
 239 ~~saltwater products license.~~

240 ~~h. An honorably discharged, resident military veteran~~  
 241 ~~certified by the United States Department of Veterans Affairs or~~  
 242 ~~its predecessor or by any branch of the United States Armed~~  
 243 ~~Forces to have a service-connected permanent disability rating~~  
 244 ~~of 10 percent or higher, upon providing proof of such disability~~  
 245 ~~rating, is not required to provide documentation for the income~~  
 246 ~~requirement with his or her initial application for a restricted~~  
 247 ~~species endorsement. Documentation for the income requirement is~~  
 248 ~~required beginning with the renewal of the restricted species~~  
 249 ~~endorsement after such veteran has possessed a valid restricted~~  
 250 ~~species endorsement for a complete license year. This exemption~~  
 251 ~~applies only to issuance of the endorsement on an individual~~  
 252 ~~saltwater products license and is a one-time exemption. In order~~  
 253 ~~to renew the restricted species endorsement on an individual~~  
 254 ~~saltwater products license, the veteran must document that at~~  
 255 ~~least \$2,500 of his or her income is attributable to the sale of~~  
 256 ~~saltwater products.~~

257 ~~i. Beginning July 1, 2014, a resident military veteran who~~  
 258 ~~applies to the commission within 48 months after receiving an~~  
 259 ~~honorable discharge from any branch of the United States Armed~~  
 260 ~~Forces, the United States Coast Guard, the military reserves,~~  
 261 ~~the Florida National Guard, or the United States Coast Guard~~

Page 9 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

262 ~~Reserve is not required to provide documentation for the income~~  
 263 ~~requirement with his or her initial application for a restricted~~  
 264 ~~species endorsement. Documentation for the income requirement is~~  
 265 ~~required beginning with the renewal of the restricted species~~  
 266 ~~endorsement after such veteran has possessed a valid restricted~~  
 267 ~~species endorsement for a complete license year. This exemption~~  
 268 ~~applies only to issuance of the endorsement on an individual~~  
 269 ~~saltwater products license and may only be applied one time per~~  
 270 ~~military enlistment.~~

271 ~~j. Until June 30, 2014, a resident military veteran who~~  
 272 ~~applies to the commission and who received an honorable~~  
 273 ~~discharge from any branch of the United States Armed Forces, the~~  
 274 ~~United States Coast Guard, the military reserves, the Florida~~  
 275 ~~National Guard, or the United States Coast Guard Reserve between~~  
 276 ~~September 11, 2001, and June 30, 2014, is not required to~~  
 277 ~~provide documentation for the income requirement with his or her~~  
 278 ~~initial application for a restricted species endorsement.~~  
 279 ~~Documentation for the income requirement is required beginning~~  
 280 ~~with the renewal of the restricted species endorsement after~~  
 281 ~~such veteran has possessed a valid restricted species~~  
 282 ~~endorsement for a complete license year. This exemption applies~~  
 283 ~~only to issuance of the endorsement on an individual saltwater~~  
 284 ~~products license.~~

285 ~~Section 6. Section 379.3012, Florida Statutes, is amended~~  
 286 ~~to read:~~

287 ~~379.3012 Alligator management and trapping program~~  
 288 ~~implementation; commission authority.-~~

289 ~~(1) In any alligator management and trapping program that~~  
 290 ~~the Fish and Wildlife Conservation Commission shall establish,~~

Page 10 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

291 the commission shall have the authority to adopt all rules  
 292 necessary for full and complete implementation of such alligator  
 293 management and trapping program, and, in order to ensure its  
 294 lawful, safe, and efficient operation in accordance therewith,  
 295 ~~may:~~

296 ~~(a) Regulate the marketing and sale of alligators, their~~  
 297 ~~hides, eggs, meat, and byproducts, including the development and~~  
 298 ~~maintenance of a state-sanctioned sale.~~

299 ~~(b) Regulate the handling and processing of alligators,~~  
 300 ~~their eggs, hides, meat, and byproducts, for the lawful, safe,~~  
 301 ~~and sanitary handling and processing of same.~~

302 ~~(c) Regulate commercial alligator farming facilities and~~  
 303 ~~operations for the captive propagation and rearing of alligators~~  
 304 ~~and their eggs.~~

305 ~~(d) Provide hide-grading services by two or more~~  
 306 ~~individuals pursuant to state-sanctioned sales if rules are~~  
 307 ~~first promulgated by the commission governing:~~

308 ~~1. All grading-related services to be provided pursuant to~~  
 309 ~~this section;~~

310 ~~2. Criteria for qualifications of persons to serve as hide-~~  
 311 ~~graders for grading services to be provided pursuant to this~~  
 312 ~~section; and~~

313 ~~3. The certification process by which hide-graders~~  
 314 ~~providing services pursuant to this section will be certified.~~

315 ~~(e) Provide sales-related services by contract pursuant to~~  
 316 ~~state-sanctioned sales if rules governing such services are~~  
 317 ~~first promulgated by the commission.~~

318 ~~(2) All contractors of the commission for the grading,~~  
 319 ~~marketing, and sale of alligators and their hides, eggs, meat,~~

592-02520-15

2015680c1

320 and byproducts shall not engage in any act constituting a  
 321 conflict of interest under part III of chapter 112.

322 ~~(3) The powers and duties of the commission to implement~~  
 323 ~~the alligator management program may hereunder shall not be~~  
 324 ~~construed so as to supersede the regulatory authority or lawful~~  
 325 ~~responsibility of the Department of Agriculture and Consumer~~  
 326 ~~Services, the Department of Health, or any local governmental~~  
 327 ~~entity regarding the processing or handling of food products,~~  
 328 ~~but is shall be deemed supplemental thereto.~~

329 Section 7. Section 379.364, Florida Statutes, is amended to  
 330 read:

331 379.364 License required for fur and hide dealers.-

332 (1) It is unlawful for a any person to engage in the  
 333 business of a dealer or buyer in green or dried alligator hides  
 334 skins or green or dried furs in the state or purchase such hides  
 335 or furs skins within the state until such person has been  
 336 licensed as herein provided.

337 (2) A person Any resident dealer or buyer who solicits  
 338 business through the mails, or by advertising, or who travels to  
 339 buy or employs or has other agents or buyers, shall be deemed a  
 340 resident state dealer and must pay a license fee of \$100 per  
 341 annum.

342 (3) A resident dealer must pay a license fee of \$100 per  
 343 annum. A nonresident dealer ~~or buyer~~ must pay a license fee of  
 344 \$500 per annum.

345 ~~(4) All dealers and buyers shall forward to the Fish and~~  
 346 ~~Wildlife Conservation Commission each 2 weeks during open season~~  
 347 ~~a report showing number and kind of hides bought and name of~~  
 348 ~~trapper from whom bought and the trapper's license number, or if~~

592-02520-15

2015680c1

349 ~~trapper is exempt from license under any of the provisions of~~  
 350 ~~this chapter, such report shall show the nature of such~~  
 351 ~~exemption. A common carrier may not knowingly ship or transport~~  
 352 ~~or receive for transportation any hides or furs unless such~~  
 353 ~~shipments have marked thereon name of shipper and the number of~~  
 354 ~~her or his fur animal license or fur dealer's license.~~

355 Section 8. Subsections (1), (4), and (5) of section  
 356 379.3751, Florida Statutes, are amended to read:

357 379.3751 Taking and possession of alligators; trapping  
 358 licenses; fees.-

359 (1) (a) A ~~No~~ person may not ~~shall~~ take or possess an ~~any~~  
 360 alligator or the eggs thereof without having first been issued  
 361 an alligator license under obtained from the commission a  
 362 trapping license and paid the fee provided in this section. Such  
 363 license shall be dated when issued and remain valid for 12  
 364 months after the date of issuance and authorizes ~~shall authorize~~  
 365 the person to whom it is issued to take or possess alligators  
 366 and their eggs, and to sell, possess, and process alligators and  
 367 their hides and meat, in accordance with law and commission  
 368 rules. Such license is ~~shall~~ not be transferable and is ~~shall~~  
 369 not be valid unless it bears on its face in indelible ink the  
 370 name of the person to whom it is issued. Such license shall be  
 371 in the personal possession of the licensee while such person is  
 372 taking alligators or their eggs or is selling, possessing, or  
 373 processing alligators or their eggs, hides, or meat. The failure  
 374 of the licensee to exhibit such license to a the commission law  
 375 enforcement officer ~~or its wildlife officers~~, when such person  
 376 is found taking alligators or their eggs or is found selling,  
 377 possessing, or processing alligators or their eggs, hides, or

Page 13 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

378 meat, is ~~shall~~ be a violation of law.

379 ~~(b)~~ In order to assure the optimal utilization of the  
 380 estimated available alligator resource and to ensure adequate  
 381 control of the alligator management and harvest program, ~~the~~  
 382 ~~commission may by rule limit the number of participants engaged~~  
 383 ~~in the taking of alligators or their eggs from the wild.~~

384 ~~(b)(e)~~ A ~~No~~ person who has been convicted of any violation  
 385 of s. 379.3015 or s. 379.409 or the rules of the commission  
 386 relating to the illegal taking of crocodylian species may not  
 387 shall be issued eligible for issuance of a license for a period  
 388 of 5 years subsequent to such conviction. In the event such  
 389 violation involves the unauthorized taking of an endangered  
 390 crocodylian species, a ~~no~~ license may not ~~shall~~ be issued for 10  
 391 years subsequent to the conviction.

392 (c) A person taking a nuisance alligator pursuant to  
 393 contract with the commission is not required to obtain an  
 394 alligator trapping license. A person assisting a contracted  
 395 nuisance alligator trapper, unless otherwise exempt under  
 396 paragraph (d), paragraph (e), or paragraph (f), is required to  
 397 possess an alligator trapping agent's license as provided in  
 398 subsection (2).

399 (d) A child under 16 years of age taking an alligator under  
 400 an alligator harvest program implemented by commission rule is  
 401 not required to obtain an alligator trapping agent license.

402 (e) A person taking an alligator pursuant to an event  
 403 permit issued under s. 379.353(2)(g) is not required to obtain  
 404 an alligator trapping license or an alligator trapping agent  
 405 license.

406 (f) An alligator trapping license or alligator trapping

Page 14 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

407 agent license must be issued without fee to any resident who  
 408 meets the requirements for disability under s. 379.353(1).

409 (g) A management area permit under s. 379.354(8) is not  
 410 required for a person engaged in the taking of an alligator  
 411 under a permit issued by the commission that authorizes the  
 412 taking of alligators.

413 (4) ~~A No person may not shall~~ take any alligator egg  
 414 occurring in the wild or possess any such egg unless he or she  
 415 ~~such person~~ has obtained, or is a licensed agent of another  
 416 person who has obtained, an alligator egg collection permit. The  
 417 alligator egg collection permit is shall be required in addition  
 418 to the alligator farming license provided in paragraph (2)(d).  
 419 The commission may is authorized to assess a fee for issuance of  
 420 the alligator egg collection permit of up to \$5 per egg  
 421 authorized to be taken or possessed pursuant to such permit.  
 422 Contingent upon an annual appropriation for alligator marketing  
 423 and education activities Irrespective of whether a fee is  
 424 assessed, \$1 per egg collected and retained, excluding eggs  
 425 collected on private wetland management areas, shall be  
 426 transferred from the alligator management program to the General  
 427 Inspection Trust Fund, to be administered by the Department of  
 428 Agriculture and Consumer Services for the purpose of providing  
 429 marketing and education services with respect to alligator  
 430 products produced in this state, notwithstanding other  
 431 provisions in this chapter.

432 ~~(5) The commission shall adopt criteria by rule to~~  
 433 ~~establish appropriate qualifications for alligator collectors~~  
 434 ~~who may receive permits pursuant to this section.~~

435 Section 9. Section 379.3752, Florida Statutes, is reenacted

Page 15 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

436 and amended to read:

437 379.3752 Required tagging of alligators and hides; fees;  
 438 revenues.—The tags provided in this section shall be required in  
 439 addition to any license required under s. 379.3751.

440 (1) ~~A No person may not shall~~ take any alligator occurring  
 441 in the wild or possess any such alligator unless such alligator  
 442 is subsequently tagged in the manner required by commission  
 443 rule. For the tag required for an alligator hatchling, the  
 444 commission may is authorized to assess a fee of up to not more  
 445 than \$15 for each alligator hatchling tag issued. ~~The commission~~  
 446 ~~shall expend one-third of the revenue generated from the~~  
 447 ~~issuance of the alligator hatchling tag for alligator husbandry~~  
 448 ~~research.~~

449 (2) ~~The commission may require that an alligator hide~~  
 450 ~~validation tag (CITES tag) be affixed to the hide of any~~  
 451 ~~alligator taken from the wild and that such hide be possessed,~~  
 452 ~~purchased, sold, offered for sale, or transported in accordance~~  
 453 ~~with commission rule.~~ The commission may is authorized to assess  
 454 a fee of up to \$30 for each alligator hide validation tag (CITES  
 455 tag) issued. Contingent upon an annual appropriation for  
 456 alligator marketing and education activities Irrespective of  
 457 whether a fee is assessed, \$5 per validated hide, excluding  
 458 those validated from public hunt programs and alligator farms,  
 459 shall be transferred from the alligator management program to  
 460 the General Inspection Trust Fund, to be administered by the  
 461 Department of Agriculture and Consumer Services for the purpose  
 462 of providing marketing and education services with respect to  
 463 alligator products produced in this state, notwithstanding other  
 464 provisions in this chapter.

Page 16 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



592-02520-15

2015680c1

465 ~~(3) The number of tags available for alligators taken~~  
 466 ~~pursuant to a collection permit shall be limited to the number~~  
 467 ~~of tags determined by the commission to equal the safe yield of~~  
 468 ~~alligators as determined pursuant to s. 379.3013.~~

469 Section 10. Paragraph (a) of subsection (2) of section  
 470 379.401, Florida Statutes, is amended to read:

471 379.401 Penalties and violations; civil penalties for  
 472 noncriminal infractions; criminal penalties; suspension and  
 473 forfeiture of licenses and permits.—

474 (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two  
 475 violation if he or she violates any of the following provisions:

476 1. Rules or orders of the commission relating to seasons or  
 477 time periods for the taking of wildlife, freshwater fish, or  
 478 saltwater fish.

479 2. Rules or orders of the commission establishing bag,  
 480 possession, or size limits or restricting methods of taking  
 481 wildlife, freshwater fish, or saltwater fish.

482 3. Rules or orders of the commission prohibiting access or  
 483 otherwise relating to access to wildlife management areas or  
 484 other areas managed by the commission.

485 4. Rules or orders of the commission relating to the  
 486 feeding of ~~wildlife, freshwater fish, or~~ saltwater fish.

487 5. Rules or orders of the commission relating to landing  
 488 requirements for freshwater fish or saltwater fish.

489 6. Rules or orders of the commission relating to restricted  
 490 hunting areas, critical wildlife areas, or bird sanctuaries.

491 7. Rules or orders of the commission relating to tagging  
 492 requirements for wildlife and fur-bearing animals.

493 8. Rules or orders of the commission relating to the use of

592-02520-15

2015680c1

494 dogs for the taking of wildlife.

495 9. Rules or orders of the commission which are not  
 496 otherwise classified.

497 10. Rules or orders of the commission prohibiting the  
 498 unlawful use of finfish traps.

499 11. All prohibitions in this chapter which are not  
 500 otherwise classified.

501 12. Section 379.33, prohibiting the violation of or  
 502 noncompliance with commission rules.

503 13. Section 379.407(7), prohibiting the sale, purchase,  
 504 harvest, or attempted harvest of any saltwater product with  
 505 intent to sell.

506 14. Section 379.2421, prohibiting the obstruction of  
 507 waterways with net gear.

508 15. Section 379.413, prohibiting the unlawful taking of  
 509 bonefish.

510 16. Section 379.365(2) (a) and (b), prohibiting the  
 511 possession or use of stone crab traps without trap tags and  
 512 theft of trap contents or gear.

513 17. Section 379.366(4) (b), prohibiting the theft of blue  
 514 crab trap contents or trap gear.

515 18. Section 379.3671(2) (c), prohibiting the possession or  
 516 use of spiny lobster traps without trap tags or certificates and  
 517 theft of trap contents or trap gear.

518 19. Section 379.357, prohibiting the possession of tarpon  
 519 without purchasing a tarpon tag.

520 ~~20. Rules or orders of the commission prohibiting the~~  
 521 ~~feeding or enticement of alligators or crocodiles.~~

522 20.21. Section 379.105, prohibiting the intentional

592-02520-15

2015680c1

523 harassment of hunters, fishers, or trappers.

524 Section 11. Section 379.412, Florida Statutes, is created  
525 to read:

526 379.412 Penalties for feeding wildlife and freshwater  
527 fish.—

528 (1) The penalties in this section apply to a violation of  
529 rules or orders of the commission which prohibit or restrict the  
530 following: feeding wildlife or freshwater fish with food or  
531 garbage, attracting or enticing wildlife or freshwater fish with  
532 food or garbage, or allowing the placement of food or garbage in  
533 a manner that attracts or entices wildlife or freshwater fish.  
534 This section does not apply to rules or orders of the commission  
535 which relate to animals that are held in captivity, restrict the  
536 taking or hunting of species over bait or other intentionally  
537 placed or deposited food, or restrict the taking or hunting of  
538 species in proximity to feeding stations.

539 (2) Any person who violates a prohibition or restriction  
540 identified in subsection (1):

541 (a) For a first violation, commits a noncriminal  
542 infraction, punishable by a civil penalty of \$100.

543 1. A person cited for a violation under this paragraph must  
544 sign and accept a citation to appear before the county court.  
545 The issuing officer may indicate on the citation the time and  
546 location of the scheduled hearing and must indicate the  
547 applicable civil penalty.

548 2. A person cited for a violation under this paragraph may  
549 pay the civil penalty by mail or in person within 30 days after  
550 receipt of the citation. If the civil penalty is paid, the  
551 person shall be deemed to have admitted committing the violation

Page 19 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

552 and to have waived his or her right to a hearing before the  
553 county court. Such admission may not be used as evidence in any  
554 other proceedings except to determine the appropriate fine for  
555 any subsequent violations.

556 3. A person who refuses to accept a citation, who fails to  
557 pay the civil penalty for a violation, or who fails to appear  
558 before a county court as required commits a misdemeanor of the  
559 second degree, punishable as provided in s. 775.082 or s.  
560 775.083.

561 4. A person who elects or is required to appear before the  
562 county court is deemed to have waived the limitation on civil  
563 penalties provided under this paragraph. After a hearing, the  
564 county court shall determine whether a violation has been  
565 committed, and if so, may impose a civil penalty of at least  
566 \$100. A person found guilty of committing a violation may appeal  
567 that finding to the circuit court. The commission of a violation  
568 must be proved beyond a reasonable doubt.

569 (b) For second and subsequent violations, if all violations  
570 are related to freshwater fish or wildlife other than bears,  
571 alligators, or other crocodylians, commits a misdemeanor of the  
572 second degree, punishable as provided in s. 775.082 or s.  
573 775.083.

574 (c) For a second violation, if each violation is related to  
575 bears, alligators, or other crocodylians, commits a misdemeanor  
576 of the second degree, punishable as provided in s. 775.082 or s.  
577 775.083.

578 (d) For a third violation, if all violations are related to  
579 bears, alligators, or other crocodylians, commits a misdemeanor  
580 of the first degree, punishable as provided in s. 775.082 or s.

Page 20 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

581 775.083.

582 (e) For a fourth or subsequent violation, if all violations  
 583 are related to bears, alligators, or other crocodilians, commits  
 584 a felony of the third degree, punishable as provided in s.  
 585 775.082, s. 775.083, or s. 775.084.

586 (3) As used in this section, the term "violation" means any  
 587 judicial disposition other than acquittal or dismissal.

588 Section 12. Section 379.3011, Florida Statutes, is  
 589 repealed.

590 Section 13. Section 379.3013, Florida Statutes, is  
 591 repealed.

592 Section 14. Section 379.3016, Florida Statutes, is  
 593 repealed.

594 Section 15. Section 379.3017, Florida Statutes, is  
 595 repealed.

596 Section 16. Paragraph (i) of subsection (1) of s. 327.73,  
 597 Florida Statutes, and subsection (1) of s. 327.375, Florida  
 598 Statutes, are reenacted for the purpose of incorporating the  
 599 amendment made by this act to s. 327.37, Florida Statutes, in  
 600 references thereto.

601 Section 17. Paragraph (p) of subsection (1) of s. 327.73,  
 602 Florida Statutes, is reenacted for the purpose of incorporating  
 603 the amendment made by this act to s. 327.39, Florida Statutes,  
 604 in a reference thereto.

605 Section 18. Paragraph (c) of subsection (1) of s. 327.54,  
 606 Florida Statutes, and paragraph (m) of subsection (1) of s.  
 607 327.73, Florida Statutes, are reenacted for the purpose of  
 608 incorporating the amendment made by this act to s. 327.50,  
 609 Florida Statutes, in references thereto.

Page 21 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02520-15

2015680c1

610 Section 19. This act shall take effect upon becoming a law.

Page 22 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-2-15  
Meeting Date

680  
Bill Number (if applicable)

648972  
Amendment Barcode (if applicable)

Topic Fish + Wildlife Conservation Commission

Name Brandy Elliott

Job Title Legislative Affairs, Deputy Director

Address 1020 S. Meridian Street  
Street

Phone (850) 487-3795

Tallahassee FL 32399  
City State Zip

Email brandy.elliott@mytwc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fish + Wildlife Conservation Commission

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/3/15

Meeting Date

SB 650

Bill Number (if applicable)

Topic FWC

Amendment Barcode (if applicable)

Name JERRY SANSON

Job Title Executive Director

Address PO Box 700

Phone 321-973-0212

Street

Cocoa FL. 32923

City

State

Zip

Email FISHAWK @ AOL. Com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ORGANIZED FISHERMEN OF FL.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-2-15

Meeting Date

680

Bill Number (if applicable)

Topic Fish + Wildlife Conservation Commission

Amendment Barcode (if applicable)

Name Brandy Elliott

Job Title Deputy Director, Legislative Affairs

Address 620 S. Meridian Street

Phone (850) 487-3795

Tallahassee

FL

32399

Email brandy.elliott@myfwc.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing Fish + Wildlife Conservation Commission

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**SENATOR CHARLES S. DEAN, SR.**  
5th District

March 23, 2015

The Honorable Alan Hays  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 680, relating to the Fish and Wildlife Conservation Commission, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Jamie DeLoach, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 24 PM 12:08  
SENT TO: CHAIRMAN  
STAFF DIR. STAFF

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: SB 718

INTRODUCER: Senator Lee

SUBJECT: Administrative Procedures

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 718 makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public. Among the most notable changes, the bill:

- Provides that the decision of an administrative law judge in a challenge to a proposed rule is final agency action that cannot be overturned by an agency.
- Removes the presumption of validity for existing agency rules.
- Expands the circumstances under which a state agency must issue a declaratory statement by eliminating the requirement that a petitioner for a declaratory statement state with particularity the petitioner's set of circumstances.
- Makes a state agency liable for attorney fees and costs when the agency improperly denies a petition for a declaratory statement or loses a challenge to an existing or unadopted rule which is asserted as a defense to agency action.
- Makes a state agency liable for attorney fees and costs in proceedings to determine the entitlement to or amount of fees in related litigation against a prevailing party.
- Requires a person to provide advance notice of the intent to challenge a proposed, existing, or unadopted rule before the person can be entitled to attorney fees and costs in a rule challenge proceeding.

This bill has an indeterminate fiscal impact related to attorney fees and costs.

The bill is effective July 1, 2015.



## II. Present Situation:

### Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.<sup>1</sup> Rulemaking authority is delegated by the Legislature<sup>2</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>3</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>4</sup> To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed.<sup>6</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>7</sup>

### Declaratory Statements

The APA authorizes a substantially affected person to request an agency’s opinion as to the applicability of a statute, rule, or order of the agency as it applies to the petitioner’s particular set of circumstances.<sup>8</sup> When issued, a declaratory statement is the agency’s legal opinion that binds the agency under principles of estoppel. A declaratory statement may “help parties avoid costly administrative litigation, while simultaneously providing useful guidance to others who may find themselves in the same or similar situations.”<sup>9</sup>

A number of grounds exist for an agency to dismiss or deny a petition for a declaratory statement, including:

- The issues raised in the petition are being simultaneously litigated in a judicial or another administrative proceeding.<sup>10</sup>
- The petition was filed to challenge another agency decision.<sup>11</sup>
- The petition seeks approval or disapproval of conduct which has already occurred.<sup>12</sup>

---

<sup>1</sup> Section 120.52(16), F.S.; *Florida Dep’t of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

<sup>2</sup> *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

<sup>3</sup> Section 120.52(17), F.S.

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>6</sup> *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.

<sup>7</sup> *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> *1000 Friends of Fla., Inc., v. State Dept. of Cmty. Affairs*, 760 So. 2d 154, 158 (Fla. 1st DCA 2000).

<sup>10</sup> *Fox v. State Bd. of Osteopathic Med. Examiners*, 395 So. 2d 192 (Fla. 1st DCA 1981).

<sup>11</sup> *Kahn v. Office of Ins. Reg.*, 881 So. 2d 699 (Fla. 1st DCA 2004).

<sup>12</sup> *Novick v. Dept. of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002).

### *Attorney Fees*

The Florida Equal Access to Justice Act is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.<sup>13</sup> Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs if the actions of the agency were not substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and
- An agency loses an appeal in a proceeding challenging an unadopted rule.<sup>14</sup>

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.<sup>15</sup>

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.<sup>16</sup>

### *Notice of Rules*

Under current law, the Department of State is required to publish the Florida Administrative Register on the Internet.<sup>17</sup> This document must contain:

- Notices relating to the adoption or repeal of a rule.
- Notices of public meetings, hearing, and workshops.
- Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
- Notices of petitions for declaratory statements or administrative determinations.
- Summaries of objections to rules filed by the Administrative Procedures Committee.
- Other material required by law or deemed useful by the department.

---

<sup>13</sup> Section 57.111, F.S.

<sup>14</sup> Section 120.595, F.S.

<sup>15</sup> Section 120.595(4)(b), F.S.

<sup>16</sup> See s. 120.595(6), F.S. (providing that a statute authorizing attorney fees in challenges to agency actions does not affect the availability of attorney fees and costs under other statutes including ss. 57.105, and 57.111, F.S.).

<sup>17</sup> Section 120.55, F.S.

### ***Burden of Proof***

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving a rule's invalidity.<sup>18</sup> However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.<sup>19</sup> In addition, a rule may not be filed for adoption until any pending challenge is resolved.<sup>20</sup>

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.<sup>21</sup>

### ***Proceedings Involving Rule Challenges***

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.<sup>22</sup> Additionally, in proceedings initiated by agency action, if a DOAH administrative law judge determines that a rule constitutes an invalid exercise of delegated legislative authority, the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.<sup>23</sup>

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH administrative law judge enters a final order that cannot be overturned by the agency. The only appeal is to a District Court of Appeal.

### ***Final Orders***

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH

---

<sup>18</sup> Section 120.56(3), F.S.

<sup>19</sup> Section 120.56(2), F.S.

<sup>20</sup> Section 120.54(3)(e)2., F.S.

<sup>21</sup> Section 120.56(4), F.S.

<sup>22</sup> Section 120.57(1)(e)3., F.S.

<sup>23</sup> Section 120.57(1)(k-1), F.S.

conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH administrative law judge enters the final order).

### ***Judicial Review***

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.<sup>24</sup> An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.<sup>25</sup>

### **Minor Violations**

The APA directs agencies to issue a “notice of noncompliance” as the first response when the agency encounters a first minor violation of a rule.<sup>26</sup> The law provides that a violation is a minor violation if it “does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.” Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency’s designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.<sup>27</sup> An agency under the direction of a cabinet officer has the discretion not to use the “notice of noncompliance” once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

### **Rules Ombudsman**

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state’s citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

---

<sup>24</sup> Section 120.68(2)(a), F.S.

<sup>25</sup> Section 120.68(9), F.S.

<sup>26</sup> Section 120.695, F.S. The statute contains the following legislative intent: “It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.”

<sup>27</sup> Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

### **III. Effect of Proposed Changes:**

This bill makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public.

#### **Declaratory Statements; Attorney Fees (Section 1)**

The Florida Equal Access to Justice Act, s. 57.111, F.S., requires a Division of Administrative Hearings (DOAH) judge to award attorney fees to a prevailing small business party in any action under the APA, if a state agency initiated the action and the agency's action was not substantially justified.

The bill redefines the term "substantially justified" as used in the act by identifying specific agency actions that are not substantially justified. As a result of the changed definition, a state agency is liable for the attorney fees and costs of a small business if an agency action is:

- Based on a subject that the prevailing small business party previously raised in a petition for a declaratory statement.
- Contrary to its position in a declaratory statement.
- Based on facts and circumstances similar to those raised in a petition for a declaratory statement, which the agency denied.

These changes defining agency actions that are not substantially justified appear likely to cause changes in agency conduct. An agency might be more likely to issue a declaratory statement when proper grounds would otherwise exist for an agency to decline to do so. Alternatively, an agency might decline to initiate an enforcement action when grounds would otherwise exist for an enforcement action.

#### **Schedule for Rulemaking Workshops; Unadopted Rule (Section 2)**

Under existing s. 120.54(7)(b), F.S., a person may petition an agency to initiate rulemaking with respect to an unadopted rule. If after a public hearing on the unadopted rule, the agency chooses to initiate rulemaking, the statutes do not establish a timeframe or schedule for the rulemaking activities. Under the bill, an agency, within 30 days after the public hearing, must establish a schedule for rulemaking workshops. By operation of existing s. 120.54(2), F.S., an agency will provide the notice required by the bill through a Notice of Rule Development, which will be published in the Florida Administrative Register. The bill also requires an agency that chooses to initiate rulemaking related to an unadopted rule to discontinue reliance on the unadopted rule.

#### **Distribution of Notices (Section 3)**

The bill adds additional items to the list of required contents of the Florida Administrative Register, including:

- Notices of Rule Development Workshops.
- A listing of all rules filed for adoption within the previous 7 days.
- A listing of rules pending ratification by the Legislature.

The bill also requires agencies that provide notices by email to interested persons to include within those email messages, notices of rule development workshops and notices of the intent to adopt, amend, or repeal a rule.

#### **Rule Challenges (Section 4)**

##### ***Burdens of Proof***

The bill amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging the validity of rules, proposed rules and statements defined as rules (“unadopted rules”). The changes clarify the pleading requirements for the petitions. It also clarifies a person who challenges a proposed or adopted rule has the burden of going forward with the evidence.

##### ***Presumption of Validity***

The bill amends s. 120.56(3), F.S., with respect to challenges to existing rules. Under current law, existing agency rules are generally presumed valid and a challenger has the burden of proving that the rule is an invalid exercise of legislative authority.<sup>28</sup> Under the bill, existing rules lose the presumption of validity, and the agency in a rule challenge must prove that the rule is not invalid. Thus, under the bill an agency has the same burden in defending the validity of an existing rule as it has under current law in defending the validity of a proposed rule.

##### ***Invalidity Determination***

Section 120.56(3), F.S., as amended by the bill, provides that an agency may not rely on an invalidated rule for any purpose. Thus, the determination of the validity of an existing rule by a DOAH judge is final agency action.

##### ***Bifurcated Proceedings***

Lastly, s. 120.56(4), F.S., as amended by the bill, prohibits a DOAH administrative law judge from bifurcating a petition challenging agency action into a challenge to an unadopted rule and a challenge to agency action.

#### **Entitlement to a Declaratory Statement (Section 5)**

##### ***Particularity Requirement***

Under existing law, a petitioner must “state with particularity the petitioner’s set of circumstances” in a petition seeking a declaratory statement of an agency’s opinion as to the application of a rule or statute. There seems to be two purposes of the particularity requirement, according to case law. First, the particularity requirement is intended to prevent an agency from responding to a purely hypothetical question unrelated to the petitioner’s personal situation.<sup>29</sup> The second purpose of the particularity requirement seems intended to prevent an agency from

---

<sup>28</sup> See *St. Johns River Water Mgmt. Dist. v. Consolidated–Tomoka Land Co.*, 717 So. 2d 72, 76 (Fla. 1st DCA 1998), superseded by statute on other grounds; *Willette v. Air Products*, 700 So. 2d 397, 399 (Fla. 1st DCA 1997); *Injured Workers Ass’n of Fla. v. Dep’t of Labor & Employment Sec.*, 630 So. 2d 1189, 1191 (Fla. 1st DCA 1994) (“Rules are entitled to a presumption of constitutional validity and should be interpreted, if possible, in a manner that preserves their validity.”).

<sup>29</sup> *Fla. Dept. of Bus. & Prof’l Reg., Div. of Pari-Mutuel Wagering v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 383 (Fla. 1999).

using a declaratory statement to define agency policy instead of rulemaking procedures.<sup>30</sup> The bill deletes the particularity requirement for declaratory statements.

The bill deletes the requirement that a petition for a declaratory statement state with particularity the petitioner's set of circumstances. The elimination of this requirement appears likely to cause agencies to issue more declaratory statements. Those statements might also be more broadly worded if the agency does not have specific information needed to tailor the statement to a petitioner's specific needs. The issuance of broadly-worded declaratory statements might also cause the agency to initiate rulemaking on the substance of the petitions.

### ***Agency Response Time***

Existing law requires agencies to issue a declaratory statement or deny a petition for a declaratory statement within 90 days after the filing of the petition. The bill reduces that time period to 60 days if a petitioner sets forth its understanding of the application of a statute or rule in its petition.

### ***Attorney Fees and Costs***

Lastly, the bill entitles a petitioner to its reasonable attorney fees and costs if an agency improperly denies a petition for a declaratory statement and the denial is reversed on appeal.

### **Time Period for Issuance of Final Order (Section 6)**

Under existing law, an agency must issue a final order within 90 days after a DOAH administrative law judge issues a recommended order. The bill, however, contemplates that a DOAH administrative law judge's decision on a rule challenge is final agency action, reversible only by an appellate court. But the bill, consistent with existing law, provides that the DOAH administrative law judge's decision with respect to other disputed matters in the same proceeding is a recommended decision. As a result, the agency might not as a practical matter be able to issue a final order until an appellate court rules on the validity of a challenged rule. For those cases, the bill provides that an agency must issue its final order within ten days after the appellate court issues its mandate.

### **Rule Challenges in Proceedings Involving Disputed Facts (Section 7)**

Section 7 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S., allowing the administrative law judge to enter a final order on a challenge to the validity of a rule or to an unadopted rule in all contests before DOAH. This treats a challenge to a rule in defending against or attacking an agency action much as a challenge in an action initiated solely to challenge the rule. Notably, the decision on the rule challenge in the DOAH proceeding is binding on the agency.

The bill allows the agency, within 15 days after notice of the rule challenge in such matters, to waive its reliance on an unadopted rule or a rule alleged to be invalid and, thereby, eliminate that

---

<sup>30</sup> *Chiles v. Dept. of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998).

aspect of the litigation, without prejudice to the agency reasserting its position in another matter or rule challenge.

### **Mediation (Section 8)**

The bill authorizes a person challenging a rule, proposed rule, or unadopted rule or a person seeking a declaratory statement to request mediation. However, the bill does not appear to limit an agency's discretion to approve or deny a request for mediation.

### **Attorney Fees (Section 9)**

The bill amends s. 120.595, F.S., to make many technical and clarifying changes, but it also increases the circumstances under which an agency may be liable for attorney fees and costs.

#### ***Rule Challenge as Defense to Agency Action***

The bill makes agencies liable for reasonable attorney fees and costs when a challenge to an existing rule or unadopted rule is successfully asserted as a defense to agency action. Under existing law, attorney fees and costs are available only in a rule challenge proceeding.

#### ***Exceptions to Liability***

Under existing law, an agency generally is liable for attorney fees and costs if it loses a challenge to a proposed or existing rule. However, the agency is not liable for attorney fees and costs if its actions were substantially justified. The bill eliminates this exception to circumstances in which an agency might otherwise be liable for attorney fees and costs.

Existing law provides an additional exception protecting an agency from liability for attorney fees and costs with respect to an unadopted rule. Specifically, if an agency initiates rulemaking after a challenge to an unadopted rule is initiated, an agency has liability protection if it proves to the DOAH administrative law judge that it did not know and should not have known that an agency statement was an unadopted rule. The bill eliminates this exception to an agency's liability for attorney fees and costs.

#### ***Prerequisite to Attorney Fees and Costs***

As a prerequisite to the entitlement to attorney fees and costs in a rule challenge proceeding, the bill requires a person challenging the proposed, existing, or unadopted rule to provide advance notice of the intent to challenge the rule to the agency head. However, the advance notice requirement does not apply to a rule challenge asserted as a defense to an agency action.

#### ***Fees for Fees***

Existing law generally limits the maximum amount of an agency's liability for attorney fees and costs to \$50,000. The bill authorizes a person to recover attorney fees and costs for litigating the entitlement to or amount of attorney fees to which it is entitled in the underlying litigation against the agency. The additional amounts are not subject to any limits.



**Judicial Review (Section 10)**

Existing law requires an agency to notify the Administrative Procedures Committee of the appeal of orders from a rule challenge proceeding. The bill requires an agency to report to the committee the appeal of orders relating to the assertion of a rule challenge as a defense to agency action. Section 10 also contains provisions conforming to other provisions of the bill which allow the direct appeal of a decision of a DOAH administrative law judge ruling on a rule challenge asserted as a defense to agency action.

**Designation of Minor Violation of Rules (Section 11)**

Section 11 amends s. 120.695, F.S., to direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation. Each agency that fails to timely complete the review and file the certification will be reported by the rules ombudsman to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Administrative Procedures Committee.

Beginning July 1, 2015, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency's Internet webpage or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines.

**Effective Date (Section 12)**

The bill takes effect July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not apply to counties or municipalities. As such, the bill is not subject to the constitutional restrictions on the Legislature to enact mandates.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

SB 718 bill may require an agency to provide precise guidance either through more precise rules or declaratory statements to those regulated before the agency may sanction a regulated entity for a rule or statutory violation.

**C. Government Sector Impact:**

The bill creates additional grounds or expands existing grounds for awarding attorney fees and costs against a state agency. Under existing sections of the Administrative Procedure Act, the fees that may be awarded against an agency are limited to \$50,000. In addition to those amounts, the bill allows the award of attorney fees and costs for litigating the entitlement to or amount of attorney fees and costs in the underlying legal action. These additional fees and costs are not subject to any cap on fees. This could potentially have a negative fiscal impact to the state when a state agency is the non-prevailing party; however, the overall fiscal impact of the bill is indeterminate.

The risk of incurring additional attorney fees and costs might deter agencies from engaging in enforcement actions. The bill may also encourage agencies to enact more rules or more precisely define their existing rules and issue more declaratory statements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

As the Administrative Procedure Act has evolved over time through amendments by the Legislature, it has become more complex. This bill seems to add to the complexity of the act. At some point, the Legislature may wish to simplify the structure of the act to ensure that persons regulated by an agency can easily understand their rights to challenge agency actions.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 57.111, 120.54, 120.55, 120.56, 120.565, 120.569, 120.57, 120.573, 120.595, 120.68, and 120.695.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Lee

24-00407-15

2015718\_\_

1 A bill to be entitled  
 2 An act relating to administrative procedures; amending  
 3 s. 57.111, F.S.; providing conditions under which a  
 4 proceeding is not substantially justified for purposes  
 5 of attorney fees and costs; amending s. 120.54, F.S.;  
 6 requiring agencies to set a time for workshops for  
 7 certain unadopted rules; amending s. 120.55, F.S.;  
 8 providing additional items that must be noticed by an  
 9 agency in the Florida Administrative Register;  
 10 requiring agencies to provide such notice to  
 11 registered recipients under certain circumstances;  
 12 amending s. 120.56, F.S.; clarifying that petitions  
 13 for administrative determinations apply to rules and  
 14 proposed rules; identifying which entities have the  
 15 burden in hearings in which a rule, proposed rule, or  
 16 agency statement is at issue; prohibiting an  
 17 administrative law judge from bifurcating certain  
 18 petitions; amending s. 120.565, F.S.; authorizing  
 19 certain parties to state to an agency their  
 20 understanding of how certain rules apply to specific  
 21 facts; specifying the timeframe for an agency to  
 22 provide a declaratory statement; authorizing the award  
 23 of attorney fees under certain circumstances; amending  
 24 s. 120.569, F.S.; granting agencies additional time to  
 25 render final orders under certain circumstances;  
 26 amending s. 120.57, F.S.; conforming proceedings based  
 27 on invalid or unadopted rules to proceedings used for  
 28 challenging existing rules; requiring an agency to  
 29 issue a notice regarding its reliance on the

Page 1 of 34

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

30 challenged rule or alleged unadopted rule; authorizing  
 31 the administrative law judge to make certain findings  
 32 on the validity of certain alleged unadopted rules;  
 33 requiring the administrative law judge to issue a  
 34 separate final order on certain rules and alleged  
 35 unadopted rules; prohibiting agencies from rejecting  
 36 specific conclusions of law; limiting situations under  
 37 which an agency may reject or modify conclusions of  
 38 law; providing for stay of proceedings not involving  
 39 disputed issues of fact upon timely filing of a rule  
 40 challenge; providing that the final order terminates  
 41 the stay; amending s. 120.573, F.S.; providing  
 42 additional situations in which a party may request  
 43 mediation; amending s. 120.595, F.S.; providing  
 44 criteria for establishing whether a nonprevailing  
 45 party participated in a proceeding for an improper  
 46 purpose; revising provisions providing for the award  
 47 of attorney fees and costs by the appellate court or  
 48 administrative law judge; providing exceptions;  
 49 removing a provision authorizing an agency to  
 50 demonstrate its actions were substantially justified;  
 51 requiring notice of a proposed challenge by the  
 52 petitioner as a condition precedent to filing a  
 53 challenge and being eligible for the reimbursement of  
 54 attorney fees and costs; authorizing the recovery of  
 55 attorney fees and costs incurred in litigating rights  
 56 to attorney fees and costs in certain actions;  
 57 providing such attorney fees and costs are not limited  
 58 in amount; amending s. 120.68, F.S.; requiring

Page 2 of 34

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

59 specified agencies to provide notice of appeal to the  
 60 Administrative Procedures Committee under certain  
 61 circumstances; amending s. 120.695, F.S.; removing  
 62 obsolete provisions; requiring agency review and  
 63 certification of minor rule violations by a specified  
 64 date; requiring the reporting of agency failure to  
 65 complete such review and certification; requiring  
 66 certification of minor violations for all rules  
 67 adopted after a specified date; requiring public  
 68 notice; providing for nonapplicability; providing an  
 69 effective date.

70  
 71 Be It Enacted by the Legislature of the State of Florida:

72  
 73 Section 1. Paragraph (e) of subsection (3) of section  
 74 57.111, Florida Statutes, is amended to read:

75 57.111 Civil actions and administrative proceedings  
 76 initiated by state agencies; attorney ~~attorneys'~~ fees and  
 77 costs.-

78 (3) As used in this section:

79 (e) A proceeding is "substantially justified" if it had a  
 80 reasonable basis in law and fact at the time it was initiated by  
 81 a state agency. A proceeding is not "substantially justified" if  
 82 the law, rule, or order at issue in the current agency action is  
 83 the subject upon which the prevailing party previously  
 84 petitioned the agency for a declaratory statement under s.  
 85 120.565; the current agency action involves identical or  
 86 substantially similar facts and circumstances as those raised in  
 87 the previous petition; and:

Page 3 of 34

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

88 1. The agency action contradicts the declaratory statement  
 89 issued by the agency upon the previous petition; or  
 90 2. The agency denied the previous petition under s. 120.565  
 91 before initiating the current agency action against the  
 92 substantially affected party.

93 Section 2. Paragraph (c) of subsection (7) of section  
 94 120.54, Florida Statutes, is amended to read:

95 120.54 Rulemaking.-

96 (7) PETITION TO INITIATE RULEMAKING.-

97 (c) Within 30 days following the public hearing provided  
 98 for in ~~by~~ paragraph (b), if the petition's requested action  
 99 requires rulemaking and the agency initiates rulemaking, the  
 100 agency shall establish a time certain for rulemaking workshops  
 101 and shall discontinue reliance upon the agency statement or  
 102 unadopted rule until it adopts rules pursuant to subsection (3).  
 103 If the agency does not initiate rulemaking or otherwise comply  
 104 with the requested action, the agency shall publish in the  
 105 Florida Administrative Register a statement of its reasons for  
 106 not initiating rulemaking or otherwise complying with the  
 107 requested action, and of any changes it will make in the scope  
 108 or application of the unadopted rule. The agency shall file the  
 109 statement with the committee. The committee shall forward a copy  
 110 of the statement to the substantive committee with primary  
 111 oversight jurisdiction of the agency in each house of the  
 112 Legislature. The committee or the committee with primary  
 113 oversight jurisdiction may hold a hearing directed to the  
 114 statement of the agency. The committee holding the hearing may  
 115 recommend to the Legislature the introduction of legislation  
 116 making the rule a statutory standard or limiting or otherwise

Page 4 of 34

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

117 modifying the authority of the agency.

118 Section 3. Section 120.55, Florida Statutes, is amended to  
119 read:

120 120.55 Publication.—

121 (1) The Department of State shall:

122 (a)1. Through a continuous revision and publication system,  
123 compile and publish electronically, on an Internet website  
124 managed by the department, the "Florida Administrative Code."  
125 The Florida Administrative Code shall contain all rules adopted  
126 by each agency, citing the grant of rulemaking authority and the  
127 specific law implemented pursuant to which each rule was  
128 adopted, all history notes as authorized in s. 120.545(7),  
129 complete indexes to all rules contained in the code, and any  
130 other material required or authorized by law or deemed useful by  
131 the department. The electronic code shall display each rule  
132 chapter currently in effect in browse mode and allow full text  
133 search of the code and each rule chapter. The department may  
134 contract with a publishing firm for a printed publication;  
135 however, the department shall retain responsibility for the code  
136 as provided in this section. The electronic publication shall be  
137 the official compilation of the administrative rules of this  
138 state. The Department of State shall retain the copyright over  
139 the Florida Administrative Code.

140 2. Rules general in form but applicable to only one school  
141 district, community college district, or county, or a part  
142 thereof, or state university rules relating to internal  
143 personnel or business and finance shall not be published in the  
144 Florida Administrative Code. Exclusion from publication in the  
145 Florida Administrative Code shall not affect the validity or

Page 5 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

146 effectiveness of such rules.

147 3. At the beginning of the section of the code dealing with  
148 an agency that files copies of its rules with the department,  
149 the department shall publish the address and telephone number of  
150 the executive offices of each agency, the manner by which the  
151 agency indexes its rules, a listing of all rules of that agency  
152 excluded from publication in the code, and a statement as to  
153 where those rules may be inspected.

154 4. Forms shall not be published in the Florida  
155 Administrative Code; but any form which an agency uses in its  
156 dealings with the public, along with any accompanying  
157 instructions, shall be filed with the committee before it is  
158 used. Any form or instruction which meets the definition of  
159 "rule" provided in s. 120.52 shall be incorporated by reference  
160 into the appropriate rule. The reference shall specifically  
161 state that the form is being incorporated by reference and shall  
162 include the number, title, and effective date of the form and an  
163 explanation of how the form may be obtained. Each form created  
164 by an agency which is incorporated by reference in a rule notice  
165 of which is given under s. 120.54(3)(a) after December 31, 2007,  
166 must clearly display the number, title, and effective date of  
167 the form and the number of the rule in which the form is  
168 incorporated.

169 5. The department shall allow adopted rules and material  
170 incorporated by reference to be filed in electronic form as  
171 prescribed by department rule. When a rule is filed for adoption  
172 with incorporated material in electronic form, the department's  
173 publication of the Florida Administrative Code on its Internet  
174 website must contain a hyperlink from the incorporating

Page 6 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15 2015718\_\_

175 reference in the rule directly to that material. The department  
 176 may not allow hyperlinks from rules in the Florida  
 177 Administrative Code to any material other than that filed with  
 178 and maintained by the department, but may allow hyperlinks to  
 179 incorporated material maintained by the department from the  
 180 adopting agency's website or other sites.

181 (b) Electronically publish on an Internet website managed  
 182 by the department a continuous revision and publication entitled  
 183 the "Florida Administrative Register," which shall serve as the  
 184 official publication and must contain:

185 1. All notices required by s. 120.54(2) and (3) (a)  
 186 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
 187 consideration.

188 2. All notices of public meetings, hearings, and workshops  
 189 conducted in accordance with s. 120.525, including a statement  
 190 of the manner in which a copy of the agenda may be obtained.

191 3. A notice of each request for authorization to amend or  
 192 repeal an existing uniform rule or for the adoption of new  
 193 uniform rules.

194 4. Notice of petitions for declaratory statements or  
 195 administrative determinations.

196 5. A summary of each objection to any rule filed by the  
 197 Administrative Procedures Committee.

198 6. A listing of rules filed for adoption in the previous 7  
 199 days.

200 7. A listing of all rules filed for adoption pending  
 201 legislative ratification under s. 120.541(3). Each rule on the  
 202 list shall be taken off the list once it is ratified or  
 203 withdrawn.

Page 7 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15 2015718\_\_

204 ~~8.6-~~ Any other material required or authorized by law or  
 205 deemed useful by the department.

206

207 The department may contract with a publishing firm for a printed  
 208 publication of the Florida Administrative Register and make  
 209 copies available on an annual subscription basis.

210 (c) Prescribe by rule the style and form required for  
 211 rules, notices, and other materials submitted for filing.

212 (d) Charge each agency using the Florida Administrative  
 213 Register a space rate to cover the costs related to the Florida  
 214 Administrative Register and the Florida Administrative Code.

215 (e) Maintain a permanent record of all notices published in  
 216 the Florida Administrative Register.

217 (2) The Florida Administrative Register Internet website  
 218 must allow users to:

219 (a) Search for notices by type, publication date, rule  
 220 number, word, subject, and agency.

221 (b) Search a database that makes available all notices  
 222 published on the website for a period of at least 5 years.

223 (c) Subscribe to an automated e-mail notification of  
 224 selected notices to be sent out before or concurrently with  
 225 publication of the electronic Florida Administrative Register.  
 226 Such notification must include in the text of the e-mail a  
 227 summary of the content of each notice.

228 (d) View agency forms and other materials submitted to the  
 229 department in electronic form and incorporated by reference in  
 230 proposed rules.

231 (e) Comment on proposed rules.

232 (3) Publication of material required by paragraph (1)(b) on

Page 8 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

233 the Florida Administrative Register Internet website does not  
 234 preclude publication of such material on an agency's website or  
 235 by other means.

236 (4) Each agency shall provide copies of its rules upon  
 237 request, with citations to the grant of rulemaking authority and  
 238 the specific law implemented for each rule.

239 (5) Each agency that provides an e-mail notification  
 240 service to inform registered recipients of notices shall use  
 241 that service to notify recipients of each notice required under  
 242 s. 120.54(2) and (3) (a) and provide Internet links to the  
 243 appropriate rule page on the Secretary of State's website or  
 244 Internet links to an agency website that contains the proposed  
 245 rule or final rule.

246 ~~(6)~~ Any publication of a proposed rule promulgated by an  
 247 agency, whether published in the Florida Administrative Register  
 248 or elsewhere, shall include, along with the rule, the name of  
 249 the person or persons originating such rule, the name of the  
 250 agency head who approved the rule, and the date upon which the  
 251 rule was approved.

252 ~~(7)~~ Access to the Florida Administrative Register  
 253 Internet website and its contents, including the e-mail  
 254 notification service, shall be free for the public.

255 ~~(8)~~ (7) (a) All fees and moneys collected by the Department  
 256 of State under this chapter shall be deposited in the Records  
 257 Management Trust Fund for the purpose of paying for costs  
 258 incurred by the department in carrying out this chapter.

259 (b) The unencumbered balance in the Records Management  
 260 Trust Fund for fees collected pursuant to this chapter may not  
 261 exceed \$300,000 at the beginning of each fiscal year, and any

24-00407-15

2015718\_\_

262 excess shall be transferred to the General Revenue Fund.

263 Section 4. Subsections (1), (3), and (4) of section 120.56,  
 264 Florida Statutes, are amended to read:

265 120.56 Challenges to rules.—

266 (1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A~~  
 267 ~~RULE OR A PROPOSED RULE.~~—

268 (a) Any person substantially affected by a rule or a  
 269 proposed rule may seek an administrative determination of the  
 270 invalidity of the rule on the ground that the rule is an invalid  
 271 exercise of delegated legislative authority.

272 (b) The petition seeking an administrative determination of  
 273 the invalidity of a rule or proposed rule must state the facts  
 274 and with particularity the provisions alleged to be invalid with  
 275 sufficient explanation of the ~~facts or~~ grounds for the alleged  
 276 invalidity and facts sufficient to show that the petitioner  
 277 ~~person~~ challenging a rule is substantially affected by it, or  
 278 that the petitioner person challenging a proposed rule would be  
 279 substantially affected by it.

280 (c) The petition shall be filed by electronic means with  
 281 the division which shall, immediately upon filing, forward by  
 282 electronic means copies to the agency whose rule is challenged,  
 283 the Department of State, and the committee. Within 10 days after  
 284 receiving the petition, the division director shall, if the  
 285 petition complies with ~~the requirements of~~ paragraph (b), assign  
 286 an administrative law judge who shall conduct a hearing within  
 287 30 days thereafter, unless the petition is withdrawn or a  
 288 continuance is granted by agreement of the parties or for good  
 289 cause shown. Evidence of good cause includes, but is not limited  
 290 to, written notice of an agency's decision to modify or withdraw



24-00407-15

2015718\_\_

291 the proposed rule or a written notice from the chair of the  
 292 committee stating that the committee will consider an objection  
 293 to the rule at its next scheduled meeting. The failure of an  
 294 agency to follow the applicable rulemaking procedures or  
 295 requirements set forth in this chapter shall be presumed to be  
 296 material; however, the agency may rebut this presumption by  
 297 showing that the substantial interests of the petitioner and the  
 298 fairness of the proceedings have not been impaired.

299 (d) Within 30 days after the hearing, the administrative  
 300 law judge shall render a decision and state the reasons therefor  
 301 in writing. The division shall forthwith transmit by electronic  
 302 means copies of the administrative law judge's decision to the  
 303 agency, the Department of State, and the committee.

304 (e) Hearings held under this section shall be de novo in  
 305 nature. The standard of proof shall be the preponderance of the  
 306 evidence. The petitioner has the burden of going forward with  
 307 the evidence. The agency has the burden of proving by a  
 308 preponderance of the evidence that the rule, proposed rule, or  
 309 agency statement is not an invalid exercise of delegated  
 310 legislative authority. Hearings shall be conducted in the same  
 311 manner as provided by ss. 120.569 and 120.57, except that the  
 312 administrative law judge's order shall be final agency action.  
 313 The petitioner and the agency whose rule is challenged shall be  
 314 adverse parties. Other substantially affected persons may join  
 315 the proceedings as intervenors on appropriate terms which shall  
 316 not unduly delay the proceedings. Failure to proceed under this  
 317 section ~~does shall~~ not constitute failure to exhaust  
 318 administrative remedies.

319 (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

Page 11 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

320 (a) A substantially affected person may seek an  
 321 administrative determination of the invalidity of an existing  
 322 rule at any time during the existence of the rule. The  
 323 petitioner has the a burden of going forward with the evidence  
 324 as set forth in paragraph (1) (b), and the agency has the burden  
 325 of proving by a preponderance of the evidence that the existing  
 326 rule is not an invalid exercise of delegated legislative  
 327 authority as to the objections raised.

328 (b) The administrative law judge may declare all or part of  
 329 a rule invalid. The rule or part thereof declared invalid shall  
 330 become void when the time for filing an appeal expires. The  
 331 agency whose rule has been declared invalid in whole or part  
 332 shall give notice of the decision in the Florida Administrative  
 333 Register in the first available issue after the rule has become  
 334 void.

335 (c) If an existing agency rule is declared invalid, the  
 336 agency may no longer rely on the rule for final agency action,  
 337 including any final action on cases pending under s. 120.57.

338 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL  
 339 PROVISIONS.—

340 (a) Any person substantially affected by an agency  
 341 statement may seek an administrative determination that the  
 342 statement violates s. 120.54(1) (a). The petition shall include  
 343 the text of the statement or a description of the statement and  
 344 shall state ~~with particularity~~ facts sufficient to show that the  
 345 statement constitutes a rule under s. 120.52 and that the agency  
 346 has not adopted the statement by the rulemaking procedure  
 347 provided by s. 120.54.

348 (b) The administrative law judge may extend the hearing

Page 12 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

349 date beyond 30 days after assignment of the case for good cause.  
 350 Upon notification to the administrative law judge provided  
 351 before the final hearing that the agency has published a notice  
 352 of rulemaking under s. 120.54(3), such notice shall  
 353 automatically operate as a stay of proceedings pending adoption  
 354 of the statement as a rule. The administrative law judge may  
 355 vacate the stay for good cause shown. A stay of proceedings  
 356 pending rulemaking shall remain in effect so long as the agency  
 357 is proceeding expeditiously and in good faith to adopt the  
 358 statement as a rule. If a hearing is held and the petitioner  
 359 proves the allegations of the petition, the agency shall have  
 360 the burden of proving that rulemaking is not feasible or not  
 361 practicable under s. 120.54(1) (a).

362 (c) The administrative law judge may determine whether all  
 363 or part of a statement violates s. 120.54(1)(a). The decision of  
 364 the administrative law judge shall constitute a final order. The  
 365 division shall transmit a copy of the final order to the  
 366 Department of State and the committee. The Department of State  
 367 shall publish notice of the final order in the first available  
 368 issue of the Florida Administrative Register.

369 (d) If an administrative law judge enters a final order  
 370 that all or part of an agency statement violates s.  
 371 120.54(1) (a), the agency must immediately discontinue all  
 372 reliance upon the statement or any substantially similar  
 373 statement as a basis for agency action.

374 (e) If proposed rules addressing the challenged statement  
 375 are determined to be an invalid exercise of delegated  
 376 legislative authority as defined in s. 120.52(8) (b)-(f), the  
 377 agency must immediately discontinue reliance on the statement

Page 13 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

378 and any substantially similar statement until rules addressing  
 379 the subject are properly adopted, and the administrative law  
 380 judge shall enter a final order to that effect.

381 (f) If a petitioner files a petition challenging agency  
 382 action and a part of that petition alleges the presence of or  
 383 reliance upon agency statements or unadopted rules, the  
 384 administrative law judge may not bifurcate the petition into two  
 385 cases but shall consider the challenge to the proposed agency  
 386 action and the allegation that such agency action was based upon  
 387 the presence of or reliance upon agency statements or unadopted  
 388 rules.

389 (g)~~(f)~~ All proceedings to determine a violation of s.  
 390 120.54(1) (a) shall be brought pursuant to this subsection. A  
 391 proceeding pursuant to this subsection may be consolidated with  
 392 a proceeding under subsection (3) or under any other section of  
 393 this chapter. This paragraph does not prevent a party whose  
 394 substantial interests have been determined by an agency action  
 395 from bringing a proceeding pursuant to s. 120.57(1) (e).

396 Section 5. Subsection (2) of section 120.565, Florida  
 397 Statutes, is amended, and subsections (4) and (5) are added to  
 398 that section, to read:

399 120.565 Declaratory statement by agencies.—

400 (2) The petition seeking a declaratory statement shall  
 401 state ~~with particularity~~ the petitioner's set of circumstances  
 402 and shall specify the statutory provision, rule, or order that  
 403 the petitioner believes may apply to the set of circumstances.

404 (4) The petitioner may submit to the agency clerk a  
 405 statement that describes or asserts the petitioner's  
 406 understanding of how the statutory provision, rule, or order

Page 14 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

407 applies to the set of circumstances. The agency has 60 days to  
 408 review the petitioner's statement and to either accept the  
 409 statement or offer changes and other clarifications to establish  
 410 the plain meaning of how the statutory provision, rule, or order  
 411 applies to the set of circumstances described in the  
 412 petitioner's statement.

413 (5) If the agency denies a request for a declaratory  
 414 statement and the petitioner appeals the denial and it is  
 415 determined that the agency improperly denied the request, the  
 416 petitioner is entitled to an award of reasonable attorney fees  
 417 and costs.

418 Section 6. Paragraph (1) of subsection (2) of section  
 419 120.569, Florida Statutes, is amended to read:

420 120.569 Decisions which affect substantial interests.—

421 (2)

422 (1) Unless the time period is waived or extended with the  
 423 consent of all parties, the final order in a proceeding which  
 424 affects substantial interests must be in writing and include  
 425 findings of fact, if any, and conclusions of law separately  
 426 stated, and it must be rendered within 90 days:

427 1. After the hearing is concluded, if conducted by the  
 428 agency;

429 2. After a recommended order is submitted to the agency and  
 430 mailed to all parties, if the hearing is conducted by an  
 431 administrative law judge, except that, at the election of the  
 432 agency, the time for rendering the final order may be extended  
 433 up to 10 days after the entry of a mandate on any appeal from a  
 434 final order under s. 120.57(1)(e)4.; or

435 3. After the agency has received the written and oral

24-00407-15

2015718\_\_

436 material it has authorized to be submitted, if there has been no  
 437 hearing.

438 Section 7. Paragraphs (e), (h), and (l) of subsection (1)  
 439 and subsection (2) of section 120.57, Florida Statutes, are  
 440 amended to read:

441 120.57 Additional procedures for particular cases.—

442 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING  
 443 DISPUTED ISSUES OF MATERIAL FACT.—

444 (e)1. An agency or an administrative law judge may not base  
 445 agency action that determines the substantial interests of a  
 446 party on an unadopted rule or a rule that is an invalid exercise  
 447 of delegated legislative authority. The administrative law judge  
 448 shall determine whether an agency statement constitutes an  
 449 unadopted rule. This subparagraph does not preclude application  
 450 of valid adopted rules and applicable provisions of law to the  
 451 facts.

452 2. In a matter initiated as a result of agency action  
 453 proposing to determine the substantial interests of a party, a  
 454 party's timely petition for hearing may challenge the proposed  
 455 agency action based on a rule that is an invalid exercise of  
 456 delegated legislative authority or based on an alleged unadopted  
 457 rule. For challenges brought under this subparagraph:

458 a. The challenge shall be pled as a defense using the  
 459 procedures set forth in s. 120.56(1)(b).

460 b. Section 120.56(3)(a) applies to a challenge alleging  
 461 that a rule is an invalid exercise of delegated legislative  
 462 authority.

463 c. Section 120.56(4)(c) applies to a challenge alleging an  
 464 unadopted rule.

24-00407-15

2015718\_\_

465 d. The agency has 15 days from the date of receipt of a  
 466 challenge under this subparagraph to serve the challenging party  
 467 with a notice as to whether the agency will continue to rely  
 468 upon the rule or the alleged unadopted rule as a basis for the  
 469 action determining the party's substantive interests. Failure to  
 470 serve or to timely serve the notice constitutes a binding  
 471 determination that the agency may not rely upon the rule or  
 472 unadopted rule further in the proceeding. The agency shall  
 473 include a copy of the notice, if one was served, when it refers  
 474 the matter to the division under s. 120.569(2)(a).

475 e. This subparagraph does not preclude the consolidation of  
 476 any proceeding under s. 120.56 with any proceeding under this  
 477 paragraph.

478 3.2- Notwithstanding subparagraph 1., if an agency  
 479 demonstrates that the statute being implemented directs it to  
 480 adopt rules, that the agency has not had time to adopt those  
 481 rules because the requirement was so recently enacted, and that  
 482 the agency has initiated rulemaking and is proceeding  
 483 expeditiously and in good faith to adopt the required rules,  
 484 then the agency's action may be based upon those unadopted rules  
 485 if, subject to de novo review by the administrative law judge  
 486 determines that the unadopted rules would not constitute an  
 487 invalid exercise of delegated legislative authority if adopted  
 488 as rules. An unadopted rule is ~~The agency action shall not be~~  
 489 presumed to be valid ~~or invalid~~. The agency must demonstrate  
 490 that the unadopted rule:

491 a. Is within the powers, functions, and duties delegated by  
 492 the Legislature or, if the agency is operating pursuant to  
 493 authority vested in the agency by ~~derived from~~ the State

Page 17 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

494 Constitution, is within that authority;

495 b. Does not enlarge, modify, or contravene the specific  
 496 provisions of law implemented;

497 c. Is not vague, establishes adequate standards for agency  
 498 decisions, or does not vest unbridled discretion in the agency;

499 d. Is not arbitrary or capricious. A rule is arbitrary if  
 500 it is not supported by logic or the necessary facts; a rule is  
 501 capricious if it is adopted without thought or reason or is  
 502 irrational;

503 e. Is not being applied to the substantially affected party  
 504 without due notice; and

505 f. Does not impose excessive regulatory costs on the  
 506 regulated person, county, or city.

507 4. If the agency timely serves notice of continued reliance  
 508 upon a challenged rule or an alleged unadopted rule under sub-  
 509 paragraph 2.d., the administrative law judge shall determine  
 510 whether the challenged rule is an invalid exercise of delegated  
 511 legislative authority or whether the challenged agency statement  
 512 constitutes an unadopted rule and if that unadopted rule meets  
 513 the requirements of subparagraph 3. The determination shall be  
 514 rendered as a separate final order no earlier than the date on  
 515 which the administrative law judge serves the recommended order.

516 5.3- The recommended and final orders in any proceeding  
 517 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
 518 except that the administrative law judge's determination  
 519 ~~regarding an unadopted rule~~ under subparagraph ~~4. 1- or~~  
 520 ~~subparagraph 2-~~ shall be included as a conclusion of law that  
 521 ~~the agency may not reject not be rejected by the agency unless~~  
 522 ~~the agency first determines from a review of the complete~~

Page 18 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

523 ~~record, and states with particularity in the order, that such~~  
 524 ~~determination is clearly erroneous or does not comply with~~  
 525 ~~essential requirements of law. In any proceeding for review~~  
 526 ~~under s. 120.68, if the court finds that the agency's rejection~~  
 527 ~~of the determination regarding the unadopted rule does not~~  
 528 ~~comport with the provisions of this subparagraph, the agency~~  
 529 ~~action shall be set aside and the court shall award to the~~  
 530 ~~prevailing party the reasonable costs and a reasonable~~  
 531 ~~attorney's fee for the initial proceeding and the proceeding for~~  
 532 ~~review.~~

533 (h) Any party to a proceeding in which an administrative  
 534 law judge ~~of the Division of Administrative Hearings~~ has final  
 535 order authority may move for a summary final order when there is  
 536 no genuine issue as to any material fact. A summary final order  
 537 shall be rendered if the administrative law judge determines  
 538 from the pleadings, depositions, answers to interrogatories, and  
 539 admissions on file, together with affidavits, if any, that no  
 540 genuine issue as to any material fact exists and that the moving  
 541 party is entitled as a matter of law to the entry of a final  
 542 order. A summary final order shall consist of findings of fact,  
 543 if any, conclusions of law, a disposition or penalty, if  
 544 applicable, and any other information required by law to be  
 545 contained in the final order. This paragraph does not apply to  
 546 proceedings set forth in paragraph (e).

547 (l) The agency may adopt the recommended order as the final  
 548 order of the agency. The agency in its final order may only  
 549 reject or modify the conclusions of law over which it has  
 550 substantive jurisdiction and interpretation of administrative  
 551 rules over which it has substantive jurisdiction if the agency

Page 19 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

552 determines that the conclusions of law are clearly erroneous.  
 553 When rejecting or modifying such conclusion of law or  
 554 interpretation of administrative rule, the agency must state  
 555 with particularity its reasons for rejecting or modifying such  
 556 conclusion of law or interpretation of administrative rule and  
 557 must make a finding that its substituted conclusion of law or  
 558 interpretation of administrative rule is as reasonable as, or  
 559 more reasonable than, that which was rejected or modified.  
 560 Rejection or modification of conclusions of law may not form the  
 561 basis for rejection or modification of findings of fact. The  
 562 agency may not reject or modify the findings of fact unless the  
 563 agency first determines from a review of the entire record, and  
 564 states with particularity in the order, that the findings of  
 565 fact were not based upon competent substantial evidence or that  
 566 the proceedings on which the findings were based did not comply  
 567 with essential requirements of law. The agency may accept the  
 568 recommended penalty in a recommended order, but may not reduce  
 569 or increase it without a review of the complete record and  
 570 without stating with particularity its reasons therefor in the  
 571 order, by citing to the record in justifying the action.

572 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT  
 573 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which  
 574 subsection (1) does not apply:

575 (a) The agency shall:

576 1. Give reasonable notice to affected persons of the action  
 577 of the agency, whether proposed or already taken, or of its  
 578 decision to refuse action, together with a summary of the  
 579 factual, legal, and policy grounds therefor.

580 2. Give parties or their counsel the option, at a

Page 20 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

581 convenient time and place, to present to the agency or  
 582 ~~administrative law judge hearing officer~~ written or oral  
 583 evidence in opposition to the action of the agency or to its  
 584 refusal to act, or a written statement challenging the grounds  
 585 upon which the agency has chosen to justify its action or  
 586 inaction.

587 3. If the objections of the parties are overruled, provide  
 588 a written explanation within 7 days.

589 (b) An agency may not base agency action that determines  
 590 the substantial interests of a party on an unadopted rule or a  
 591 rule that is an invalid exercise of delegated legislative  
 592 authority. No later than the date provided by the agency under  
 593 subparagraph (a)2., the party may file a petition under s.  
 594 120.56 challenging the rule, portion of rule, or unadopted rule  
 595 upon which the agency bases its proposed action or refusal to  
 596 act. The filing of a challenge under s. 120.56 pursuant to this  
 597 paragraph shall stay all proceedings on the agency's proposed  
 598 action or refusal to act until entry of the final order by the  
 599 administrative law judge. The final order shall provide notice  
 600 that the stay of the pending agency action is terminated and any  
 601 further stay pending appeal of the final order must be sought  
 602 from the appellate court.

603 ~~(c)(b)~~ The record shall only consist of:

- 604 1. The notice and summary of grounds.
- 605 2. Evidence received.
- 606 3. All written statements submitted.
- 607 4. Any decision overruling objections.
- 608 5. All matters placed on the record after an ex parte  
 609 communication.

Page 21 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

610 6. The official transcript.

611 7. Any decision, opinion, order, or report by the presiding  
 612 officer.

613 Section 8. Section 120.573, Florida Statutes, is amended to  
 614 read:

615 120.573 Mediation of disputes.—

616 (1) Each announcement of an agency action that affects  
 617 substantial interests shall advise whether mediation of the  
 618 administrative dispute for the type of agency action announced  
 619 is available and that choosing mediation does not affect the  
 620 right to an administrative hearing. If the agency and all  
 621 parties to the administrative action agree to mediation, in  
 622 writing, within 10 days after the time period stated in the  
 623 announcement for election of an administrative remedy under ss.  
 624 120.569 and 120.57, the time limitations imposed by ss. 120.569  
 625 and 120.57 shall be tolled to allow the agency and parties to  
 626 mediate the administrative dispute. The mediation shall be  
 627 concluded within 60 days after ~~of~~ such agreement unless  
 628 otherwise agreed by the parties. The mediation agreement shall  
 629 include provisions for mediator selection, the allocation of  
 630 costs and fees associated with mediation, and the mediating  
 631 parties' understanding regarding the confidentiality of  
 632 discussions and documents introduced during mediation. If  
 633 mediation results in settlement of the administrative dispute,  
 634 the agency shall enter a final order incorporating the agreement  
 635 of the parties. If mediation terminates without settlement of  
 636 the dispute, the agency shall notify the parties in writing that  
 637 the administrative hearing processes under ss. 120.569 and  
 638 120.57 are resumed.

Page 22 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

639 (2) A party in a proceeding conducted pursuant to a  
 640 petition seeking an administrative determination of the  
 641 invalidity of an existing rule, proposed rule, or agency  
 642 statement under s. 120.56 or a proceeding conducted pursuant to  
 643 a petition seeking a declaratory statement under s. 120.565 may  
 644 request mediation of the dispute under this section.

645 Section 9. Section 120.595, Florida Statutes, is amended to  
 646 read:

647 120.595 Attorney ~~Attorney's~~ fees.—

648 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 649 120.57(1).—

650 (a) The provisions of this subsection are supplemental to,  
 651 and do not abrogate, other provisions allowing the award of fees  
 652 or costs in administrative proceedings.

653 (b) The final order in a proceeding pursuant to s.  
 654 120.57(1) shall award reasonable costs and a reasonable attorney  
 655 fees attorney's fee to the prevailing party if the  
 656 administrative law judge determines only where the nonprevailing  
 657 adverse party has been determined by the administrative law  
 658 judge to have participated in the proceeding for an improper  
 659 purpose.

660 1.(e) Other than as provided in paragraph (d), in  
 661 proceedings pursuant to s. 120.57(1), and upon motion, the  
 662 administrative law judge shall determine whether any party  
 663 participated in the proceeding for an improper purpose as  
 664 defined by this subsection. ~~In making such determination, the~~  
 665 ~~administrative law judge shall consider whether~~ The  
 666 nonprevailing adverse party shall be presumed to have  
 667 participated in the pending proceeding for an improper purpose

Page 23 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

668 if:

669 a. Such party was an adverse party has participated in  
 670 three ~~two~~ or more ~~other such~~ proceedings involving the same  
 671 prevailing party and the same subject;

672 b. In those ~~project as an adverse party and in which such~~  
 673 ~~two or more~~ proceedings, the nonprevailing adverse party did not  
 674 establish either the factual or legal merits of its position;  
 675 and shall consider whether

676 c. The factual or legal position asserted in the pending  
 677 instant proceeding would have been cognizable in the previous  
 678 proceedings; and

679 d. The nonprevailing adverse party has not rebutted the  
 680 presumption of participating. In such event, it shall be  
 681 rebuttably presumed that the nonprevailing adverse party  
 682 participated in the pending proceeding for an improper purpose.

683 2.(d) If in any proceeding in which the administrative law  
 684 judge determines that a party is determined to have participated  
 685 in the proceeding for an improper purpose, the recommended order  
 686 shall include such findings of fact and conclusions of law to  
 687 establish the conclusion ~~so designate~~ and shall determine the  
 688 award of costs and attorney ~~attorney's~~ fees.

689 (c)(e) For the purpose of this subsection:

690 1. "Improper purpose" means participation in a proceeding  
 691 pursuant to s. 120.57(1) primarily to harass or to cause  
 692 unnecessary delay or for frivolous purpose or to needlessly  
 693 increase the cost of litigation, licensing, or securing the  
 694 approval of an activity.

695 2. "Costs" has the same meaning as the costs allowed in  
 696 civil actions in this state as provided in chapter 57.

Page 24 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

697 3. "Nonprevailing adverse party" means a party that has  
 698 failed to have substantially changed the outcome of the proposed  
 699 or final agency action which is the subject of a proceeding. In  
 700 the event that a proceeding results in any substantial  
 701 modification or condition intended to resolve the matters raised  
 702 in a party's petition, it shall be determined that the party  
 703 having raised the issue addressed is not a nonprevailing adverse  
 704 party. The recommended order shall state whether the change is  
 705 substantial for purposes of this subsection. In no event shall  
 706 the term "nonprevailing party" or "prevailing party" be deemed  
 707 to include any party that has intervened in a previously  
 708 existing proceeding to support the position of an agency.

709 (d) For challenges brought under s. 120.57(1)(e), when the  
 710 agency relies on a challenged rule or an alleged unadopted rule  
 711 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the  
 712 administrative law judge declares the rule or portion of the  
 713 rule to be invalid or that the agency statement is an unadopted  
 714 rule that does not meet the requirements of s. 120.57(1)(e)4., a  
 715 judgment or order shall be rendered against the agency for  
 716 reasonable costs and reasonable attorney fees. An award of  
 717 attorney fees as provided by this paragraph may not exceed  
 718 \$50,000.

719 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION  
 720 120.56(2).—If the appellate court or administrative law judge  
 721 declares a proposed rule or portion of a proposed rule invalid  
 722 pursuant to s. 120.56(2), a judgment or order shall be rendered  
 723 against the agency for reasonable costs and reasonable attorney  
 724 attorney's fees, unless the agency demonstrates that ~~its actions~~  
 725 ~~were substantially justified or~~ special circumstances exist

Page 25 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

726 which would make the award unjust. ~~An agency's actions are~~  
 727 ~~"substantially justified" if there was a reasonable basis in law~~  
 728 ~~and fact at the time the actions were taken by the agency.~~ If  
 729 the agency prevails in the proceedings, the appellate court or  
 730 administrative law judge shall award reasonable costs and  
 731 reasonable attorney attorney's fees against a party if the  
 732 appellate court or administrative law judge determines that a  
 733 party participated in the proceedings for an improper purpose as  
 734 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney  
 735 attorney's fees as provided by this subsection may not shall  
 736 exceed \$50,000.

737 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION  
 738 120.56(3) AND (5).—If the appellate court or administrative law  
 739 judge declares a rule or portion of a rule invalid pursuant to  
 740 s. 120.56(3) or (5), a judgment or order shall be rendered  
 741 against the agency for reasonable costs and reasonable attorney  
 742 attorney's fees, unless the agency demonstrates that ~~its actions~~  
 743 ~~were substantially justified or~~ special circumstances exist  
 744 which would make the award unjust. ~~An agency's actions are~~  
 745 ~~"substantially justified" if there was a reasonable basis in law~~  
 746 ~~and fact at the time the actions were taken by the agency.~~ If  
 747 the agency prevails in the proceedings, the appellate court or  
 748 administrative law judge shall award reasonable costs and  
 749 reasonable attorney attorney's fees against a party if the  
 750 appellate court or administrative law judge determines that a  
 751 party participated in the proceedings for an improper purpose as  
 752 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney  
 753 attorney's fees as provided by this subsection may not shall  
 754 exceed \$50,000.

Page 26 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



24-00407-15

2015718\_\_

755 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION PURSUANT TO~~  
756 SECTION 120.56(4).-

757 (a) If the appellate court or administrative law judge  
758 determines that all or part of an unadopted rule ~~agency~~  
759 ~~statement~~ violates s. 120.54(1)(a), or that the agency must  
760 immediately discontinue reliance upon ~~on~~ the unadopted rule  
761 ~~statement~~ and any substantially similar statement pursuant to s.  
762 120.56(4)(e), a judgment or order shall be entered against the  
763 agency for reasonable costs and reasonable attorney ~~attorney's~~  
764 fees, unless the agency demonstrates that the statement is  
765 required by the Federal Government to implement or retain a  
766 delegated or approved program or to meet a condition to receipt  
767 of federal funds.

768 (b) Upon notification to the administrative law judge  
769 provided before the final hearing that the agency has published  
770 a notice of rulemaking under s. 120.54(3)(a), such notice shall  
771 automatically operate as a stay of proceedings pending  
772 rulemaking. The administrative law judge may vacate the stay for  
773 good cause shown. A stay of proceedings under this paragraph  
774 remains in effect so long as the agency is proceeding  
775 expeditiously and in good faith to adopt the statement as a  
776 rule. The administrative law judge shall award reasonable costs  
777 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the  
778 petitioner ~~before~~ prior to the date the notice was published,  
779 ~~unless the agency proves to the administrative law judge that it~~  
780 ~~did not know and should not have known that the statement was an~~  
781 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
782 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
783 ~~agency received notice that the statement may constitute an~~

Page 27 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

784 ~~unadopted rule at least 30 days before a petition under s.~~  
785 ~~120.56(4) was filed and that the agency failed to publish the~~  
786 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
787 ~~addresses the statement within that 30-day period. Notice to the~~  
788 ~~agency may be satisfied by its receipt of a copy of the s.~~  
789 ~~120.56(4) petition, a notice or other paper containing~~  
790 ~~substantially the same information, or a petition filed pursuant~~  
791 ~~to s. 120.54(7)). An award of attorney ~~attorney's~~ fees as~~  
792 provided by this paragraph may not exceed \$50,000.

793 (c) Notwithstanding the ~~provisions of~~ chapter 284, an award  
794 shall be paid from the budget entity of the secretary, executive  
795 director, or equivalent administrative officer of the agency,  
796 and the agency is ~~shall not be~~ entitled to payment of an award  
797 or reimbursement for payment of an award under any provision of  
798 law.

799 (d) If the agency prevails in the proceedings, the  
800 appellate court or administrative law judge shall award  
801 reasonable costs and attorney ~~attorney's~~ fees against a party if  
802 the appellate court or administrative law judge determines that  
803 the party participated in the proceedings for an improper  
804 purpose as defined in paragraph (1)(c) ~~(1)(e)~~ or that the party  
805 or the party's attorney knew or should have known that a claim  
806 was not supported by the material facts necessary to establish  
807 the claim or would not be supported by the application of then-  
808 existing law to those material facts.

809 (5) APPEALS.-When there is an appeal, the court in its  
810 discretion may award reasonable attorney ~~attorney's~~ fees and  
811 reasonable costs to the prevailing party if the court finds that  
812 the appeal was frivolous, meritless, or an abuse of the

Page 28 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

813 appellate process, or that the agency action ~~that which~~  
 814 precipitated the appeal was a gross abuse of the agency's  
 815 discretion. Upon review of agency action that precipitates an  
 816 appeal, if the court finds that the agency improperly rejected  
 817 or modified findings of fact in a recommended order, the court  
 818 shall award reasonable ~~attorney attorney's~~ fees and reasonable  
 819 costs to a prevailing appellant for the administrative  
 820 proceeding and the appellate proceeding.

821 (6) NOTICE OF INVALIDITY.—A party failing to serve a notice  
 822 of proposed challenge under this subsection is not entitled to  
 823 an award of reasonable attorney fees and reasonable costs under  
 824 this section.

825 (a) Before filing a petition challenging the validity of a  
 826 proposed rule under s. 120.56(2), an adopted rule under s.  
 827 120.56(3), or an agency statement defined as an unadopted rule  
 828 under s. 120.56(4), a substantially affected person shall serve  
 829 the agency head with notice of the proposed challenge. The  
 830 notice shall identify the proposed or adopted rule or the  
 831 unadopted rule that the person proposes to challenge and a brief  
 832 explanation of the basis for that challenge. The notice must be  
 833 received by the agency head at least 5 days before the filing of  
 834 a petition under s. 120.56(2) and at least 30 days before the  
 835 filing of a petition under s. 120.56(3) or s. 120.56(4).

836 (b) This subsection does not apply to defenses raised and  
 837 challenges authorized by s. 120.57(1) (e) or s. 120.57(2) (b).

838 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For  
 839 purposes of this chapter, s. 57.105(5), and s. 57.111, in  
 840 addition to an award of reasonable attorney fees and reasonable  
 841 costs, the prevailing party shall also recover reasonable

24-00407-15

2015718\_\_

842 attorney fees and reasonable costs incurred in litigating  
 843 entitlement to, and the determination or quantification of,  
 844 reasonable attorney fees and reasonable costs for the underlying  
 845 matter. Reasonable attorney fees and reasonable costs awarded  
 846 for litigating entitlement to, and the determination or  
 847 quantification of, reasonable attorney fees and reasonable costs  
 848 for the underlying matter are not subject to the limitations on  
 849 amounts provided in this chapter or s. 57.111.

850 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,  
 851 including ss. 57.105 and 57.111, authorize the award of attorney  
 852 attorney's fees and costs in administrative proceedings. ~~Nothing~~  
 853 in This section ~~does not shall~~ affect the availability of  
 854 attorney attorney's fees and costs as provided in those  
 855 sections.

856 Section 10. Paragraph (a) of subsection (2) and subsection  
 857 (9) of section 120.68, Florida Statutes, are amended to read:  
 858 120.68 Judicial review.—

859 (2) (a) Judicial review shall be sought in the appellate  
 860 district where the agency maintains its headquarters or where a  
 861 party resides or as otherwise provided by law. All proceedings  
 862 shall be instituted by filing a notice of appeal or petition for  
 863 review in accordance with the Florida Rules of Appellate  
 864 Procedure within 30 days after the rendition of the order being  
 865 appealed. If the appeal is of an order rendered in a proceeding  
 866 initiated under s. 120.56 or a final order under s.  
 867 120.57(1) (e)4., the agency whose rule is being challenged shall  
 868 transmit a copy of the notice of appeal to the committee.

869 (9) A ~~No~~ petition challenging an agency rule as an invalid  
 870 exercise of delegated legislative authority ~~may not shall~~ be

24-00407-15

2015718\_\_

871 instituted pursuant to this section, except to review an order  
 872 entered pursuant to a proceeding under s. 120.56, s.  
 873 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of  
 874 immediate danger, necessity, and procedural fairness  
 875 prerequisite to the adoption of an emergency rule pursuant to s.  
 876 120.54(4), unless the sole issue presented by the petition is  
 877 the constitutionality of a rule and there are no disputed issues  
 878 of fact.

879 Section 11. Section 120.695, Florida Statutes, is amended  
 880 to read:

881 120.695 Notice of noncompliance; designation of minor  
 882 violation of rules.-

883 (1) It is the policy of the state that the purpose of  
 884 regulation is to protect the public by attaining compliance with  
 885 the policies established by the Legislature. Fines and other  
 886 penalties may be provided in order to assure compliance;  
 887 however, the collection of fines and the imposition of penalties  
 888 are intended to be secondary to the primary goal of attaining  
 889 compliance with an agency's rules. It is the intent of the  
 890 Legislature that an agency charged with enforcing rules shall  
 891 issue a notice of noncompliance as its first response to a minor  
 892 violation of a rule in any instance in which it is reasonable to  
 893 assume that the violator was unaware of the rule or unclear as  
 894 to how to comply with it.

895 (2)(a) Each agency shall issue a notice of noncompliance as  
 896 a first response to a minor violation of a rule. A "notice of  
 897 noncompliance" is a notification by the agency charged with  
 898 enforcing the rule issued to the person or business subject to  
 899 the rule. A notice of noncompliance may not be accompanied with

24-00407-15

2015718\_\_

900 a fine or other disciplinary penalty. It must identify the  
 901 specific rule that is being violated, provide information on how  
 902 to comply with the rule, and specify a reasonable time for the  
 903 violator to comply with the rule. A rule is agency action that  
 904 regulates a business, occupation, or profession, or regulates a  
 905 person operating a business, occupation, or profession, and  
 906 that, if not complied with, may result in a disciplinary  
 907 penalty.

908 (b) Each agency shall review all of its rules and designate  
 909 those for which a violation would be a minor violation and for  
 910 which a notice of noncompliance must be the first enforcement  
 911 action taken against a person or business subject to regulation.  
 912 A violation of a rule is a minor violation if it does not result  
 913 in economic or physical harm to a person or adversely affect the  
 914 public health, safety, or welfare or create a significant threat  
 915 of such harm. ~~If an agency under the direction of a cabinet~~  
 916 ~~officer mails to each licensee a notice of the designated rules~~  
 917 ~~at the time of licensure and at least annually thereafter, the~~  
 918 ~~provisions of paragraph (a) may be exercised at the discretion~~  
 919 ~~of the agency. Such notice shall include a subject matter index~~  
 920 ~~of the rules and information on how the rules may be obtained.~~

921 (c)1. Within 3 months after any request of the rules  
 922 ombudsman in the Executive Office of the Governor, The agency's  
 923 review and designation must be completed by December 1, 1995;  
 924 each agency shall review under the direction of the Governor  
 925 shall make a report to the Governor, and each agency under the  
 926 joint direction of the Governor and Cabinet shall report to the  
 927 Governor and Cabinet by January 1, 1996, on which of its rules  
 928 and certify to the President of the Senate, the Speaker of the

24-00407-15

2015718\_\_

929 House of Representatives, the Administrative Procedures  
 930 Committee, and the rules ombudsman any designated rules, have  
 931 ~~been designated as rules~~ the violation of which would be a minor  
 932 violation under paragraph (b), consistent with the legislative  
 933 intent stated in subsection (1). The rules ombudsman shall  
 934 promptly report to the Governor, the President of the Senate,  
 935 the Speaker of the House of Representatives, and the  
 936 Administrative Procedures Committee each failure of an agency to  
 937 timely complete the review and file the certification as  
 938 required by this section.

939 2. Beginning July 1, 2015, each agency shall:

940 a. Publish all rules that the agency has designated as  
 941 rules that the violation of which would be a minor violation,  
 942 either as a complete list on the agency's Internet web page or  
 943 by incorporation of the designations in the agency's  
 944 disciplinary guidelines adopted as a rule.

945 b. Ensure that all investigative and enforcement personnel  
 946 are knowledgeable about the agency's designations under this  
 947 section.

948 3. For each rule filed for adoption, the agency head shall  
 949 certify whether any part of the rule is designated as a rule  
 950 that the violation of which would be a minor violation and shall  
 951 update the listing required by sub-subparagraph 2.a.

952 (d) The Governor or the Governor and Cabinet, as  
 953 appropriate ~~pursuant to paragraph (e)~~, may evaluate the review  
 954 and designation effects of each agency subject to the direction  
 955 and supervision of such authority and may ~~direct apply~~ a  
 956 different designation than that applied by such the agency.

957 (e) Notwithstanding s. 120.52(1)(a), this section does not

Page 33 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-00407-15

2015718\_\_

958 apply to:

959 1. The Department of Corrections;

960 2. Educational units;

961 3. The regulation of law enforcement personnel; or

962 4. The regulation of teachers.

963 (f) Designation pursuant to this section is not subject to  
 964 challenge under this chapter.

965 Section 12. This act shall take effect July 1, 2015.

Page 34 of 34

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 726

INTRODUCER: Commerce and Tourism Committee and Senator Ring

SUBJECT: Consumer Protection

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>FP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 726 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within three business days of their purchase if the consumer:

- Has been adjudicated incapacitated;
- Is subject to a guardianship, and the guardian has the authority to determine the consumer's right to manage property; or
- Has a doctor's note that indicates that he has been diagnosed with a medical condition that causes him to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his person or property, and has a power of attorney in effect.

The bill also authorizes the Department of Agriculture and Consumer Services (DACCS) to administer a fine of up to two times the value of the goods purchased.

The bill has an insignificant, indeterminate fiscal impact on state funds.

The effective date of the bill is July 1, 2015.

## II. Present Situation:

### Consumer Protections

The Department of Agriculture and Consumer Services (DACS or department) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints and is responsible for overseeing and regulating a range of businesses practices related to refunds, returns, and exchanges at retail stores that are provided in s. 501.142, F.S. The enforcement of s. 501.142, F.S., is based on complaints made directly to the DACS.<sup>1</sup> The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon the department's request to do so.<sup>2</sup>

Currently, s. 501.142, F.S., requires retail stores to clearly post a "no refunds" sign at the point of sale in order to enforce this policy. If the retail store does not have a posted "no refunds" policy, then it must present a written version of its refund policy upon a consumer's request or adhere to the default refund policy described in s. 501.142, F.S. This provision requires a full refund to any customer who presents to the retail store within seven days of the original purchase their proof of purchase and the unused and originally-packaged item. A retail store's refund policy may allow for a longer return period.

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a directive to cease and desist from the violation. Additionally, a local government may apply penalties as outlined in s. 501.142 (6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer's request, or goods that may not legally be resold by the retail store.

### Incapacity

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.<sup>3</sup> Protections exist for individuals with cognitive impairment or incapacity and range from issue or authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.<sup>4</sup>

---

<sup>1</sup> Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).

<sup>2</sup> *Id.*

<sup>3</sup> Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities* (May 2014) available at [http://files.consumerfinance.gov/f/201406\\_cfpb\\_guide\\_protecting-residents-from-financial-exploitation.pdf](http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf) (last visited 3/9/2015).

<sup>4</sup> Section 744.331(6)(a), The court shall make a finding of "the exact nature and scope of the person's incapacities;...and the specific rights that the person is incapable of exercising."

A power of attorney or a durable power of attorney<sup>5</sup> is a legally binding document that delegates specific authority to an agent to act on a person's behalf.<sup>6</sup> Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated.<sup>7</sup> The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property, or may be broadly drawn to cover all legal acts that the principal could otherwise do.<sup>8</sup> While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.<sup>9</sup> A power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian, who "has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability."<sup>10</sup> Any adult may petition a court to initiate a petition to determine another's incapacity.<sup>11</sup> An "incapacitated person" is a "person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person."<sup>12</sup> In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.<sup>13</sup> Guardians are governed exclusively by the Florida Statutes, and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.<sup>14,15</sup> A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

### III. Effect of Proposed Changes:

**Section 1** amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and, either personally or through his or her representative, with the provisions below:

- Within three business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and
- Provides documentation establishing that:
  - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
  - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer's right to manage property; or

<sup>5</sup> See Chapter 709, F.S.

<sup>6</sup> The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6>  
Last accessed 3/9/2015.

<sup>7</sup> *Id.*

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

<sup>9</sup> Sections 709.2102(4), 709.2014, and 709.2109(1)(c) F.S.

<sup>10</sup> Black's Law Dictionary (10<sup>th</sup> ed. 2014).

<sup>11</sup> Section 744.331, F.S.

<sup>12</sup> Section 744.102(12), F.S.

<sup>13</sup> Section 744.331(6), F.S.

<sup>14</sup> *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966).

<sup>15</sup> Section 744.361, F.S. provides the standard powers and duties of a guardian.

- The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

The bill also provides the DACS additional authority to impose an administrative fine of twice the value of the goods purchased.

**Section 2** corrects cross-references.

**Section 3** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will be subject to fines as penalties for violations of CS/SB 726.

C. Government Sector Impact:

The DACS estimates there will be an insignificant, indeterminate fiscal impact as enforcement is based on consumer complaints.<sup>16</sup> Historically, the DACS has only issued one administrative fine for an establishment found to be noncompliant.

#### **VI. Technical Deficiencies:**

None.

---

<sup>16</sup> Department of Agriculture and Consumer Services, *SB 726 Agency Analysis* (Feb. 24, 2015) (on file with the Senate Committee on Commerce and Tourism).



**VII. Related Issues:**

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.<sup>17</sup> Therefore, proposed section 501.142(2)(c)1. may be broader than necessary.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.142 and 501.95.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on March 10, 2015:**

- Clarifies the department's enforcement of the bill by removing restitution as an available remedy.
- Expressly states that local governments may enforce this law in addition to the department.
- Expands the bill's protections to cover consumers subject to a guardianship, and consumers who lack capacity to make or communicate reasonable decisions regarding his person or property and are in a valid power of attorney or durable power of attorney relationship.
- Clarifies that certain consumers have three business days rather than calendar days to return the item.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

---

<sup>17</sup> Section 744.3215, F.S.

By the Committee on Commerce and Tourism; and Senator Ring

577-02093A-15

2015726c1

A bill to be entitled

An act relating to consumer protection; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified period of time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the Legislature finds that persons who are incapacitated, are subject to certain types of guardianships, or have been diagnosed with a medical condition causing a lack of capacity to make reasonable decisions need additional protections in consumer transactions involving costly purchases, and

WHEREAS, it is in the public interest to protect the welfare of this state's most vulnerable residents and their family members, and

WHEREAS, it is the intent of the Legislature to safeguard such residents' financial interests by providing them with the ability to return certain goods within a reasonable period of time, NOW, THEREFORE,

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

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02093A-15

2015726c1

Section 1. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce the provisions of this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, ~~each every~~ retail sales establishment offering goods for sale to the general public must grant a cash refund or credit refund to a consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02093A-15

2015726c1

59 currently exercisable by the consumer's agent, and the consumer  
 60 has been diagnosed with a medical condition that causes him or  
 61 her to lack sufficient understanding or capacity to make or  
 62 communicate reasonable decisions concerning his or her person or  
 63 property, which is evidenced by a written statement signed by a  
 64 physician licensed pursuant to chapter 458 or chapter 459 or  
 65 licensed to practice medicine under the laws of another state.

66 (3) (a) Except as provided in subsection (2), a retail sales  
 67 establishment offering goods for sale to the general public may  
 68 refuse to offer a that offers no cash refund, credit refund, or  
 69 exchange for the purchase if the retailer posts of merchandise  
 70 must post a sign at the point of sale se stating that refunds or  
 71 exchanges are not allowed at the point of sale. Failure of a  
 72 retail sales establishment to exhibit a "no refund or exchange"  
 73 sign at the point of sale under such circumstances at the point  
 74 of sale shall mean that a refund or exchange policy exists, and  
 75 the policy must shall be presented in writing to the consumer  
 76 upon request.

77 (b) A Any retail sales establishment that violates this  
 78 subsection must failing to comply with the provisions of this  
 79 section shall grant to the consumer, upon request and proof of  
 80 purchase, a refund for the purchase on the merchandise, within 7  
 81 days after of the date of purchase, if provided the goods are  
 82 merchandise is unused and in the original carton, if one was  
 83 furnished. This section does not Nothing herein shall prohibit a  
 84 retail sales establishment from having a refund policy that  
 85 which exceeds 7 the number of days and specified herein.  
 86 However, this subsection does not prohibit a local government  
 87 from enforcing the provisions established by this section.

Page 3 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02093A-15

2015726c1

88 (4)(2) The provisions of This section does shall not apply  
 89 to the sale of food, perishable goods, goods that which are  
 90 custom made, goods that which are custom altered at the request  
 91 of the customer, or goods that which cannot be resold by the  
 92 merchant because of any law, rule, or regulation adopted by a  
 93 governmental body.

94 (5)(3) If the department finds that a person has violated  
 95 or is operating in violation of:

96 (a) Subsection (2), the department shall enter an order  
 97 that imposes an administrative fine in the amount of twice the  
 98 value of the goods, excluding tax, which the person refused to  
 99 refund.

100 (b) Subsection (3) or an order issued under this section,  
 101 the department may enter an order that imposes doing one or more  
 102 of the following if the department finds that a person has  
 103 violated or is operating in violation of any of the provisions  
 104 of this section or the orders issued under this section:

105 1.(a) Impose An administrative fine not to exceed \$100 for  
 106 each violation.

107 2.(b) A directive to Direct the person to cease and desist  
 108 specified activities.

109 (6)(4) An The administrative proceeding proceedings that  
 110 may could result in the entry of an order imposing any of the  
 111 penalties specified in subsection (5) is (3) are governed by  
 112 chapter 120.

113 (7)(5) Any Moneys recovered by the department of  
 114 Agriculture and Consumer Services as a penalty under this  
 115 section shall be deposited in the General Inspection Trust Fund.

116 (8)(6) Upon the first violation of this section, a local

Page 4 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02093A-15

2015726c1

117 government may issue a written warning. Upon a second or ~~and any~~  
118 subsequent violation, a local government may impose a fine of up  
119 to \$50 per violation. ~~Any~~ Moneys recovered by the local  
120 government as a penalty under this section shall be deposited in  
121 the appropriate local account.

122 Section 2. Paragraph (c) of subsection (2) of section  
123 501.95, Florida Statutes, is amended to read:

124 501.95 Gift certificates and credit memos.—

125 (2)

126 (c) Enforcement of this section shall be as provided in s.  
127 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for  
128 violations of this section.

129 Section 3. This act shall take effect July 1, 2015.



The Florida Senate

## Committee Agenda Request

**To:** Senator Alan Hays  
Appropriations Committee on General Government

**Subject:** Committee Agenda Request

**Date:** March 10, 2015

---

I respectfully request that **Senate Bill #726**, relating to Consumer Protection, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Jeremy Ring".

---

Senator Jeremy Ring  
Florida Senate, District 29

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 10 AM 11:09  
ALPH: CHAIRMAN  
STAFF DIR. \_\_\_\_\_  
STAFF \_\_\_\_\_

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 798 (275316)

INTRODUCER: Appropriations Subcommittee on General Government; Commerce and Tourism Committee; and Senator Lee

SUBJECT: Household Moving Services

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 798 broadens protections for consumers who use intrastate moving services (shippers) by:

- Providing for a required insurance protection plan for shippers' moved goods;
- Requiring a binding estimate of the cost of services to be provided by the mover; and
- Clarifying what payment a mover can demand prior to returning the moved goods to the shipper.

The bill has an insignificant fiscal impact on state funds.

The effective date of the bill is July 1, 2015.

**II. Present Situation:**

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods originating and terminating in the state.<sup>1</sup> These regulations co-exist with federal law, which governs interstate moving of household goods.

---

<sup>1</sup> Section 507.02, F.S.

Section 507.01(9), F.S., defines “mover” as a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.<sup>2</sup> A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.<sup>3</sup>

Section 507.03, F.S., requires any mover or moving broker who wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services (DACS). As of March 2015, 1,037 movers and 12 moving brokers were registered.<sup>4</sup> In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.<sup>5</sup>

### **Insurance Coverage and Liability Limitations**

Section 507.04, F.S., requires movers and moving brokers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.<sup>6</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>7</sup>

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. The mover must inform the shipper of the opportunity to purchase valuation coverage, if the mover offers such additional insurance.<sup>8</sup>

### **Violations and Penalties**

Section 507.05, F.S., requires an intrastate mover to provide an estimate and contract to the shipper before commencing the move. Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper’s goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices.<sup>9</sup> Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper’s goods until the inflated price has been paid in full.

---

<sup>2</sup> Section 507.01(9), F.S.

<sup>3</sup> Section 507.01(10), F.S.

<sup>4</sup> DACS, *SB 798 Agency Analysis* (February 24, 2015), on file with the Senate Commerce and Tourism Committee; Interview with DACS staff, March 17, 2015.

<sup>5</sup> Section 507.03(1), F.S.

<sup>6</sup> Section 507.04(4), F.S.

<sup>7</sup> Section 507.04(1)(b), F.S.

<sup>8</sup> Section 507.04(4), F.S.

<sup>9</sup> According to the Federal Motor Carrier Safety Administration (FMCSA), Florida is a hot spot for moving fraud. See, e.g. Christina Hernandez, *3 South Florida Moving Companies Accused of Holding Customer Shipments Hostage* (November 26, 2013), available at <http://www.nbcmiami.com/news/local/3-South-Florida-Moving-Companies-Accused-of-Holding-Customer-Shipments-Hostage-233525971.html> (last accessed March 16, 2015).

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

### **Local Ordinances and Regulations**

Municipalities and counties may adopt local ordinances or regulations relating to the moving of household goods in addition to the state regulations required by statute.<sup>10</sup> Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.<sup>11</sup>

## **III. Effect of Proposed Changes:**

### **Definitions and Legislative Intent**

**Section 1** defines terms used in the bill, deletes the definition of “estimate” (but provides for a binding estimate in later sections). Additionally, “personal laborers” who assist shippers exclusively with the loading or unloading of their household goods are excluded from the definition of “mover.”

**Section 2** provides that the bill is intended to provide consistency and transparency in moving practices.

### **Insurance Requirement**

**Section 3** clarifies that movers must maintain current and valid *cargo* liability insurance coverage. The bill also removes the 60 cents per pound, per article minimum liability insurance requirement for the loss or damage of household goods, but adds a requirement that a mover place valuation coverage<sup>12</sup> equal to the cost of repair or replacement of the shipper’s goods, unless such coverage is waived by the shipper. Valuation coverage can be more valuable to shippers than liability insurance in instances of loss of relatively light items, e.g., electronics, are lost or damaged during the move because they will be insured based on value rather than weight.

### **Before the Move**

**Section 6** requires a mover to provide a prospective shipper with an informational publication (see section 5) and a binding estimate (see section 4) prior to entering into any contract for moving services.

---

<sup>10</sup> Section 507.09, F.S.

<sup>11</sup> Section 507.09, F.S.

<sup>12</sup> Valuation coverage will only cover loss caused by the mover’s fault, whereas moving coverage, available through an insurance agent, will cover loss caused by “acts of God.”

<https://www.protectyourmove.gov/consumer/awareness/valuation/valuation-insurance.htm>.



**Section 5** creates s. 507.054, F.S., which mandates the DACS to prepare a publication entitled “Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law.” This booklet, distributed by movers, must:

- Describe the shipper’s and mover’s rights and responsibilities, as well as available remedies;
- Bear an attestation signed by both parties signifying that they have read and understand the document as well as the criminal and administrative penalties for specific violations;
- Include a warning of the risks of shipping sentimental or family heirlooms;
- Be attached to the general contract for moving services as an integral part thereof; and
- Measure at least 36 square inches.

The shipper must acknowledge receipt of this publication by signed acknowledgement in the contract.

The binding estimate, described in **section 4** of the bill, must be based on the mover’s physical survey of the household goods to be moved. In addition, it must:

- Be provided to the shipper before the execution of a contract for services, and at least 48 hours before the move;
- Include at least an itemized total cost for the loading, transport or shipment, and unloading of household goods and accessorial services;
- Provide a table of measures used by the mover in preparing the estimate;
- Evince the date the estimate was prepared and the proposed date of the move;
- State that the estimate is binding on the mover and shipper;
- Identify accepted forms of payment; and
- Bear the signature of both parties.

A physical survey may only be waived if the goods are outside a 50-mile radius from the mover or if the shipper waives the right by signed writing. A binding estimate must be provided in every move performed by a mover, but the 48-hour period between provision of the binding estimate, and the move may be waived by a shipper’s signed or electronic acknowledgement in the contract.

The waiting period between the provision of a binding estimate and the move may be waived if the shipper contacts the mover within 48 hours of the move.

The binding estimate may not be amended by the mover within 48 hours of the move unless the shipper requests additional services or unless both parties agree to amend the estimate.

A mover and shipper must enter into a contract for services prior to the performance of any services. In accordance with **section 4** of the bill, the contract must include:

- Contact information of both parties;
- Date contract was prepared and date of the move;
- Where the goods will be stored, including in the case of a contract dispute;
- A copy of the binding estimate;
- Total cost to shipper that may be collected by the mover at delivery, and terms of the payment; and

- Acceptable forms of payment.

The mover must retain a copy of the binding estimate and the contract for one year after their preparation dates and keep a copy with him or her during the entire move, should a dispute over cost or payment arise.

### **Payment and Delivery of Goods**

**Sections 7 and 8** provide for notice requirements if the mover is unable to perform the requested services on the date reflected in the contract. Additionally, the bill requires a mover to relinquish a shipper's goods inside the location directed by the shipper in a timely manner, if the shipper has paid the exact amount of the binding estimate; paid any additional charges properly agreed to by both parties in writing, if applicable; and paid any charges related to impracticable operations, if applicable.

**Section 8** provides that a mover may require payment in excess of the binding estimate prior to his or her relinquishment of the household goods, if:

- Prior to beginning the move, the parties negotiate a revised binding estimate to reflect extra services requested by the shipper.
- The shipper, after at least a one-hour cool off period, consents by written contract addendum to the mover's performance of (and charging for) additional services that the mover has advised are essential to the move.
- After execution of the contract, the shipper requests additional services and the mover informs the shipper of associated charges in writing.
- Impracticable operations require additional services to be performed by the mover.

The mover cannot demand payment of any additional charges assessed under ch. 507, F.S., prior to relinquishing the shipper's household goods, but may collect payment by billing the shipper within 15 days after delivery of the goods. Payment for legitimate charges must be paid by the shipper within 30 days after receipt of the bill.

### **Violations and Penalties**

**Section 9** prohibits increasing the contracted cost of the move, if not in accordance with ch. 507, F.S., improperly withholding a shipper's goods, and otherwise failing to comply with chapter 507.

**Section 10** creates administrative penalties for violations of ch. 507, F.S., including the suspension of a mover's license if the company's officer or director is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property, or a crime arising from conduct during movement of household goods.

**Section 11** makes conforming changes.

**Section 12** creates criminal penalties for violations of ch. 507, F.S., including penalizing as a third degree felony any mover's refusal to relinquish a shipper's goods after a law enforcement officer determines that payment has been made in accordance with this chapter.

**Rulemaking Authority**

**Section 13** grants the DACS rulemaking authority to administer this bill.

**Effective Date**

**Section 14** creates an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The public may see a faster resolution to moving disputes that arise due to the provisions in PCS/CS/SB 798.

**C. Government Sector Impact:**

The bill requires the DACS to prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers. The DACS indicates the cost of this publication can be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) considered SB 798, which had the same criminal penalties as PCS/CS/SB 798, and determined that SB 798 would have a positive insignificant impact (less than 10 per year) on prison beds.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

---

<sup>13</sup> Florida Criminal Justice Impact Conference, *March 11, 2015 Results*, (March 11, 2015), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last accessed March 19, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.02, 507.04, 507.05, 507.06, 507.07, 507.09, 507.10 and 507.11.

This bill creates the following sections of the Florida Statutes: 507.054, 507.055, 507.065, 507.066, and 507.14.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Defines “personal laborers” as individuals hired directly by shippers to assist in the moving of household goods, and removes them from the requirements of the bill;
- Requires movers to provide valuation coverage, equal to the cost of repair or replacement of the shipper’s goods, unless waived in writing by the shipper;
- Allows a shipper to waive the binding estimate by signed or electronic acknowledgement;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move, if the shipper initially contacts the mover within the 48-hour waiting period; and
- Deletes provisions relating to payment in case of partial or total loss of goods by the mover.

**CS by Commerce and Tourism on March 23, 2015:**

- The committee substitute maintains the requirement that moving brokers provide proof of insurance to the DACS;
- Removes requirement that movers publish a tariff;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move; and
- Clarifies what costs may be collected by the mover upon delivery of the moved household goods.

**B. Amendments:**

None.



949376

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Lee)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 82 - 456

and insert:

Section 1. Present subsections (2) through (5) of section 507.01, Florida Statutes, are redesignated as subsections (3) through (6), respectively, present subsections (9) through (11) of that section are redesignated as subsections (10) through (12), respectively, present subsections (12) and (13) of that section are redesignated as subsections (14) and (15),



949376

11 respectively, new subsections (2), (9), and (13) are added to  
12 that section, and present subsections (6) and (9) are amended,  
13 to read:

14 507.01 Definitions.—As used in this chapter, the term:

15 (2) "Additional services" means any additional  
16 transportation of household goods which is performed by a mover,  
17 is not specifically included in a binding estimate or contract,  
18 and results in a charge to the shipper.

19 ~~(6) "Estimate" means a written document that sets forth the~~  
20 ~~total costs and describes the basis of those costs, relating to~~  
21 ~~a shipper's household move, including, but not limited to, the~~  
22 ~~loading, transportation or shipment, and unloading of household~~  
23 ~~goods and accessorial services.~~

24 (9) "Impracticable operations" means conditions arising  
25 after execution of a contract for household moving services  
26 which make it impractical for a mover to perform pickup or  
27 delivery services for a household move.

28 ~~(10)(9)~~ "Mover" means a person who, for compensation,  
29 contracts for or engages in the loading, transportation or  
30 shipment, or unloading of household goods as part of a household  
31 move. The term does not include a postal, courier, envelope, or  
32 package service that, or a person labor who, does not advertise  
33 ~~itself~~ as a mover or moving service.

34 (13) "Personal laborer" means an individual hired directly  
35 by the shipper to assist in the loading and unloading of the  
36 shipper's own household goods. The term does not include any  
37 individual who has contracted with or is compensated by a third-  
38 party or whose services are brokered as part of a household  
39 move.



949376

40 Section 2. Subsection (3) of section 507.02, Florida  
41 Statutes, is amended to read:

42 507.02 Construction; intent; application.—

43 (3) This chapter is intended to provide consistency and  
44 transparency in moving practices and to secure the satisfaction  
45 and confidence of shippers and members of the public when using  
46 a mover.

47 Section 3. Subsections (1), (3), (4), and (5) of section  
48 507.04, Florida Statutes, are amended to read:

49 507.04 Required insurance coverages; liability limitations;  
50 valuation coverage.—

51 (1) CARGO LIABILITY INSURANCE.—

52 (a)1. Except as provided in paragraph (b), each mover  
53 operating in this state must maintain current and valid cargo  
54 liability insurance coverage of at least \$10,000 per shipment  
55 for the loss or damage of household goods resulting from the  
56 negligence of the mover or its employees or agents.

57 2. The mover must provide the department with evidence of  
58 liability insurance coverage before the mover is registered with  
59 the department under s. 507.03. All insurance coverage  
60 maintained by a mover must remain in effect throughout the  
61 mover's registration period. ~~A mover's failure to maintain~~  
62 ~~insurance coverage in accordance with this paragraph constitutes~~  
63 ~~an immediate threat to the public health, safety, and welfare.~~  
64 ~~If a mover fails to maintain insurance coverage, the department~~  
65 ~~may immediately suspend the mover's registration or eligibility~~  
66 ~~for registration, and the mover must immediately cease operating~~  
67 ~~as a mover in this state. In addition, and notwithstanding the~~  
68 ~~availability of any administrative relief pursuant to chapter~~



949376

69 ~~120, the department may seek from the appropriate circuit court~~  
70 ~~an immediate injunction prohibiting the mover from operating in~~  
71 ~~this state until the mover complies with this paragraph, a civil~~  
72 ~~penalty not to exceed \$5,000, and court costs.~~

73 (b) A mover that operates two or fewer vehicles, in lieu of  
74 maintaining the cargo liability insurance coverage required  
75 under paragraph (a), may, and each moving broker must, maintain  
76 one of the following alternative coverages:

77 1. A performance bond in the amount of \$25,000, for which  
78 the surety of the bond must be a surety company authorized to  
79 conduct business in this state; or

80 2. A certificate of deposit in a Florida banking  
81 institution in the amount of \$25,000.

82  
83 The original bond or certificate of deposit must be filed with  
84 the department and must designate the department as the sole  
85 beneficiary. The department must use the bond or certificate of  
86 deposit exclusively for the payment of claims to consumers who  
87 are injured by the fraud, misrepresentation, breach of contract,  
88 misfeasance, malfeasance, or financial failure of the mover or  
89 moving broker or by a violation of this chapter by the mover or  
90 broker. Liability for these injuries may be determined in an  
91 administrative proceeding of the department or through a civil  
92 action in a court of competent jurisdiction. However, claims  
93 against the bond or certificate of deposit must only be paid, in  
94 amounts not to exceed the determined liability for these  
95 injuries, by order of the department in an administrative  
96 proceeding. The bond or certificate of deposit is subject to  
97 successive claims, but the aggregate amount of these claims may





949376

98 not exceed the amount of the bond or certificate of deposit.

99 (3) INSURANCE COVERAGES.—The insurance coverages required  
100 under paragraph (1) (a) and subsection (2) must be issued by an  
101 insurance company or carrier licensed to transact business in  
102 this state under the Florida Insurance Code as designated in s.  
103 624.01. The department shall require a mover to present a  
104 certificate of insurance of the required coverages before  
105 issuance or renewal of a registration certificate under s.  
106 507.03. The department shall be named as a certificateholder in  
107 the certificate and must be notified at least 10 days before  
108 cancellation of insurance coverage. A mover's failure to  
109 maintain insurance coverage constitutes an immediate threat to  
110 the public health, safety, and welfare. If a mover fails to  
111 maintain insurance coverage, the department may immediately  
112 suspend the mover's registration or eligibility for  
113 registration, and the mover must immediately cease operating as  
114 a mover in this state. In addition, and notwithstanding the  
115 availability of any administrative relief pursuant to chapter  
116 120, the department may seek from the appropriate circuit court  
117 an immediate injunction prohibiting the mover from operating in  
118 this state until the mover complies with this paragraph, a civil  
119 penalty not to exceed \$5,000, and court costs.

120 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not~~  
121 ~~limit its liability for the loss or damage of household goods to~~  
122 ~~a valuation rate that is less than 60 cents per pound per~~  
123 ~~article. A provision of a contract for moving services is void~~  
124 ~~if the provision limits a mover's liability to a valuation rate~~  
125 ~~that is less than the minimum rate under this subsection. If a~~  
126 ~~mover limits its liability for a shipper's goods, the mover must~~



949376

127 ~~disclose the limitation, including the valuation rate, to the~~  
128 ~~shipper in writing at the time that the estimate and contract~~  
129 ~~for services are executed and before any moving or accessorial~~  
130 ~~services are provided. The disclosure must also inform the~~  
131 ~~shipper of the opportunity to purchase valuation coverage if the~~  
132 ~~mover offers that coverage under subsection (5).~~

133       ~~(5) VALUATION COVERAGE.~~-A mover shall ~~may~~ offer valuation  
134 coverage to compensate a shipper for the loss or damage of the  
135 shipper's household goods that are lost or damaged during a  
136 household move. ~~If a mover offers valuation coverage,~~ The  
137 coverage must indemnify the shipper for at least the cost of  
138 repair or replacement of the goods, unless waived or amended by  
139 the shipper. The shipper may waive or amend the valuation  
140 coverage, and the waiver must be made in a signed acknowledgment  
141 in the contract ~~minimum valuation rate required under subsection~~  
142 ~~(4).~~ The mover must disclose the terms of the coverage to the  
143 shipper in writing, including any deductibles, within at the  
144 ~~time that~~ the binding estimate and again when the contract for  
145 services is ~~are~~ executed and before any moving or accessorial  
146 services are provided. The disclosure must inform the shipper of  
147 the cost of the valuation coverage, if any ~~the valuation rate of~~  
148 ~~the coverage, and the opportunity to reject the coverage. If~~  
149 ~~valuation coverage compensates a shipper for at least the~~  
150 ~~minimum valuation rate required under subsection (4), the~~  
151 ~~coverage satisfies the mover's liability for the minimum~~  
152 ~~valuation rate.~~

153       Section 4. Section 507.05, Florida Statutes, is amended to  
154 read:

155       507.05 Physical surveys, binding estimates, and contracts



949376

156 ~~for service. Before providing any moving or accessorial~~  
157 ~~services, a contract and estimate must be provided to a~~  
158 ~~prospective shipper in writing, must be signed and dated by the~~  
159 ~~shipper and the mover, and must include:~~

160 (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
161 of the household goods to be moved and provide the prospective  
162 shipper with a binding estimate of the cost of the move.

163 (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
164 physical survey, and such waiver must be in writing and signed  
165 by the shipper before the household goods are loaded. The mover  
166 shall retain a copy of the waiver as an addendum to the contract  
167 for service.

168 (3) BINDING ESTIMATE.—Before executing a contract for  
169 service for a household move, and at least 48 hours before the  
170 scheduled time and date of a shipment of household goods, a  
171 mover must provide a binding estimate of the total charges,  
172 including, but not limited to, the loading, transportation or  
173 shipment, and unloading of household goods and accessorial  
174 services. The binding estimate shall be based on a physical  
175 survey conducted pursuant to subsection (1), unless waived  
176 pursuant to subsection (2).

177 (a) The shipper may waive the binding estimate if the  
178 waiver is made by signed or electronic acknowledgment before the  
179 commencement of the 48-hour period before the household goods  
180 are loaded. The mover shall retain a copy of the waiver as an  
181 addendum to the contract for services. To be enforceable, a  
182 waiver executed under this paragraph must, at a minimum, include  
183 a statement in uppercase type that is at least 5 points larger  
184 than, and clearly distinguishable from, the rest of the text of



949376

185 the waiver or release containing the statement. The exact  
186 statement to be included in a waiver of a binding estimate to be  
187 used by all movers shall be determined by the department in  
188 rulemaking and must include a delineation of the specific rights  
189 that a shipper may lose by waiving the binding estimate.

190 (b) The shipper may also waive the 48-hour period if the  
191 moving services requested commence within 48 hours of the  
192 shipper's initial contact with the mover contracted to perform  
193 the moving services.

194 (c) At a minimum, the binding estimate must include all of  
195 the following:

196 1. The table of measures used by the mover or the mover's  
197 agent in preparing the estimate.

198 2. The date the estimate was prepared and the proposed date  
199 of the move, if any.

200 3. An itemized breakdown and description of services, and  
201 the total cost to the shipper of loading, transporting or  
202 shipping, unloading, and accessorial services.

203 4. A statement that the estimate is binding on the mover  
204 and the shipper and that the charges shown apply only to those  
205 services specifically identified in the estimate.

206 5. Identification of acceptable forms of payment.

207 (d) A mover may charge a one-time fee, not to exceed \$100,  
208 for providing a binding estimate.

209 (e) The binding estimate must be signed by the mover and  
210 the shipper, and a copy must be provided to the shipper by the  
211 mover at the time that the estimate is signed.

212 (f) A binding estimate may only be amended by the mover  
213 before the scheduled loading of household goods for shipment



949376

214 when the shipper has requested additional services of the mover  
215 not previously disclosed in the original binding estimate, or  
216 upon mutual agreement of the mover and the shipper. Once a mover  
217 begins to load the household goods for a move, failure to  
218 execute a new binding estimate signifies the mover has  
219 reaffirmed the original binding estimate.

220 (g) A mover may not collect more than the amount of the  
221 binding estimate unless:

222 1. The shipper waives receipt of a binding estimate under  
223 this subsection.

224 2. The shipper tenders additional household goods, requests  
225 additional services, or requires services that are not  
226 specifically included in the binding estimate, in which case the  
227 mover is not required to honor the estimate. If, despite the  
228 addition of household goods or the need for additional services,  
229 the mover chooses to perform the move, it must, before loading  
230 the household goods, inform the shipper of the associated  
231 charges in writing. The mover may require full payment at the  
232 destination for the costs associated with the additional  
233 requested services and the full amount of the original binding  
234 estimate.

235 3. Upon issuance of the contract for services, the mover  
236 advises the shipper, in advance of performing additional  
237 services, including accessorial services, that such services are  
238 essential to properly performing the move. The mover must allow  
239 the shipper at least 1 hour to determine whether to authorize  
240 the additional services.

241 a. If the shipper agrees to pay for the additional  
242 services, the mover must execute a written addendum to the



949376

243 contract for services, which must be signed by the shipper. The  
244 addendum may be sent to the shipper by facsimile, e-mail,  
245 overnight courier, or certified mail, with return receipt  
246 requested. The mover must bill the shipper for the agreed upon  
247 additional services within 15 days after the delivery of those  
248 additional services pursuant to s. 507.06.

249 b. If the shipper does not agree to pay for the additional  
250 services, the mover may perform and, pursuant to s. 507.06, bill  
251 the shipper for those additional services necessary to complete  
252 the delivery.

253 (h) A mover shall retain a copy of the binding estimate for  
254 each move performed for at least 1 year after its preparation  
255 date as an attachment to the contract for service.

256 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
257 accessorial services, a mover must provide a contract for  
258 service to the shipper, which the shipper must sign and date.

259 (a) At a minimum, the contract for service must include:

260 1.~~(1)~~ The name, telephone number, and physical address  
261 where the mover's employees are available during normal business  
262 hours.

263 2.~~(2)~~ The date the contract ~~was~~ ~~or estimate is~~ prepared and  
264 the ~~any~~ proposed date of the move, if any.

265 3.~~(3)~~ The name and address of the shipper, the addresses  
266 where the articles are to be picked up and delivered, and a  
267 telephone number where the shipper may be reached.

268 4.~~(4)~~ The name, telephone number, and physical address of  
269 any location where the household goods will be held pending  
270 further transportation, including situations in which ~~where~~ the  
271 mover retains possession of household goods pending resolution



949376

272 of a fee dispute with the shipper.

273 5.(5) A binding estimate provided in accordance with  
274 subsection (3) An itemized breakdown and description and total  
275 of all costs and services for loading, transportation or  
276 shipment, unloading, and accessorial services to be provided  
277 during a household move or storage of household goods.

278 6. The total charges owed by the shipper based on the  
279 binding estimate and the terms and conditions for their payment,  
280 including any required minimum payment.

281 7. If the household goods are transported under an  
282 agreement to collect payment upon delivery, the maximum payment  
283 that the mover may demand at the time of delivery.

284 8.(6) Acceptable forms of payment, which must be clearly  
285 and conspicuously disclosed to the shipper on the binding  
286 estimate and the contract for services. A mover must shall  
287 accept at least a minimum of two of the three following forms of  
288 payment:

289 a.(a) Cash, cashier's check, money order, or traveler's  
290 check;

291 b.(b) Valid personal check, showing upon its face the name  
292 and address of the shipper or authorized representative; or

293 c.(c) Valid credit card, which shall include, but not be  
294 limited to, Visa or MasterCard. A mover must clearly and  
295 conspicuously disclose to the shipper in the estimate and  
296 contract for services the forms of payments the mover will  
297 accept, including the forms of payment described in paragraphs  
298 (a)-(c).

299 (b) Each addendum to the contract for service is an  
300 integral part of the contract.



949376

301 (c) A copy of the contract for service must accompany the  
302 household goods whenever they are in the mover's or the mover's  
303 agent's possession. Before a vehicle that is being used for the  
304 move leaves the point of origin, the driver responsible for the  
305 move must have the contract for service in his or her  
306 possession.

307 (d) A mover shall retain a contract for service for each  
308 move it performs for at least 1 year after the date the contract  
309 for service was signed.

310 Section 5. Section 507.054, Florida Statutes, is created to  
311 read:

312 507.054 Publication.—

313 (1) The department shall prepare a publication that  
314 includes a summary of the rights and responsibilities of, and  
315 remedies available to movers and shippers under this chapter.  
316 The publication must include a statement that a mover's failure  
317 to relinquish household goods as required by this chapter  
318 constitutes a felony of the third degree, punishable as provided  
319 in s. 775.082, s. 775.083, or s. 775.084, that any other  
320 violation of this chapter constitutes a misdemeanor of the first  
321 degree, punishable as provided in s. 775.082 or s. 775.083, and  
322 that any violation of this chapter constitutes a violation of  
323 the Florida Deceptive and Unfair Trade Practices Act. The  
324 publication must also include a notice to the shipper about the  
325 potential risks of shipping sentimental or family heirloom  
326 items.

327 (2) A mover may provide exact copies of the department's  
328 publication to shippers or may customize the color, design, and  
329 dimension of the front and back covers of the standard





949376

330 department publication. If the mover customizes the publication,  
331 the customized publication must include the content specified in  
332 subsection (1) and meet the following requirements:

333 (a) The font size used must be at least 10 points, with the  
334 exception that the following must appear prominently on the  
335 front cover in at least 12-point boldface type: "Your Rights and  
336 Responsibilities When You Move. Furnished by Your Mover, as  
337 Required by Florida Law."

338 (b) The size of the booklet must be at least 36 square  
339 inches.

340 (3) The shipper must acknowledge receipt of the publication  
341 by signed acknowledgement in the contract.

342 Section 6. Section 507.055, Florida Statutes, is created to  
343 read:

344 507.055 Required disclosure and acknowledgment of rights  
345 and remedies.—Before executing a contract for service for a  
346 move, a mover must provide to a prospective shipper all of the  
347 following:

348 (1) The publication required under s. 507.054.

349 (2) A concise, easy-to-read, and accurate binding estimate  
350 required under s. 507.05(3).

351 Section 7. Subsections (1) and (3) of section 507.06,  
352 Florida Statutes, are amended, and subsection (4) is added to  
353 that section, to read:

354 507.06 Delivery and storage of household goods.—

355 (1) On the agreed upon delivery date or within the  
356 timeframe specified in the contract for service, a mover must  
357 relinquish household goods to a shipper and must place the  
358 household goods inside a shipper's dwelling or, if directed by



949376

359 the shipper, inside a storehouse or warehouse that is owned or  
360 rented by the shipper or the shipper's agent, unless the shipper  
361 has not tendered payment pursuant to s. 507.065 or s. 507.066 ~~in~~  
362 ~~the amount specified in a written contract or estimate signed~~  
363 ~~and dated by the shipper.~~ This requirement may be waived by the  
364 shipper. A mover may not, under any circumstances, refuse to  
365 relinquish prescription medicines and household goods for use by  
366 children, including children's furniture, clothing, or toys,  
367 ~~under any circumstances.~~

368 (3) A mover that lawfully fails to relinquish a shipper's  
369 household goods may place the goods in storage until payment in  
370 accordance with ss. 507.065 or 507.066 is tendered; however, the  
371 mover must notify the shipper of the location where the goods  
372 are stored and the amount due within 5 days after receipt of a  
373 written request for that information from the shipper, which  
374 request must include the address where the shipper may receive  
375 the notice. A mover may not require a prospective shipper to  
376 waive any rights or requirements under this section.

377 (4) If a mover becomes aware that it cannot perform the  
378 pickup or the delivery of household goods on the date agreed  
379 upon or during the timeframe specified in the contract for  
380 service due to circumstances not anticipated by the contract,  
381 the mover shall notify the shipper of the delay and advise the  
382 shipper of the amended date or timeframe within which the mover  
383 expects to pick up or deliver the household goods in a timely  
384 manner.

385 Section 8. Section 507.065, Florida Statutes, is created to  
386 read:

387 507.065 Payment.-



949376

388           (1) Except as provided in s. 507.05(3), the maximum amount  
389 that a mover may charge before relinquishing household goods to  
390 a shipper is the exact amount of the binding estimate, unless  
391 waived by the shipper, plus  
392

393 ===== T I T L E   A M E N D M E N T =====

394 And the title is amended as follows:

395           Delete lines 15 - 50

396 and insert:

397           cost of repair or replacement goods unless waived or  
398           amended by the shipper; authorizing the shipper to  
399           waive or amend the valuation coverage; requiring that  
400           the waiver be made in a signed acknowledgment in the  
401           contract; revising the time at which the mover must  
402           disclose the terms of the coverage to the shipper in  
403           writing including any deductibles; revising the  
404           information that the disclosure must provide to the  
405           shipper; amending s. 507.05, F.S.; requiring a mover  
406           to conduct a physical survey and provide a binding  
407           estimate in certain circumstances unless waived by the  
408           shipper; requiring specified content for the binding  
409           estimate; authorizing a shipper to waive the binding  
410           estimate in certain circumstances; authorizing the  
411           mover to provide a maximum one-time fee for providing  
412           a binding estimate; requiring the mover and shipper to  
413           sign the estimate; requiring the mover to provide the  
414           shipper with a copy of the estimate at the time of  
415           signature; providing that a binding estimate may only  
416           be amended under certain circumstances; authorizing a



949376

417 mover to charge more than the binding estimate in  
418 certain circumstances; requiring a mover to allow a  
419 shipper to consider whether additional services are  
420 needed; requiring a mover to retain a copy of the  
421 binding estimate for a specified period; requiring a  
422 mover to provide a contract for service to the shipper  
423 before providing moving or accessorial services;  
424 requiring a driver to have possession of the contract  
425 before leaving the point of origin; requiring a mover  
426 to retain a contract of service for a specified  
427 period; creating s. 507.054, F.S.; requiring the  
428 department to prepare a publication that summarizes  
429 the rights and responsibilities of, and remedies  
430 available to, movers and shippers; requiring the  
431 publication to meet certain specifications; creating  
432 s. 507.055, F.S.; requiring a mover to provide certain  
433 disclosures to a prospective shipper; amending s.  
434 507.06, F.S.; requiring a mover to tender household  
435 goods for delivery on the agreed upon delivery date or  
436 within a specified period unless waived by the  
437 shipper; requiring a mover to notify and provide  
438 certain information to a shipper if the mover is  
439 unable to perform delivery on the agreed upon date or  
440 during the specified period; creating s. 507.065,  
441 F.S.; providing a maximum amount that a mover may  
442 charge a shipper unless waived by the shipper;  
443 requiring a mover to notify and provide



419526

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Lee)  
recommended the following:

1           **Senate Substitute for Amendment (949376) (with title**  
2 **amendment)**

3  
4           Delete lines 82 - 567  
5 and insert:

6           Section 1. Present subsections (2) through (5) of section  
7 507.01, Florida Statutes, are redesignated as subsections (3)  
8 through (6), respectively, present subsections (9), (10), and  
9 (11) of that section are redesignated as subsections (10), (11),  
10 and (12), respectively, present subsections (12) and (13) of



419526

11 that section are redesignated as subsections (14) and (15),  
12 respectively, new subsections (2), (9), and (13) are added to  
13 that section, and present subsections (6) and (9) are amended,  
14 to read:

15 507.01 Definitions.—As used in this chapter, the term:

16 (2) "Additional services" means any additional  
17 transportation of household goods which is performed by a mover,  
18 is not specifically included in a binding estimate or contract,  
19 and results in a charge to the shipper.

20 ~~(6) "Estimate" means a written document that sets forth the~~  
21 ~~total costs and describes the basis of those costs, relating to~~  
22 ~~a shipper's household move, including, but not limited to, the~~  
23 ~~loading, transportation or shipment, and unloading of household~~  
24 ~~goods and accessorial services.~~

25 (9) "Impracticable operations" means conditions arising  
26 after execution of a contract for household moving services  
27 which make it impractical for a mover to perform pickup or  
28 delivery services for a household move.

29 ~~(10)~~ (9) "Mover" means a person who, for compensation,  
30 contracts for or engages in the loading, transportation or  
31 shipment, or unloading of household goods as part of a household  
32 move. The term does not include a postal, courier, envelope, or  
33 package service that, or a personal laborer who, does not  
34 advertise itself as a mover or moving service.

35 (13) "Personal laborer" means an individual hired directly  
36 by the shipper to assist in the loading and unloading of the  
37 shipper's own household goods. The term does not include any  
38 individual who has contracted with or is compensated by a third-  
39 party or whose services are brokered as part of a household



419526

40 move.

41 Section 2. Subsection (3) of section 507.02, Florida  
42 Statutes, is amended to read:

43 507.02 Construction; intent; application.—

44 (3) This chapter is intended to provide consistency and  
45 transparency in moving practices and to secure the satisfaction  
46 and confidence of shippers and members of the public when using  
47 a mover.

48 Section 3. Subsections (1), (3), (4), and (5) of section  
49 507.04, Florida Statutes, are amended to read:

50 507.04 Required insurance coverages; liability limitations;  
51 valuation coverage.—

52 (1) CARGO LIABILITY INSURANCE.—

53 (a)1. Except as provided in paragraph (b), each mover  
54 operating in this state must maintain current and valid cargo  
55 liability insurance coverage of at least \$10,000 per shipment  
56 for the loss or damage of household goods resulting from the  
57 negligence of the mover or its employees or agents.

58 2. The mover must provide the department with evidence of  
59 liability insurance coverage before the mover is registered with  
60 the department under s. 507.03. All insurance coverage  
61 maintained by a mover must remain in effect throughout the  
62 mover's registration period. ~~A mover's failure to maintain~~  
63 ~~insurance coverage in accordance with this paragraph constitutes~~  
64 ~~an immediate threat to the public health, safety, and welfare.~~  
65 ~~If a mover fails to maintain insurance coverage, the department~~  
66 ~~may immediately suspend the mover's registration or eligibility~~  
67 ~~for registration, and the mover must immediately cease operating~~  
68 ~~as a mover in this state. In addition, and notwithstanding the~~



419526

69 ~~availability of any administrative relief pursuant to chapter~~  
70 ~~120, the department may seek from the appropriate circuit court~~  
71 ~~an immediate injunction prohibiting the mover from operating in~~  
72 ~~this state until the mover complies with this paragraph, a civil~~  
73 ~~penalty not to exceed \$5,000, and court costs.~~

74 (b) A mover that operates two or fewer vehicles, in lieu of  
75 maintaining the cargo liability insurance coverage required  
76 under paragraph (a), may, and each moving broker must, maintain  
77 one of the following alternative coverages:

78 1. A performance bond in the amount of \$25,000, for which  
79 the surety of the bond must be a surety company authorized to  
80 conduct business in this state; or

81 2. A certificate of deposit in a Florida banking  
82 institution in the amount of \$25,000.

83

84 The original bond or certificate of deposit must be filed with  
85 the department and must designate the department as the sole  
86 beneficiary. The department must use the bond or certificate of  
87 deposit exclusively for the payment of claims to consumers who  
88 are injured by the fraud, misrepresentation, breach of contract,  
89 misfeasance, malfeasance, or financial failure of the mover or  
90 moving broker or by a violation of this chapter by the mover or  
91 broker. Liability for these injuries may be determined in an  
92 administrative proceeding of the department or through a civil  
93 action in a court of competent jurisdiction. However, claims  
94 against the bond or certificate of deposit must only be paid, in  
95 amounts not to exceed the determined liability for these  
96 injuries, by order of the department in an administrative  
97 proceeding. The bond or certificate of deposit is subject to





419526

98 successive claims, but the aggregate amount of these claims may  
99 not exceed the amount of the bond or certificate of deposit.

100 (3) INSURANCE COVERAGES.—The insurance coverages required  
101 under paragraph (1)(a) and subsection (2) must be issued by an  
102 insurance company or carrier licensed to transact business in  
103 this state under the Florida Insurance Code as designated in s.  
104 624.01. The department shall require a mover to present a  
105 certificate of insurance of the required coverages before  
106 issuance or renewal of a registration certificate under s.  
107 507.03. The department shall be named as a certificateholder in  
108 the certificate and must be notified at least 10 days before  
109 cancellation of insurance coverage. A mover's failure to  
110 maintain insurance coverage constitutes an immediate threat to  
111 the public health, safety, and welfare. If a mover fails to  
112 maintain insurance coverage, the department may immediately  
113 suspend the mover's registration or eligibility for  
114 registration, and the mover must immediately cease operating as  
115 a mover in this state. In addition, and notwithstanding the  
116 availability of any administrative relief pursuant to chapter  
117 120, the department may seek from the appropriate circuit court  
118 an immediate injunction prohibiting the mover from operating in  
119 this state until the mover complies with this paragraph. The  
120 mover may also be assessed a civil penalty not to exceed \$5,000  
121 and court costs.

122 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.~~ ~~A mover may not~~  
123 ~~limit its liability for the loss or damage of household goods to~~  
124 ~~a valuation rate that is less than 60 cents per pound per~~  
125 ~~article. A provision of a contract for moving services is void~~  
126 ~~if the provision limits a mover's liability to a valuation rate~~



419526

127 ~~that is less than the minimum rate under this subsection. If a~~  
128 ~~mover limits its liability for a shipper's goods, the mover must~~  
129 ~~disclose the limitation, including the valuation rate, to the~~  
130 ~~shipper in writing at the time that the estimate and contract~~  
131 ~~for services are executed and before any moving or accessorial~~  
132 ~~services are provided. The disclosure must also inform the~~  
133 ~~shipper of the opportunity to purchase valuation coverage if the~~  
134 ~~mover offers that coverage under subsection (5).~~

135       ~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation  
136 coverage to compensate a shipper for the loss or damage of the  
137 shipper's household goods that are lost or damaged during a  
138 household move. ~~If a mover offers valuation coverage,~~ The  
139 coverage must indemnify the shipper for at least the cost of  
140 repair or replacement of the goods, unless waived or amended by  
141 the shipper. The shipper may waive or amend the valuation  
142 coverage, and the waiver must be made in a signed acknowledgment  
143 in the contract ~~minimum valuation rate required under subsection~~  
144 ~~(4)~~. The mover must disclose the terms of the coverage to the  
145 shipper in writing, including any deductibles, in at the time  
146 ~~that~~ the binding estimate and again when the contract for  
147 services is ~~are~~ executed and before any moving or accessorial  
148 services are provided. The disclosure must inform the shipper of  
149 the cost of the valuation coverage, if any ~~the valuation rate of~~  
150 ~~the coverage, and the opportunity to reject the coverage. If~~  
151 ~~valuation coverage compensates a shipper for at least the~~  
152 ~~minimum valuation rate required under subsection (4), the~~  
153 ~~coverage satisfies the mover's liability for the minimum~~  
154 ~~valuation rate.~~

155       Section 4. Section 507.05, Florida Statutes, is amended to



419526

156 read:

157       507.05 Physical surveys, binding estimates, and contracts  
158 for service. ~~Before providing any moving or accessorial~~  
159 ~~services, a contract and estimate must be provided to a~~  
160 ~~prospective shipper in writing, must be signed and dated by the~~  
161 ~~shipper and the mover, and must include:~~

162       (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
163 of the household goods to be moved and provide the prospective  
164 shipper with a binding estimate of the cost of the move.

165       (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
166 physical survey, and such waiver must be in writing and signed  
167 by the shipper before the household goods are loaded. The mover  
168 shall retain a copy of the waiver as an addendum to the contract  
169 for service.

170       (3) BINDING ESTIMATE.—Before executing a contract for  
171 service for a household move, and at least 48 hours before the  
172 scheduled time and date of a shipment of household goods, a  
173 mover must provide a binding estimate of the total charges,  
174 including, but not limited to, the loading, transportation or  
175 shipment, and unloading of household goods and accessorial  
176 services. The binding estimate shall be based on a physical  
177 survey conducted pursuant to subsection (1), unless waived  
178 pursuant to subsection (2).

179       (a) The shipper may waive the binding estimate if the  
180 waiver is made by signed or electronic acknowledgment before the  
181 commencement of the 48-hour period before the household goods  
182 are loaded. The mover shall retain a copy of the waiver as an  
183 addendum to the contract for services. To be enforceable, a  
184 waiver executed under this paragraph must, at a minimum, include



419526

185 a statement in uppercase type that is at least 5 points larger  
186 than, and clearly distinguishable from, the rest of the text of  
187 the waiver or release containing the statement. The exact  
188 statement to be included in a waiver of a binding estimate to be  
189 used by all movers shall be determined by the department in  
190 rulemaking and must include a delineation of the specific rights  
191 that a shipper may lose by waiving the binding estimate.

192 (b) The shipper may also waive the 48-hour period if the  
193 moving services requested commence within 48 hours of the  
194 shipper's initial contact with the mover contracted to perform  
195 the moving services.

196 (c) At a minimum, the binding estimate must include all of  
197 the following:

198 1. The table of measures used by the mover or the mover's  
199 agent in preparing the estimate.

200 2. The date the estimate was prepared and the proposed date  
201 of the move, if any.

202 3. An itemized breakdown and description of services, and  
203 the total cost to the shipper of loading, transporting or  
204 shipping, unloading, and accessorial services.

205 4. A statement that the estimate is binding on the mover  
206 and the shipper and that the charges shown apply only to those  
207 services specifically identified in the estimate.

208 5. Identification of acceptable forms of payment.

209 (d) A mover may charge a one-time fee, not to exceed \$100,  
210 for providing a binding estimate.

211 (e) The binding estimate must be signed by the mover and  
212 the shipper, and a copy must be provided to the shipper by the  
213 mover at the time that the estimate is signed.



419526

214 (f) A binding estimate may only be amended by the mover  
215 before the scheduled loading of household goods for shipment  
216 when the shipper has requested additional services of the mover  
217 not previously disclosed in the original binding estimate, or  
218 upon mutual agreement of the mover and the shipper. Once a mover  
219 begins to load the household goods for a move, failure to  
220 execute a new binding estimate signifies the mover has  
221 reaffirmed the original binding estimate.

222 (g) A mover may not collect more than the amount of the  
223 binding estimate unless:

224 1. The shipper waives receipt of a binding estimate under  
225 this subsection.

226 2. The shipper tenders additional household goods, requests  
227 additional services, or requires services that are not  
228 specifically included in the binding estimate, in which case the  
229 mover is not required to honor the estimate. If, despite the  
230 addition of household goods or the need for additional services,  
231 the mover chooses to perform the move, it must, before loading  
232 the household goods, inform the shipper of the associated  
233 charges in writing. The mover may require full payment at the  
234 destination for the costs associated with the additional  
235 requested services and the full amount of the original binding  
236 estimate.

237 3. Upon issuance of the contract for services, the mover  
238 advises the shipper, in advance of performing additional  
239 services, including accessorial services, that such services are  
240 essential to properly performing the move. The mover must allow  
241 the shipper at least 1 hour to determine whether to authorize  
242 the additional services.



419526

243 a. If the shipper agrees to pay for the additional  
244 services, the mover must execute a written addendum to the  
245 contract for services, which must be signed by the shipper. The  
246 addendum may be sent to the shipper by facsimile, e-mail,  
247 overnight courier, or certified mail, with return receipt  
248 requested. The mover must bill the shipper for the agreed upon  
249 additional services within 15 days after the delivery of those  
250 additional services pursuant to s. 507.06.

251 b. If the shipper does not agree to pay for the additional  
252 services, the mover may perform and, pursuant to s. 507.06, bill  
253 the shipper for those additional services necessary to complete  
254 the delivery.

255 (h) A mover shall retain a copy of the binding estimate for  
256 each move performed for at least 1 year after its preparation  
257 date as an attachment to the contract for service.

258 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
259 accessorial services, a mover must provide a contract for  
260 service to the shipper, which the shipper must sign and date.

261 (a) At a minimum, the contract for service must include:

262 1.~~(1)~~ The name, telephone number, and physical address  
263 where the mover's employees are available during normal business  
264 hours.

265 2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and  
266 the ~~any~~ proposed date of the move, if any.

267 3.~~(3)~~ The name and address of the shipper, the addresses  
268 where the articles are to be picked up and delivered, and a  
269 telephone number where the shipper may be reached.

270 4.~~(4)~~ The name, telephone number, and physical address of  
271 any location where the household goods will be held pending



419526

272 further transportation, including situations in which ~~where~~ the  
273 mover retains possession of household goods pending resolution  
274 of a fee dispute with the shipper.

275 5.~~(5)~~ A binding estimate provided in accordance with  
276 subsection (3) An itemized breakdown and description and total  
277 of all costs and services for loading, transportation or  
278 shipment, unloading, and accessorial services to be provided  
279 during a household move or storage of household goods.

280 6. The total charges owed by the shipper based on the  
281 binding estimate and the terms and conditions for their payment,  
282 including any required minimum payment.

283 7. If the household goods are transported under an  
284 agreement to collect payment upon delivery, the maximum payment  
285 that the mover may demand at the time of delivery.

286 8.~~(6)~~ Acceptable forms of payment, which must be clearly  
287 and conspicuously disclosed to the shipper on the binding  
288 estimate and the contract for services. A mover must shall  
289 accept at least a minimum of two of the three following forms of  
290 payment:

291 a.~~(a)~~ Cash, cashier's check, money order, or traveler's  
292 check;

293 b.~~(b)~~ Valid personal check, showing upon its face the name  
294 and address of the shipper or authorized representative; or

295 c.~~(c)~~ Valid credit card, which shall include, but not be  
296 limited to, Visa or MasterCard. A mover must clearly and  
297 conspicuously disclose to the shipper in the estimate and  
298 contract for services the forms of payments the mover will  
299 accept, including the forms of payment described in paragraphs  
300 (a)-(c).



419526

301       (b) Each addendum to the contract for service is an  
302 integral part of the contract.

303       (c) A copy of the contract for service must accompany the  
304 household goods whenever they are in the mover's or the mover's  
305 agent's possession. Before a vehicle that is being used for the  
306 move leaves the point of origin, the driver responsible for the  
307 move must have the contract for service in his or her  
308 possession.

309       (d) A mover shall retain a contract for service for each  
310 move it performs for at least 1 year after the date the contract  
311 for service was signed.

312       Section 5. Section 507.054, Florida Statutes, is created to  
313 read:

314       507.054 Publication.—

315       (1) The department shall prepare a publication that  
316 includes a summary of the rights and responsibilities of, and  
317 remedies available to movers and shippers under this chapter.  
318 The publication must include a statement that a mover's failure  
319 to relinquish household goods as required by this chapter  
320 constitutes a felony of the third degree, punishable as provided  
321 in s. 775.082, s. 775.083, or s. 775.084, that any other  
322 violation of this chapter constitutes a misdemeanor of the first  
323 degree, punishable as provided in s. 775.082 or s. 775.083, and  
324 that any violation of this chapter constitutes a violation of  
325 the Florida Deceptive and Unfair Trade Practices Act. The  
326 publication must also include a notice to the shipper about the  
327 potential risks of shipping sentimental or family heirloom  
328 items.

329       (2) A mover may provide exact copies of the department's





419526

330 publication to shippers or may customize the color, design, and  
331 dimension of the front and back covers of the standard  
332 department publication. If the mover customizes the publication,  
333 the customized publication must include the content specified in  
334 subsection (1) and meet the following requirements:

335 (a) The font size used must be at least 10 points, with the  
336 exception that the following must appear prominently on the  
337 front cover in at least 12-point boldface type: "Your Rights and  
338 Responsibilities When You Move. Furnished by Your Mover, as  
339 Required by Florida Law."

340 (b) The size of the booklet must be at least 36 square  
341 inches.

342 (3) The shipper must acknowledge receipt of the publication  
343 by signed acknowledgement in the contract.

344 Section 6. Section 507.055, Florida Statutes, is created to  
345 read:

346 507.055 Required disclosure and acknowledgment of rights  
347 and remedies.—Before executing a contract for service for a  
348 move, a mover must provide to a prospective shipper all of the  
349 following:

350 (1) The publication required under s. 507.054.

351 (2) A concise, easy-to-read, and accurate binding estimate  
352 required under s. 507.05(3).

353 Section 7. Subsections (1) and (3) of section 507.06,  
354 Florida Statutes, are amended, and subsection (4) is added to  
355 that section, to read:

356 507.06 Delivery and storage of household goods.—

357 (1) On the agreed upon delivery date or within the  
358 timeframe specified in the contract for service, a mover must



419526

359 relinquish household goods to a shipper and must place the  
360 household goods inside a shipper's dwelling or, if directed by  
361 the shipper, inside a storehouse or warehouse that is owned or  
362 rented by the shipper or the shipper's agent, unless the shipper  
363 has not tendered payment pursuant to s. 507.065 ~~in the amount~~  
364 ~~specified in a written contract or estimate signed and dated by~~  
365 ~~the shipper.~~ This requirement may be waived by the shipper. A  
366 mover may not, under any circumstances, refuse to relinquish  
367 prescription medicines and household goods for use by children,  
368 including children's furniture, clothing, or toys, ~~under any~~  
369 ~~circumstances.~~

370 (3) A mover that lawfully fails to relinquish a shipper's  
371 household goods may place the goods in storage until payment in  
372 accordance with s. 507.065 is tendered; however, the mover must  
373 notify the shipper of the location where the goods are stored  
374 and the amount due within 5 days after receipt of a written  
375 request for that information from the shipper, which request  
376 must include the address where the shipper may receive the  
377 notice. A mover may not require a prospective shipper to waive  
378 any rights or requirements under this section.

379 (4) If a mover becomes aware that it will be unable to  
380 perform either the pickup or the delivery of household goods on  
381 the date agreed upon or during the timeframe specified in the  
382 contract for service due to circumstances not anticipated by the  
383 contract, the mover shall notify the shipper of the delay and  
384 advise the shipper of the amended date or timeframe within which  
385 the mover expects to pick up or deliver the household goods in a  
386 timely manner.

387 Section 8. Section 507.065, Florida Statutes, is created to



419526

388 read:

389 507.065 Payment.—

390 (1) Except as provided in s. 507.05(3), the maximum amount  
391 that a mover may charge before relinquishing household goods to  
392 a shipper is the exact amount of the binding estimate, unless  
393 waived by the shipper, plus charges for any additional services  
394 requested or agreed to in writing by the shipper after the  
395 contract for service was issued and for impracticable  
396 operations, if applicable.

397 (2) A mover must bill a shipper for any charges assessed  
398 under this chapter which are not collected upon delivery of  
399 household goods at their destination within 15 days after such  
400 delivery. A mover may assess a late fee for any uncollected  
401 charges if the shipper fails to make payment within 30 days  
402 after receipt of the bill.

403 Section 9. Subsections (1), (4), and (5) and paragraphs (a)  
404 and (b) of subsection (6), of section 507.07, Florida Statutes,  
405 are amended, to read:

406 507.07 Violations.—It is a violation of this chapter:

407 (1) To operate conduct business as a mover or moving  
408 broker, or advertise to engage in violation the business of  
409 moving or fail to comply with ss. 507.03-507.10, or any other  
410 requirement under this chapter offering to move, without being  
411 registered with the department.

412 (4) To increase the contracted cost fail to honor and  
413 comply with all provisions of the contract for moving services  
414 in any way other than provided for in this chapter or bill of  
415 lading regarding the purchaser's rights, benefits, and  
416 privileges thereunder.



419526

417 (5) To withhold delivery of household goods or in any way  
418 hold household goods in storage against the expressed wishes of  
419 the shipper if payment has been made as delineated in the  
420 estimate or contract for services, or pursuant to this chapter.

421 ~~(6) (a) To include in any contract any provision purporting~~  
422 ~~to waive or limit any right or benefit provided to shippers~~  
423 ~~under this chapter.~~

424 (a) (b) Unless expressly authorized by this chapter, to seek  
425 or solicit a waiver or acceptance of limitation from a shipper  
426 concerning rights or benefits provided under this chapter.

427 Section 10. Section 507.09, Florida Statutes, is amended to  
428 read:

429 507.09 Administrative remedies; penalties.—

430 (1) The department may enter an order doing one or more of  
431 the following if the department finds that a mover or moving  
432 broker, or a person employed or contracted by a mover or broker,  
433 has violated or is operating in violation of this chapter or the  
434 rules or orders issued pursuant to this chapter:

435 (a) Issuing a notice of noncompliance under s. 120.695.

436 (b) Imposing an administrative fine in the Class II  
437 category pursuant to s. 570.971 for each act or omission.

438 (c) Directing that the person cease and desist specified  
439 activities.

440 (d) Refusing to register or revoking or suspending a  
441 registration.

442 (e) Placing the registrant on probation, subject to the  
443 conditions specified by the department.

444 (2) The department shall, upon notification and subsequent  
445 written verification by a law enforcement agency, a court, a



419526

446 state attorney, or the Department of Law Enforcement,  
447 immediately suspend a registration or the processing of an  
448 application for a registration if the registrant, applicant, or  
449 an officer or director of the registrant or applicant is  
450 formally charged with a crime involving fraud, theft, larceny,  
451 embezzlement, or fraudulent conversion or misappropriation of  
452 property or a crime arising from conduct during a movement of  
453 household goods until final disposition of the case or removal  
454 or resignation of that officer or director.

455 (3) The administrative proceedings that ~~which~~ could result  
456 in the entry of an order imposing any of the penalties specified  
457 in subsection (1) or subsection (2) are governed by chapter 120.

458 ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
459 ~~120.54 to administer this chapter.~~

460 Section 11. Subsection (4) of section 507.10, Florida  
461 Statutes, is amended to read:

462 507.10 Civil penalties; remedies.-

463 (4) Except as expressly authorized by this chapter, any  
464 provision in a contract for services or bill of lading from a  
465 mover or moving broker that purports to waive, limit, restrict,  
466 or avoid any of the duties, obligations, or prescriptions of the  
467 mover or broker, as provided in this chapter, is void.

468 Section 12. Section 507.11, Florida Statutes, is amended to  
469 read:

470 507.11 Criminal penalties.-

471 (1) The refusal of a mover or a mover's employee, agent, or  
472 contractor to comply with an order from a law enforcement  
473 officer to relinquish a shipper's household goods after the  
474 officer determines that the shipper has tendered payment in



419526

475 accordance with s. 507.065 ~~of the amount of a~~

476

477 ===== T I T L E A M E N D M E N T =====

478 And the title is amended as follows:

479 Delete lines 15 - 75

480 and insert:

481 cost of repair or replacement goods unless waived or  
482 amended by the shipper; authorizing the shipper to  
483 waive or amend the valuation coverage; requiring that  
484 the waiver be made in a signed acknowledgment in the  
485 contract; revising the time at which the mover must  
486 disclose the terms of the coverage to the shipper in  
487 writing, including any deductibles; revising the  
488 information that the disclosure must provide to the  
489 shipper; amending s. 507.05, F.S.; requiring a mover  
490 to conduct a physical survey and provide a binding  
491 estimate in certain circumstances unless waived by the  
492 shipper; requiring specified content for the binding  
493 estimate; authorizing a shipper to waive the binding  
494 estimate in certain circumstances; authorizing the  
495 mover to provide a maximum one-time fee for providing  
496 a binding estimate; requiring the mover and shipper to  
497 sign the estimate; requiring the mover to provide the  
498 shipper with a copy of the estimate at the time of  
499 signature; providing that a binding estimate may only  
500 be amended under certain circumstances; authorizing a  
501 mover to charge more than the binding estimate in  
502 certain circumstances; requiring a mover to allow a  
503 shipper to consider whether additional services are



419526

504 needed; requiring a mover to retain a copy of the  
505 binding estimate for a specified period; requiring a  
506 mover to provide a contract for service to the shipper  
507 before providing moving or accessorial services;  
508 requiring a driver to have possession of the contract  
509 before leaving the point of origin; requiring a mover  
510 to retain a contract of service for a specified  
511 period; creating s. 507.054, F.S.; requiring the  
512 department to prepare a publication that summarizes  
513 the rights and responsibilities of, and remedies  
514 available to, movers and shippers; requiring the  
515 publication to meet certain specifications; creating  
516 s. 507.055, F.S.; requiring a mover to provide certain  
517 disclosures to a prospective shipper; amending s.  
518 507.06, F.S.; requiring a mover to tender household  
519 goods for delivery on the agreed upon delivery date or  
520 within a specified period unless waived by the  
521 shipper; requiring a mover to notify and provide  
522 certain information to a shipper if the mover is  
523 unable to perform delivery on the agreed upon date or  
524 during the specified period; creating s. 507.065,  
525 F.S.; providing a maximum amount that a mover may  
526 charge a shipper unless waived by the shipper;  
527 requiring a mover to bill a shipper for specified  
528 charges in certain circumstances; authorizing a mover  
529 to assess a late fee for any uncollected charges in  
530 certain circumstances; amending s. 507.07, F.S.;  
531 providing that it is a violation of ch. 507, F.S., to  
532 fail to comply with specified provisions; providing



419526

533 that it is a violation of ch. 507, F.S., to increase  
534 the contracted cost for moving services in certain  
535 circumstances; conforming provisions to changes made  
536 by this act; amending s. 507.09, F.S.; requiring the  
537 department, upon verification by certain entities, to  
538 immediately suspend a registration or the processing  
539 of an application for a registration in certain  
540 circumstances; amending s. 507.10, F.S.; conforming a  
541 provision to a change made by this act; amending s.  
542 507.11, F.S.; providing



By the Committee on Commerce and Tourism; and Senator Lee

577-02749A-15

2015798c1

1 A bill to be entitled  
 2 An act relating to household moving services; amending  
 3 s. 507.01, F.S.; defining terms; amending s. 507.02,  
 4 F.S.; clarifying intent; amending s. 507.04, F.S.;  
 5 removing a prohibition that a mover may not limit its  
 6 liability for the loss or damage of household goods to  
 7 a specified valuation rate; removing a requirement  
 8 that a mover disclose a liability limitation when the  
 9 mover limits its liability for a shipper's goods;  
 10 requiring a mover to offer valuation coverage to  
 11 compensate a shipper for the loss or damage of the  
 12 shipper's household goods that are lost or damaged  
 13 during a household move; requiring the valuation  
 14 coverage to indemnify the shipper for at least the  
 15 cost of replacement goods less depreciated value;  
 16 revising the time at which the mover must disclose the  
 17 terms of the coverage to the shipper in writing;  
 18 revising the information that the disclosure must  
 19 provide to the shipper; amending s. 507.05, F.S.;  
 20 requiring a mover to conduct a physical survey and  
 21 provide a binding estimate in certain circumstances  
 22 unless waived by the shipper; requiring specified  
 23 content for the binding estimate; authorizing the  
 24 mover to provide a maximum one-time fee for providing  
 25 a binding estimate; requiring the mover and shipper to  
 26 sign the estimate; requiring the mover to provide the  
 27 shipper with a copy of the estimate at the time of  
 28 signature; providing that a binding estimate may only  
 29 be amended under certain circumstances; authorizing a

Page 1 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

30 mover to charge more than the binding estimate in  
 31 certain circumstances; requiring a mover to allow a  
 32 shipper to consider whether additional services are  
 33 needed; requiring a mover to retain a copy of the  
 34 binding estimate for a specified period; requiring a  
 35 mover to provide a contract for service to the shipper  
 36 before providing moving or accessorial services;  
 37 requiring a driver to have possession of the contract  
 38 before leaving the point of origin; requiring a mover  
 39 to retain a contract of service for a specified  
 40 period; creating s. 507.054, F.S.; requiring the  
 41 department to prepare a publication that summarizes  
 42 the rights and responsibilities of, and remedies  
 43 available to, movers and shippers; requiring the  
 44 publication to meet certain specifications; creating  
 45 s. 507.055, F.S.; requiring a mover to provide certain  
 46 disclosures to a prospective shipper; amending s.  
 47 507.06, F.S.; requiring a mover to tender household  
 48 goods for delivery on the agreed upon delivery date or  
 49 within a specified period unless waived by the  
 50 shipper; requiring a mover to notify and provide  
 51 certain information to a shipper if the mover is  
 52 unable to perform delivery on the agreed upon date or  
 53 during the specified period; creating s. 507.065,  
 54 F.S.; providing a maximum amount that a mover may  
 55 charge a shipper; requiring a mover to bill a shipper  
 56 for certain amounts within a specified period;  
 57 creating s. 507.066, F.S.; specifying the amount of  
 58 payment that the mover may collect upon delivery of

Page 2 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

59 partially lost or destroyed household goods; requiring  
 60 a mover to determine the proportion of lost or  
 61 destroyed household goods; prohibiting a mover from  
 62 collecting or requiring a shipper to pay any charges  
 63 other than specific valuation rate charges if a  
 64 household goods shipment is totally lost or destroyed  
 65 in transit; amending s. 507.07, F.S.; providing that  
 66 it is a violation of ch. 507, F.S., to fail to comply  
 67 with specified provisions; providing that it is a  
 68 violation of ch. 507, F.S., to increase the contracted  
 69 cost for moving services in certain circumstances;  
 70 conforming a provision to a change made by this act;  
 71 amending s. 507.09, F.S.; requiring the department,  
 72 upon verification by certain entities, to immediately  
 73 suspend a registration or the processing of an  
 74 application for a registration in certain  
 75 circumstances; amending s. 507.11, F.S.; providing  
 76 criminal penalties; creating s. 507.14, F.S.;

77 requiring the department to adopt rules; providing an  
 78 effective date.

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

81  
 82 Section 1. Present subsections (6) through (9) of section  
 83 507.01, Florida Statutes, are amended, and new subsection (8) is  
 84 added to that section, to read:

85 507.01 Definitions.—As used in this chapter, the term:

86 ~~(6) "Estimate" means a written document that sets forth the~~  
 87 ~~total costs and describes the basis of those costs, relating to~~

577-02749A-15

2015798c1

88 ~~a shipper's household move, including, but not limited to, the~~  
 89 ~~loading, transportation or shipment, and unloading of household~~  
 90 ~~goods and accessorial services.~~  
 91 (6)-(7) "Household goods" or "goods" means personal effects  
 92 or other personal property commonly found in a home, personal  
 93 residence, or other dwelling, including, but not limited to,  
 94 household furniture. The term does not include freight or  
 95 personal property moving to or from a factory, store, or other  
 96 place of business.  
 97 (7)-(8) "Household move" or "move" means the loading of  
 98 household goods into a vehicle, moving container, or other mode  
 99 of transportation or shipment; the transportation or shipment of  
 100 those household goods; and the unloading of those household  
 101 goods, when the transportation or shipment originates and  
 102 terminates at one of the following ultimate locations,  
 103 regardless of whether the mover temporarily stores the goods  
 104 while en route between the originating and terminating  
 105 locations:  
 106 (a) From one dwelling to another dwelling;  
 107 (b) From a dwelling to a storehouse or warehouse that is  
 108 owned or rented by the shipper or the shipper's agent; or  
 109 (c) From a storehouse or warehouse that is owned or rented  
 110 by the shipper or the shipper's agent to a dwelling.  
 111 (8) "Impracticable operations" means conditions that arise  
 112 after execution of a contract for household moving services  
 113 which make it impractical for a mover to perform pickup or  
 114 delivery services for a household move.  
 115 (9) "Additional Services" means any additional  
 116 transportation of household goods that is performed by a mover,

577-02749A-15

2015798c1

117 is not specifically included in a binding estimate, and which  
 118 results in a charge to the shipper.

119 (10){9} "Mover" means a person who, for compensation,  
 120 contracts for or engages in the loading, transportation or  
 121 shipment, or unloading of household goods as part of a household  
 122 move. The term does not include a postal, courier, envelope, or  
 123 package service that does not advertise itself as a mover or  
 124 moving service.

125 Section 2. Subsection (3) of section 507.02, Florida  
 126 Statutes, is amended to read:

127 507.02 Construction; intent; application.—

128 (3) This chapter is intended to provide consistency and  
 129 transparency in moving practices and to secure the satisfaction  
 130 and confidence of shippers and members of the public when using  
 131 a mover.

132 Section 3. Subsections (1), (3), (4), and (5) of section  
 133 507.04, Florida Statutes, are amended to read:

134 507.04 Required insurance coverages; liability limitations;  
 135 valuation coverage.—

136 (1) CARGO LIABILITY INSURANCE.—

137 (a)1. Except as provided in paragraph (b), each mover  
 138 operating in this state must maintain current and valid cargo  
 139 liability insurance coverage of at least \$10,000 per shipment  
 140 for the loss or damage of household goods resulting from the  
 141 negligence of the mover or its employees or agents.

142 2. The mover must provide the department with evidence of  
 143 liability insurance coverage before the mover is registered with  
 144 the department under s. 507.03. All insurance coverage  
 145 maintained by a mover must remain in effect throughout the

577-02749A-15

2015798c1

146 mover's registration period. A mover's failure to maintain  
 147 insurance coverage in accordance with this paragraph constitutes  
 148 an immediate threat to the public health, safety, and welfare.  
 149 ~~If a mover fails to maintain insurance coverage, the department~~  
 150 ~~may immediately suspend the mover's registration or eligibility~~  
 151 ~~for registration, and the mover must immediately cease operating~~  
 152 ~~as a mover in this state. In addition, and notwithstanding the~~  
 153 ~~availability of any administrative relief pursuant to chapter~~  
 154 ~~120, the department may seek from the appropriate circuit court~~  
 155 ~~an immediate injunction prohibiting the mover from operating in~~  
 156 ~~this state until the mover complies with this paragraph, a civil~~  
 157 ~~penalty not to exceed \$5,000, and court costs.~~

158 (b) A mover that operates two or fewer vehicles, in lieu of  
 159 maintaining the cargo liability insurance coverage required  
 160 under paragraph (a), may, and each moving broker must, maintain  
 161 one of the following alternative coverages:

162 1. A performance bond in the amount of \$25,000, for which  
 163 the surety of the bond must be a surety company authorized to  
 164 conduct business in this state; or

165 2. A certificate of deposit in a Florida banking  
 166 institution in the amount of \$25,000.

167  
 168 The original bond or certificate of deposit must be filed with  
 169 the department and must designate the department as the sole  
 170 beneficiary. The department must use the bond or certificate of  
 171 deposit exclusively for the payment of claims to consumers who  
 172 are injured by the fraud, misrepresentation, breach of contract,  
 173 misfeasance, malfeasance, or financial failure of the mover or  
 174 moving broker or by a violation of this chapter by the mover or

577-02749A-15

2015798c1

175 broker. Liability for these injuries may be determined in an  
 176 administrative proceeding of the department or through a civil  
 177 action in a court of competent jurisdiction. However, claims  
 178 against the bond or certificate of deposit must only be paid, in  
 179 amounts not to exceed the determined liability for these  
 180 injuries, by order of the department in an administrative  
 181 proceeding. The bond or certificate of deposit is subject to  
 182 successive claims, but the aggregate amount of these claims may  
 183 not exceed the amount of the bond or certificate of deposit.

184 (3) INSURANCE COVERAGES.—The insurance coverages required  
 185 under paragraph (1) (a) and subsection (2) must be issued by an  
 186 insurance company or carrier licensed to transact business in  
 187 this state under the Florida Insurance Code as designated in s.  
 188 624.01. The department shall require a mover to present a  
 189 certificate of insurance of the required coverages before  
 190 issuance or renewal of a registration certificate under s.  
 191 507.03. The department shall be named as a certificateholder in  
 192 the certificate and must be notified at least 10 days before  
 193 cancellation of insurance coverage. A mover's failure to  
 194 maintain insurance coverage constitutes an immediate threat to  
 195 the public health, safety, and welfare. If a mover fails to  
 196 maintain insurance coverage, the department may immediately  
 197 suspend the mover's registration or eligibility for  
 198 registration, and the mover must immediately cease operating as  
 199 a mover in this state. In addition, and notwithstanding the  
 200 availability of any administrative relief pursuant to chapter  
 201 120, the department may seek from the appropriate circuit court  
 202 an immediate injunction prohibiting the mover from operating in  
 203 this state until the mover complies with this paragraph, a civil

Page 7 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

204 penalty not to exceed \$5,000, and court costs.

205 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.~~ A mover may not  
 206 ~~limit its liability for the loss or damage of household goods to~~  
 207 ~~a valuation rate that is less than 60 cents per pound per~~  
 208 ~~article. A provision of a contract for moving services is void~~  
 209 ~~if the provision limits a mover's liability to a valuation rate~~  
 210 ~~that is less than the minimum rate under this subsection. If a~~  
 211 ~~mover limits its liability for a shipper's goods, the mover must~~  
 212 ~~disclose the limitation, including the valuation rate, to the~~  
 213 ~~shipper in writing at the time that the estimate and contract~~  
 214 ~~for services are executed and before any moving or accessorial~~  
 215 ~~services are provided. The disclosure must also inform the~~  
 216 ~~shipper of the opportunity to purchase valuation coverage if the~~  
 217 ~~mover offers that coverage under subsection (5).~~

218 ~~(5) VALUATION COVERAGE.~~—A mover shall ~~may~~ offer valuation  
 219 coverage to compensate a shipper for the loss or damage of the  
 220 shipper's household goods that are lost or damaged during a  
 221 household move. ~~If a mover offers valuation coverage,~~ The  
 222 coverage must indemnify the shipper for at least the cost of  
 223 replacement of the goods less depreciated value ~~minimum~~  
 224 valuation rate required under subsection (4). The mover must  
 225 disclose the terms of the coverage to the shipper in writing  
 226 within ~~at the time that~~ the binding estimate and again when the  
 227 contract for services ~~is~~ are executed and before any moving or  
 228 accessorial services are provided. The disclosure must inform  
 229 the shipper of the cost of the valuation coverage, if any the  
 230 valuation rate of the coverage, ~~and the opportunity to reject~~  
 231 the coverage. If valuation coverage compensates a shipper for at  
 232 least the minimum valuation rate required under subsection (4),

Page 8 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

233 ~~the coverage satisfies the mover's liability for the minimum~~  
 234 ~~valuation rate.~~

235 Section 4. Section 507.05, Florida Statutes, is amended to  
 236 read:

237 507.05 Physical surveys, binding estimates, and contracts  
 238 for service. ~~Before providing any moving or accessorial~~  
 239 ~~services, a contract and estimate must be provided to a~~  
 240 ~~prospective shipper in writing, must be signed and dated by the~~  
 241 ~~shipper and the mover, and must include:~~

242 (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
 243 of the household goods to be moved and provide the prospective  
 244 shipper with a binding estimate of the cost of the move.

245 (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
 246 physical survey, and such waiver must be in writing and signed  
 247 by the shipper before the household goods are loaded. The mover  
 248 shall retain a copy of the waiver as an addendum to the contract  
 249 for service.

250 (3) BINDING ESTIMATE.—Before executing a contract for  
 251 service for a household move, and at least 48 hours before the  
 252 scheduled time and date of a shipment of household goods, a  
 253 mover must provide a binding estimate of the total charges,  
 254 including, but not limited to, the loading, transportation or  
 255 shipment, and unloading of household goods and accessorial  
 256 services. The binding estimate shall be based on a physical  
 257 survey conducted pursuant to subsection (1), unless waived  
 258 pursuant to subsection (2).

259 (a) The shipper may waive the 48 hour waiting period and  
 260 such waiver must be made by signed acknowledgement in the  
 261 contract.

577-02749A-15

2015798c1

262 (b) At a minimum, the binding estimate must include all of  
 263 the following:

264 1. The table of measures used by the mover or the mover's  
 265 agent in preparing the estimate.

266 2. The date the estimate was prepared and the proposed date  
 267 of the move, if any.

268 3. An itemized breakdown and description of services, and  
 269 the total cost to the shipper of loading, transporting or  
 270 shipping, unloading, and accessorial services.

271 4. A statement that the estimate is binding on the mover  
 272 and the shipper and that the charges shown apply only to those  
 273 services specifically identified in the estimate.

274 5. Identification of acceptable forms of payment.

275 (c) A mover may charge a one-time fee, not to exceed \$100,  
 276 for providing a binding estimate.

277 (d) The binding estimate must be signed by the mover and  
 278 the shipper, and a copy must be provided to the shipper by the  
 279 mover at the time that the estimate is signed.

280 (e) A binding estimate may only be amended by the mover  
 281 before the scheduled loading of household goods for shipment  
 282 when the shipper has requested additional services of the mover  
 283 not previously disclosed in the original binding estimate, or  
 284 upon mutual agreement of the mover and the shipper. Once a mover  
 285 begins to load the household goods for a move, failure to  
 286 execute a new binding estimate signifies the mover has  
 287 reaffirmed the original binding estimate.

288 (f) A mover may not collect more than the amount of the  
 289 binding estimate unless:

290 1. The shipper tenders additional household goods, requests

577-02749A-15

2015798c1

291 additional services, or requires services that are not  
 292 specifically included in the binding estimate, in which case the  
 293 mover is not required to honor the estimate. If, despite the  
 294 addition of household goods or the need for additional services,  
 295 the mover chooses to perform the move, it must, before loading  
 296 the household goods, inform the shipper of the associated  
 297 charges in writing. The mover may require full payment at the  
 298 destination for the costs associated with the additional  
 299 requested services and the full amount of the original binding  
 300 estimate.

301 2. Upon issuance of the contract for services, the mover  
 302 advises the shipper, in advance of performing additional  
 303 services, including accessorial services, that such services are  
 304 essential to properly performing the move. The mover must allow  
 305 the shipper at least 1 hour to determine whether to authorize  
 306 the additional services.

307 a. If the shipper agrees to pay for the additional  
 308 services, the mover must execute a written addendum to the  
 309 contract for services, which must be signed by the shipper. The  
 310 addendum may be sent to the shipper by facsimile, e-mail,  
 311 overnight courier, or certified mail, with return receipt  
 312 requested. The mover must bill the shipper for the agreed upon  
 313 additional services within 15 days after the delivery of those  
 314 additional services pursuant to s. 507.06.

315 b. If the shipper does not agree to pay for the additional  
 316 services, the mover may perform and, pursuant to s. 507.06, bill  
 317 the shipper for those additional services necessary to complete  
 318 the delivery.

319 (g) A mover shall retain a copy of the binding estimate for

577-02749A-15

2015798c1

320 each move performed for at least 1 year after its preparation  
 321 date as an attachment to the contract for service.

322 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
 323 accessorial services, a mover must provide a contract for  
 324 service to the shipper, which the shipper must sign and date.

325 (a) At a minimum, the contract for service must include:

326 1.(4) The name, telephone number, and physical address  
 327 where the mover's employees are available during normal business  
 328 hours.

329 2.(2) The date the contract ~~was~~ ~~or~~ ~~estimate~~ is prepared and  
 330 the ~~any~~ proposed date of the move, if any.

331 3.(3) The name and address of the shipper, the addresses  
 332 where the articles are to be picked up and delivered, and a  
 333 telephone number where the shipper may be reached.

334 4.(4) The name, telephone number, and physical address of  
 335 any location where the household goods will be held pending  
 336 further transportation, including situations in which ~~where~~ the  
 337 mover retains possession of household goods pending resolution  
 338 of a fee dispute with the shipper.

339 5.(5) A binding estimate provided in accordance with s.  
 340 507.05—~~An itemized breakdown and description and total of all~~  
 341 ~~costs and services for loading, transportation or shipment,~~  
 342 ~~unloading, and accessorial services to be provided during a~~  
 343 ~~household move or storage of household goods.~~

344 6. The total charges owed by the shipper based on the  
 345 binding estimate and the terms and conditions for their payment,  
 346 including any required minimum payment.

347 7. If the household goods are transported under an  
 348 agreement to collect payment upon delivery, the maximum payment

577-02749A-15

2015798c1

349 that the mover may demand at the time of delivery.  
 350 8.(6) Acceptable forms of payment, which must be clearly  
 351 and conspicuously disclosed to the shipper on the binding  
 352 estimate and the contract for services. A mover ~~must~~ shall  
 353 accept ~~at least a minimum of~~ two of the three following forms of  
 354 payment:  
 355 a.~~(a)~~ Cash, cashier's check, money order, or traveler's  
 356 check;  
 357 b.~~(b)~~ Valid personal check, showing upon its face the name  
 358 and address of the shipper or authorized representative; or  
 359 c.~~(c)~~ Valid credit card, which shall include, but not be  
 360 limited to, Visa or MasterCard. ~~A mover must clearly and~~  
 361 ~~conspicuously disclose to the shipper in the estimate and~~  
 362 ~~contract for services the forms of payments the mover will~~  
 363 ~~accept, including the forms of payment described in paragraphs~~  
 364 ~~(a)-(c).~~  
 365 (b) Each addendum to the contract for service is an  
 366 integral part of the contract.  
 367 (c) A copy of the contract for service must accompany the  
 368 household goods whenever they are in the mover's or the mover's  
 369 agent's possession. Before a vehicle that is being used for the  
 370 move leaves the point of origin, the driver responsible for the  
 371 move must have the contract for service in his or her  
 372 possession.  
 373 (d) A mover shall retain a contract for service for each  
 374 move it performs for at least 1 year after the date the contract  
 375 for service was signed.  
 376 Section 5. Section 507.054, Florida Statutes, is created to  
 377 read:

Page 13 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

378 507.054 Publication.-  
 379 (1) The department shall prepare a publication that  
 380 includes a summary of the rights and responsibilities of, and  
 381 remedies available to movers and shippers under this chapter.  
 382 The publication must include a statement that a mover's failure  
 383 to relinquish household goods as required by this chapter  
 384 constitutes a felony of the third degree, punishable as provided  
 385 in s. 775.082, s. 775.083, or s. 775.084, that any other  
 386 violation of this chapter constitutes a misdemeanor of the first  
 387 degree, punishable as provided in s. 775.082 or s. 775.083, and  
 388 that any violation of this chapter constitutes a violation of  
 389 the Florida Deceptive and Unfair Trade Practices Act. The  
 390 publication must also include a notice to the shipper about the  
 391 potential risks of shipping sentimental or family heirloom  
 392 items.  
 393 (2) A mover may provide exact copies of the department's  
 394 publication to shippers or may customize the color, design, and  
 395 dimension of the front and back covers of the standard  
 396 department publication. If the mover customizes the publication,  
 397 the customized publication must include the content specified in  
 398 subsection (1) and meet the following requirements:  
 399 (a) The font size used must be at least 10 points, with the  
 400 exception that the following must appear prominently on the  
 401 front cover in at least 12-point boldface type: "Your Rights and  
 402 Responsibilities When You Move. Furnished by Your Mover, as  
 403 Required by Florida Law."  
 404 (b) The size of the booklet must be at least 36 square  
 405 inches.  
 406 (3) The shipper must acknowledge receipt of the publication

Page 14 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

407 by signed acknowledgement in the contract.

408 Section 6. Section 507.055, Florida Statutes, is created to  
409 read:

410 507.055 Required disclosure and acknowledgment of rights  
411 and remedies.—Before executing a contract for service for a  
412 move, a mover must provide to a prospective shipper all of the  
413 following:

414 (1) The publication required under s. 507.054.

415 (2) A concise, easy-to-read, and accurate binding estimate  
416 required under s. 507.05(3).

417 Section 7. Subsections (1) and (3) of section 507.06,  
418 Florida Statutes, are amended, and subsection (4) is added to  
419 that section, to read:

420 507.06 Delivery and storage of household goods.—

421 (1) On the agreed upon delivery date or within the  
422 timeframe specified in the contract for service, a mover must  
423 relinquish household goods to a shipper and must place the  
424 household goods inside a shipper's dwelling or, if directed by  
425 the shipper, inside a storehouse or warehouse that is owned or  
426 rented by the shipper or the shipper's agent, unless the shipper  
427 has not tendered payment pursuant to ss. 507.065 or 507.066 ~~in~~  
428 the amount specified in a written contract or estimate signed  
429 and dated by the shipper. This requirement may be waived by the  
430 shipper. A mover may not, under any circumstances, refuse to  
431 relinquish prescription medicines and household goods for use by  
432 children, including children's furniture, clothing, or toys,  
433 under any circumstances.

434 (3) A mover that lawfully fails to relinquish a shipper's  
435 household goods may place the goods in storage until payment in

Page 15 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02749A-15

2015798c1

436 accordance with ss. 507.065 or 507.066 is tendered; however, the  
437 mover must notify the shipper of the location where the goods  
438 are stored and the amount due within 5 days after receipt of a  
439 written request for that information from the shipper, which  
440 request must include the address where the shipper may receive  
441 the notice. A mover may not require a prospective shipper to  
442 waive any rights or requirements under this section.

443 (4) If a mover becomes aware that it will be unable to  
444 perform either the pickup or the delivery of household goods on  
445 the date agreed upon or during the timeframe specified in the  
446 contract for service due to circumstances not anticipated by the  
447 contract, the mover shall notify the shipper of the delay and  
448 advise the shipper of the amended date or timeframe within which  
449 the mover expects to pick up or deliver the household goods in a  
450 timely manner.

451 Section 8. Section 507.065, Florida Statutes, is created to  
452 read:

453 507.065 Payment.—

454 (1) Except as provided in s. 507.05(3), the maximum amount  
455 that a mover may charge before relinquishing household goods to  
456 a shipper is the exact amount of the binding estimate, plus  
457 charges for any additional services requested or agreed to in  
458 writing by the shipper after the contract for service was issued  
459 and for impracticable operations, if applicable.

460 (2) A mover must bill a shipper for any charges assessed  
461 under this chapter which are not collected upon delivery of  
462 household goods at their destination within 15 days after such  
463 delivery. A mover may assess a late fee for any uncollected  
464 charges if the shipper fails to make payment within 30 days

Page 16 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



577-02749A-15

2015798c1

465 after receipt of the bill.

466 Section 9. Section 507.066, Florida Statutes, is created to  
467 read:

468 507.066 Collection for losses.—

469 (1) PARTIAL LOSSES.—A mover may collect an adjusted payment  
470 from a shipper if part of a shipment of household goods is lost  
471 or destroyed.

472 (a) A mover may collect the following at delivery:

473 1. A prorated percentage of the binding estimate. The  
474 prorated percentage must equal the percentage of the weight of  
475 the portion of the household goods delivered relative to the  
476 total weight of the household goods that were ordered to be  
477 moved.

478 2. Charges for any additional services requested by the  
479 shipper after the contract for service was issued.

480 3. Charges for impracticable operations, if applicable;  
481 however, such charges may not exceed 15 percent of all other  
482 charges due at delivery.

483 4. Any specific valuation rate charges due, as provided in  
484 s. 507.04(4), if applicable.

485 (b) The mover may bill and collect from the shipper any  
486 remaining charges not collected at the time of delivery in  
487 accordance with s. 507.065. This paragraph does not apply if the  
488 loss or destruction of household goods occurred as a result of  
489 an act or omission of the shipper.

490 (c) A mover must determine, at its own expense, the  
491 proportion of the household goods, based on actual or  
492 constructive weight, which were lost or destroyed in transit.

493 (2) TOTAL LOSSES.—A mover may not collect, or require a

577-02749A-15

2015798c1

494 shipper to pay, freight charges, including a charge for  
495 accessorial services, when a household goods shipment is lost or  
496 destroyed in transit; however, the mover may collect a specific  
497 valuation rate charge due, as provided in s. 507.04(4). This  
498 subsection does not apply if the loss or destruction was due to  
499 an act or omission of the shipper.

500 (3) SHIPPER'S RIGHTS.—A shipper's rights under this section  
501 are in addition to any other rights the shipper may have with  
502 respect to household goods that were lost or destroyed while in  
503 the custody of the mover or the mover's agent. These rights also  
504 apply regardless of whether the shipper exercises his or her  
505 right to obtain a refund of the portion of a mover's published  
506 freight charges corresponding to the portion of the lost or  
507 destroyed household goods, including any charges for accessorial  
508 services, at the time the mover disposes of claims for loss,  
509 damage, or injury to the household goods.

510 Section 10. Subsections (1), (4), and (5) of section  
511 507.07, Florida Statutes, are amended, to read:

512 507.07 Violations.—It is a violation of this chapter:

513 (1) To ~~operate~~ ~~conduct business as a mover or moving~~  
514 ~~broker, or advertise to engage in violation the business of~~  
515 ~~moving or fail to comply with ss. 507.03-507.10, or any other~~  
516 ~~requirement under this chapter offering to move, without being~~  
517 ~~registered with the department.~~

518 (4) To ~~increase the contracted cost fail to honor and~~  
519 ~~comply with all provisions of the contract for moving services~~  
520 ~~in any way other than provided for in this chapter or bill of~~  
521 ~~lading regarding the purchaser's rights, benefits, and~~  
522 ~~privileges thereunder.~~

577-02749A-15

2015798c1

523 (5) To withhold delivery of household goods or in any way  
 524 hold household goods in storage against the expressed wishes of  
 525 the shipper if payment has been made as delineated in the  
 526 estimate or contract for services, or pursuant to this chapter.

527 Section 11. Section 507.09, Florida Statutes, is amended to  
 528 read:

529 507.09 Administrative remedies; penalties.—

530 (1) The department may enter an order doing one or more of  
 531 the following if the department finds that a mover or moving  
 532 broker, or a person employed or contracted by a mover or broker,  
 533 has violated or is operating in violation of this chapter or the  
 534 rules or orders issued pursuant to this chapter:

535 (a) Issuing a notice of noncompliance under s. 120.695.

536 (b) Imposing an administrative fine in the Class II  
 537 category pursuant to s. 570.971 for each act or omission.

538 (c) Directing that the person cease and desist specified  
 539 activities.

540 (d) Refusing to register or revoking or suspending a  
 541 registration.

542 (e) Placing the registrant on probation, subject to the  
 543 conditions specified by the department.

544 (2) The department shall, upon notification and subsequent  
 545 written verification by a law enforcement agency, a court, a  
 546 state attorney, or the Department of Law Enforcement,  
 547 immediately suspend a registration or the processing of an  
 548 application for a registration if the registrant, applicant, or  
 549 an officer or director of the registrant or applicant is  
 550 formally charged with a crime involving fraud, theft, larceny,  
 551 embezzlement, or fraudulent conversion or misappropriation of

577-02749A-15

2015798c1

552 property or a crime arising from conduct during a movement of  
 553 household goods until final disposition of the case or removal  
 554 or resignation of that officer or director.

555 (3) The administrative proceedings ~~that~~ which could result  
 556 in the entry of an order imposing any of the penalties specified  
 557 in subsection (1) or subsection (2) are governed by chapter 120.

558 ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
 559 ~~120.54 to administer this chapter.~~

560 Section 12. Section 507.11, Florida Statutes, is amended to  
 561 read:

562 507.11 Criminal penalties.—

563 (1) The refusal of a mover or a mover's employee, agent, or  
 564 contractor to comply with an order from a law enforcement  
 565 officer to relinquish a shipper's household goods after the  
 566 officer determines that the shipper has tendered payment in  
 567 accordance with ss. 507.065 and 507.066 ~~of the amount of a~~  
 568 ~~written estimate or contract~~, or after the officer determines  
 569 that the mover did not produce a signed estimate or contract for  
 570 service upon which demand is being made for payment, is a felony  
 571 of the third degree, punishable as provided in s. 775.082, s.  
 572 775.083, or s. 775.084. A mover's compliance with an order from  
 573 a law enforcement officer to relinquish household goods to a  
 574 shipper is not a waiver or finding of fact regarding any right  
 575 to seek further payment from the shipper.

576 (2) Except as provided in subsection (1), any person or  
 577 business that violates this chapter commits a misdemeanor of the  
 578 first degree, punishable as provided in s. 775.082 or s.  
 579 775.083.

580 Section 13. Section 507.14, Florida Statutes, is created

577-02749A-15

2015798c1

581 to read:

582 507.14 Rulemaking.~~The department shall adopt rules to~~  
583 administer this chapter.

584 Section 14. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

798

Bill Number (if applicable)

949376

Amendment Barcode (if applicable)

Topic HOUSEHOLD MOVING

Name COREY MATHEWS

Job Title EXECUTIVE DIRECTOR

Address 1390 TIMBERLANE ROAD

Street

Phone 850/222-6000

TALLAHASSEE FL 32312

City

State

Zip

Email COREY@FMWA.ORG

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing FL MOVERS + WAREHOUSEMEN'S ASSOCIATION

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

798

Bill Number (if applicable)

Topic Household Moving Services

Amendment Barcode (if applicable)

Name Jon Rees

Job Title Deputy Director Legislative Affairs DACS

Address PL 10 The Capitol

Phone 617-7700

Street

Tallahassee

FL

32399

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Dept. of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 836

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Florida Insurance Guaranty Association

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 836 revises provisions governing the Florida Insurance Guaranty Association (FIGA), which provides a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. After an insolvency occurs, the FIGA determines if an assessment is needed to pay claims, administrative costs, or bonds issued by the FIGA and certifies the need for an assessment levy to the Office of Insurance Regulation (OIR). The OIR reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies to pay their assessment to the FIGA. Generally, insurers must pay regular assessments within 30 days of the levy, and emergency assessments can be paid in a single payment, or over 12 months, at the option of FIGA. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal.

The bill creates a uniform assessment percentage to be collected from policyholders. The bill authorizes the FIGA to use a monthly installment method for the collection of emergency or regular assessments from insurers in addition to the current pay and recoup method or a combination of both. An insurer that did not write insurance in the prior year is required to pay an assessment based on an estimate of premiums it will write in the assessment year. The bill streamlines the reconciliation of collections and eliminates a regulatory filing with the OIR. The bill codifies the OIR's interpretation of an admissible asset for purposes of statutory accounting treatment of the FIGA assessments.

The bill exempts regular assessments from the insurance premium tax, which is expected to have a negative indeterminate fiscal impact. Currently, emergency assessments are exempt from the insurance premium tax.

The bill will have an indeterminate negative impact on state revenues due to the exemption from insurance premium taxes on FIGA assessments.

The bill is effective July 1, 2015.

## II. Present Situation:

### **Florida Insurance Guaranty Association**

Part II of chapter 631, Florida Statutes, governs the operations of the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, which was created to provide a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies.<sup>1</sup> Property and casualty insurance companies doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance. When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount the FIGA will cover is \$300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to the structure and contents on homeowners' claims, the FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims, the FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association.

### ***FIGA Funding and Assessments***

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, the FIGA has several potential funding sources. For example, the FIGA receives funds that are available from distributions of the estate of the insolvent insurance company.<sup>2</sup> The FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After an insolvency occurs, the FIGA is authorized to levy assessments against Florida member insurance companies under two separate statutory provisions. Section 631.57(3)(a), F.S., authorizes the FIGA to levy a regular assessment as necessary for up to two percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., which may be levied only to pay covered claims of an insurer that was

---

<sup>1</sup> Workers' compensation insurance is excluded from FIGA since the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) pays covered claims under chapter 440, F.S., Florida's Workers' Compensation Law.

<sup>2</sup> The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.

rendered insolvent by the effects of a hurricane. At the discretion of the FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at two percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

The procedure used by the FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders is provided in s. 631.57(3), F.S. The procedures listed below are generally the same for regular and emergency assessments:

- The FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by the FIGA.
- The FIGA certifies the need for an assessment levy to the OIR.
- The OIR reviews the certification and, if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay the assessment to the FIGA.
- Insurers must pay regular assessments within 30 days of the levy. Emergency assessments can be either paid in one payment at the end of that month, or spread out over 12 months, at the option of the FIGA.
- For both types of assessments, once an insurance company pays the assessment to the FIGA, it may begin to recoup the assessment from its policyholders at policy issuance or renewal.

An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for one year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a one year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the one year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholder by refunds or premium credits.

### *Accounting for Assessments*

Most insurers authorized to do business in the United States are required by their state regulators to prepare financial statements in accordance with statutory accounting principles (SAP). These principles are tools that assist state insurance departments in the regulation of solvency. The SAP are characterized as a conservative approach since it evaluates liquidity and the ability to pay claims in the future. In contrast, other users of financial information, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP), which attempt to match revenues to expenses. The OIR requires insurers to file annual SAP statements and independently audited financial reports.<sup>3</sup>

---

<sup>3</sup> Section 624.424, F.S.



In some respects, GAAP differs from SAP in the treatment of certain transactions, such as the FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows the recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.<sup>4</sup> For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset, resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue. Retained earnings are reduced in the year the assessment is paid; however, it is increased the following year as the assessment is recouped from policyholders. The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must be recognized as an admissible asset<sup>5</sup> under SAP, to the extent the receivable is likely to be realized.<sup>6</sup>

### ***Insurance Premium Tax***

The premium tax is applied to insurance premiums written in Florida. For purposes of property and casualty insurance premiums, the tax is 1.75 percent on gross premiums less reinsurance and returned premiums.<sup>7</sup> An insurance company may offset their premium tax liability with various credits, deductions, and exemptions. Amounts recouped from policyholders because of a regular assessment by the FIGA relating to an insolvency that occurs on or after July 1, 2010, are considered taxable premium under s. 624.509, F.S.<sup>8</sup> Emergency assessments recouped by insurers are not considered taxable premiums.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill significantly revises the assessment process for regular and emergency assessments.

**Section 1** amends s. 631.54, F.S., to define “assessment year,” as a 12-month period, which may begin on the first day of any calendar quarter, as specified in an order issued by the OIR directing insurers to pay an assessment to the FIGA.

**Section 2** amends s. 631.57, F.S. In the OIR order levying the regular or emergency assessment, the bill requires the office to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which may not begin before 90 days after the FIGA certifies such an assessment.

Under the initial or single payment method, insurers are required to make an initial payment to the FIGA before the beginning of the assessment year, on or before the date specified in the

---

<sup>4</sup> See Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments*, memorandum to Sandy Robinson at FIGA, December 3, 2013, (on file with the Senate Committee on Banking and Insurance).

<sup>5</sup> As defined in the National Association of Insurance Commissioners’ Statement of Statutory Accounting Principles No. 4.

<sup>6</sup> Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). <http://www.floir.com/siteDocuments/SupplementalMemo.pdf> (Last accessed by Banking and Insurance Committee Staff on February 10, 2015).

<sup>7</sup> Section 624.509, F.S.

<sup>8</sup> Section 631.57(3)(g), F.S.

<sup>9</sup> Section 631.57(3)(e)3., F.S.

order. The initial payment made by insurers that wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated net direct written premium that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's market share for the prior year is used as a basis for determining an insurer's total assessment, and insurers that did not write in the prior year are not subject to the assessment.

Subsequently, insurers are required to file a reconciliation report with the FIGA within 45 days after the end of the assessment year. Insurers must indicate the amount of the initial payment to the FIGA, whether the payment was based on premiums for the prior year or a good faith projection, and the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S., which specifies that knowing, false statements and entries are an unfair insurance trade practice. Insurers are required to complete and submit a payment reconciliation report. If an insurer's collections exceed the initial payment to the FIGA, the insurer would remit the excess amount to the FIGA within 90 days after the end of the assessment year. If an insurer's collections were less than the initial payment to the FIGA, credit would be given to the insurer against future assessments. Under the current collection method, an insurer generally remits the regular assessment within 30 days of the levy.

As an alternative to the advance payment method described above, the bill authorizes the FIGA to use a monthly installment method for the collection of regular or emergency assessments from policyholders by the insurers. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to the FIGA and subsequently recoup that payment from policyholders. Currently, the FIGA is authorized to use a single payment method or payments over 12 months for emergency assessments. The bill provides the FIGA with the discretion to use the installment plan based on the FIGA's projected cash flow. If the FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for six months, they may recommend a monthly assessment instead of a single payment. In the order levying the assessment, the OIR may specify that the assessment is due and payable monthly as the funds are collected from insureds throughout the assessment year. If the assessment is due and payable monthly, the assessment must be a uniform percentage of premium collected from all policyholders with policies in the classes protected by the account. All insurers are required to collect the assessment without regard to whether the insurer reported premium for the prior year.

The bill provides that assessments levied under s. 631.57(3), F.S., are levied upon insurers and that this subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholders duty to pay, such assessments. The bill retains the current caps on assessments of two percent for the regular assessment and two percent for the emergency assessment.

The bill authorizes the OIR to defer temporarily any insurer from any regular or temporary assessment if the OIR finds that the insurer is impaired or insolvent. Currently, s. 631.57(4), F.S., provides a limited exception to the assessment. Subject to regulatory approval, an insurer may be exempted from any regular or emergency assessment if an assessment would result in the

insurer's financial statement reflecting an amount of capital or surplus less than the sum required by any jurisdiction in which the insurer is authorized to transact insurance.

The bill provides that assessments levied and paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future, which is recognized as an admissible asset under statutory accounting principles,<sup>10</sup> to the extent the receivable is likely to be realized. This codifies the current practice of the OIR. The bill provides that an asset must be established and recorded separately from the liability, regardless of whether it is based on a retrospective or prospective premium-based assessment. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets would be based on the actual premium written offset by the obligation to the FIGA.

The bill provides that assessments are exempt from the premium tax. Currently, emergency assessments are not subject to premium tax, commissions, or fees. The bill also exempts regular assessments from any fees or commissions.

**Section 3** amends s. 631.64, F.S., to require the separate disclosures of charges or recoupments on premium statements.

**Sections 4 and 5** provide technical, conforming changes.

**Section 6** provides the bill will take effect July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

CS/SB 836 exempts the regular assessment from insurance premium tax. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact. The assessments occur on an irregular basis,

---

<sup>10</sup> National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

occurring only eight times between 1994 and 2014. The fiscal year with the largest amount of taxes collected on regular assessments in that period was \$6.0 million, with an average fiscal year tax collection amount of \$2.1 million (excluding years with zero collections). Out of the last 20 years, there were no assessments in 13 years.

**B. Private Sector Impact:**

The bill would allow the FIGA to use a single payment, monthly installment plan, or a combination of methods for the collection of regular and emergency assessments. Currently, the FIGA may collect regular or emergency assessments upfront from insurers and the FIGA has the option to collect the emergency assessment over 12 months.

The bill creates a uniform percentage assessment of policyholders. The assessment would apply to insurers writing in the preceding year and new insurers writing insurance as of, or after the date the FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of insurers for the prior year and insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report and a payment reconciliation report with the FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

Advocates of the bill contend that the current assessment mechanism poses a threat to the solvency of property insurers doing business in Florida after a storm. Advocates of the bill state that a monthly payment reduces the risk of insolvency.

The bill exempts the regular assessment from the insurance premium tax.

**C. Government Sector Impact:**

The bill has an indeterminate negative fiscal impact on state revenues resulting from the insurance premium tax exemption for regular FIGA assessments. On February 26, 2015, the Revenue Estimating Conference determined that this exemption would have a negative indeterminate fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 631.54, 631.57, 631.64, 627.727, and 631.55.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 10, 2015:**

The CS provides technical, conforming changes.

- B. **Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By the Committee on Banking and Insurance; and Senator Latvala

597-02115-15

2015836c1

1 A bill to be entitled  
 2 An act relating to the Florida Insurance Guaranty  
 3 Association; amending s. 631.54, F.S.; defining the  
 4 term "assessment year"; amending s. 631.57, F.S.;  
 5 revising provisions relating to the levy of  
 6 assessments on insurers by the Florida Insurance  
 7 Guaranty Association; specifying conditions under  
 8 which such assessments are paid; revising procedures  
 9 and timeframes for the levying of the assessments;  
 10 revising provisions relating to assessments that are  
 11 premium and not subject to the premium tax; limiting  
 12 an insurer's liability for uncollectible emergency  
 13 assessments; deleting the requirement to file a final  
 14 accounting report documenting the recoupment; revising  
 15 an exemption for assessments; amending s. 631.64,  
 16 F.S.; requiring charges or recoupments to be displayed  
 17 separately on premium statements to policyholders and  
 18 prohibiting their inclusion in rates; amending ss.  
 19 627.727 and 631.55, F.S.; conforming cross-references;  
 20 providing an effective date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24 Section 1. Subsections (2) through (9) of section 631.54,  
 25 Florida Statutes, are renumbered as subsections (3) through  
 26 (10), respectively, and a new subsection (2) is added to that  
 27 section to read:

28 631.54 Definitions.—As used in this part:

29 (2) "Assessment year" means the 12-month period, which may

Page 1 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

30 begin on the first day of any calendar quarter, whether January  
 31 1, April 1, July 1, or October 1, as specified in an order  
 32 issued by the office directing insurers to pay an assessment to  
 33 the association.

34 Section 2. Subsections (3) and (4) of section 631.57,  
 35 Florida Statutes, are amended to read:

36 631.57 Powers and duties of the association.—

37 (3) (a) To the extent necessary to secure ~~the~~ funds for the  
 38 respective accounts for the payment of covered claims, to pay  
 39 the reasonable costs to administer such accounts ~~the same~~, and  
 40 ~~to the extent necessary~~ to secure the funds for the account  
 41 specified in s. 631.55(2)(b) or to retire indebtedness,  
 42 including, without limitation, the principal, redemption  
 43 premium, if any, and interest on, and related costs of issuance  
 44 of, bonds issued under s. 631.695 and the funding of ~~any~~  
 45 reserves and other payments required under the bond resolution  
 46 or trust indenture pursuant to which such bonds have been  
 47 issued, the office, upon certification of the board of  
 48 directors, shall levy assessments, in accordance with  
 49 subparagraphs (f)1. or 2., initially estimated in the proportion  
 50 that each insurer's net direct written premiums in this state in  
 51 the classes protected by the account bears to the total of said  
 52 net direct written premiums received in this state by all such  
 53 insurers for the preceding calendar year for the kinds of  
 54 insurance included within such account. Assessments shall be  
 55 remitted to and administered by the board of directors in the  
 56 manner specified by the approved plan and paragraph (f). Each  
 57 insurer so assessed shall have at least 30 days' written notice  
 58 as to the date the initial assessment payment is due and

Page 2 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

59 payable. Every assessment shall be ~~made as~~ a uniform percentage  
 60 ~~applicable to the net direct written premiums of each insurer in~~  
 61 ~~the kinds of insurance included within the account in which the~~  
 62 ~~assessment is made.~~ The assessments levied against any insurer  
 63 ~~may shall~~ not exceed in any one calendar year more than 2  
 64 percent of that insurer's net direct written premiums in this  
 65 state for the kinds of insurance included within such account  
 66 ~~during the calendar year next preceding the date of such~~  
 67 ~~assessments.~~

68 (b) If sufficient funds from such assessments, together  
 69 with funds previously raised, are not available in any one year  
 70 in the respective account to make all the payments or  
 71 reimbursements then owing to insurers, the funds available shall  
 72 be prorated and the unpaid portion ~~shall be~~ paid as soon  
 73 ~~thereafter~~ as funds become available.

74 (c) The Legislature finds and declares that all assessments  
 75 paid by an insurer or insurer group as a result of a levy by the  
 76 office, including assessments levied pursuant to paragraph (a)  
 77 and emergency assessments levied pursuant to paragraph (e),  
 78 constitute advances of funds from the insurer to the  
 79 association. An insurer may fully recoup such advances by  
 80 applying the uniform assessment percentage levied by the office  
 81 to all a separate recoupment factor to the premium of policies  
 82 of the same kind or line as were considered by the office in  
 83 determining the assessment liability of the insurer or insurer  
 84 group as set forth in paragraph (f).

85 1. Assessments levied under subparagraph (f)1. are paid  
 86 before policy surcharges are collected and result in a  
 87 receivable for policy surcharges collected in the future. This

Page 3 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

88 amount, to the extent it is likely that it will be realized,  
 89 meets the definition of an admissible asset as specified in the  
 90 National Association of Insurance Commissioners' Statement of  
 91 Statutory Accounting Principles No. 4. The asset shall be  
 92 established and recorded separately from the liability  
 93 regardless of whether it is based on a retrospective or  
 94 prospective premium-based assessment. If an insurer is unable to  
 95 fully recoup the amount of the assessment because of a reduction  
 96 in writings or withdrawal from the market, the amount recorded  
 97 as an asset shall be reduced to the amount reasonably expected  
 98 to be recouped.

99 2. Assessments levied under subparagraph (f)2. are paid  
 100 after policy surcharges are collected so that the recognition of  
 101 assets is based on actual premium written offset by the  
 102 obligation to the association.

103 (d) ~~No~~ State funds may not of any kind shall be allocated  
 104 or paid to ~~the said~~ association or any of its accounts.

105 (e)1.~~a.~~ In addition to assessments ~~otherwise~~ authorized in  
 106 paragraph (a), and to the extent necessary to secure the funds  
 107 for the account specified in s. 631.55(2)(b) for the direct  
 108 payment of covered claims of insurers rendered insolvent by the  
 109 effects of a hurricane and to pay the reasonable costs to  
 110 administer such claims, or to retire indebtedness, including,  
 111 without limitation, the principal, redemption premium, if any,  
 112 and interest on, and related costs of issuance of, bonds issued  
 113 under s. 631.695 and the funding of any reserves and other  
 114 payments required under the bond resolution or trust indenture  
 115 pursuant to which such bonds have been issued, the office, upon  
 116 certification of the board of directors, shall levy emergency

Page 4 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

117 assessments upon insurers holding a certificate of authority.  
 118 The emergency assessments levied against payable under this  
 119 ~~paragraph by any insurer may shall~~ not exceed in any one  
 120 ~~calendar single~~ year more than 2 percent of that insurer's net  
 121 ~~direct~~ written premiums, net of refunds, in this state ~~during~~  
 122 ~~the preceding calendar year~~ for the kinds of insurance within  
 123 the account specified in s. 631.55(2)(b).

124 ~~2.b. Any~~ Emergency assessments authorized under this  
 125 paragraph shall be levied by the office upon insurers in  
 126 accordance with subparagraph (f) ~~referred to in sub-subparagraph~~  
 127 ~~a.~~, upon certification as to the need for such assessments by  
 128 the board of directors. If in the event the board of directors  
 129 participates in the issuance of bonds in accordance with s.  
 130 631.695, emergency assessments shall be levied in each year that  
 131 bonds issued under s. 631.695 and secured by such emergency  
 132 assessments are outstanding, in ~~such~~ amounts up to such 2-  
 133 percent limit as required in order to provide for the full and  
 134 timely payment of the principal of, redemption premium, if any,  
 135 and interest on, and related costs of issuance of, such bonds.  
 136 The emergency assessments ~~provided for in this paragraph~~ are  
 137 assigned and pledged to the municipality, county, or legal  
 138 entity issuing bonds under s. 631.695 for the benefit of the  
 139 holders of such bonds, ~~in order to enable such municipality,~~  
 140 ~~county, or legal entity~~ to provide for the payment of the  
 141 principal of, redemption premium, if any, and interest on such  
 142 bonds, the cost of issuance of such bonds, and the funding of  
 143 any reserves and other payments required under the bond  
 144 resolution or trust indenture pursuant to which such bonds have  
 145 been issued, without ~~the necessity of any~~ further action by the

Page 5 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

146 association, the office, or any other party. If To the extent  
 147 bonds are issued under s. 631.695 and the association determines  
 148 to secure such bonds by a pledge of revenues received from the  
 149 emergency assessments, such bonds, upon such pledge of revenues,  
 150 shall be secured by and payable from the proceeds of such  
 151 emergency assessments, and the proceeds of emergency assessments  
 152 levied under this paragraph shall be remitted directly to and  
 153 administered by the trustee or custodian appointed for such  
 154 bonds.

155 ~~3.e.~~ Emergency assessments used to defease bonds issued  
 156 under this part paragraph may be payable in a single payment or,  
 157 at the option of the association, may be payable in 12 monthly  
 158 installments with the first installment being due and payable at  
 159 the end of the month after an emergency assessment is levied and  
 160 subsequent installments being due by not later than the end of  
 161 each succeeding month.

162 ~~4.d.~~ If emergency assessments are imposed, the report  
 163 required by s. 631.695(7) must shall include an analysis of the  
 164 revenues generated from the emergency assessments imposed under  
 165 this paragraph.

166 ~~5.e.~~ If emergency assessments are imposed, the references  
 167 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
 168 assessments levied under paragraph (a) must shall include  
 169 emergency assessments imposed under this paragraph.

170 ~~6.2.~~ If the board of directors participates in the issuance  
 171 of bonds in accordance with s. 631.695, an annual assessment  
 172 under this paragraph shall continue while the bonds issued with  
 173 respect to which the assessment was imposed are outstanding,  
 174 including any bonds the proceeds of which were used to refund

Page 6 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



597-02115-15

2015836c1

175 bonds issued pursuant to s. 631.695, unless adequate provision  
 176 has been made for the payment of the bonds in the documents  
 177 authorizing the issuance of such bonds.

178 ~~3. Emergency assessments under this paragraph are not~~  
 179 ~~premium and are not subject to the premium tax, to any fees, or~~  
 180 ~~to any commissions. An insurer is liable for all emergency~~  
 181 ~~assessments that the insurer collects and shall treat the~~  
 182 ~~failure of an insured to pay an emergency assessment as a~~  
 183 ~~failure to pay the premium. An insurer is not liable for~~  
 184 ~~uncollectible emergency assessments.~~

185 (f) ~~The recoupment factor applied to policies in accordance~~  
 186 ~~with paragraph (c) shall be selected by the insurer or insurer~~  
 187 ~~group so as to provide for the probable recoupment of both~~  
 188 ~~assessments levied pursuant to paragraph (a) and emergency~~  
 189 ~~assessments over a period of 12 months, unless the insurer or~~  
 190 ~~insurer group, at its option, elects to recoup the assessment~~  
 191 ~~over a longer period. The recoupment factor shall apply to all~~  
 192 ~~policies of the same kind or line as were considered by the~~  
 193 ~~office in determining the assessment liability of the insurer or~~  
 194 ~~insurer group issued or renewed during a 12-month period. If the~~  
 195 ~~insurer or insurer group does not collect the full amount of the~~  
 196 ~~assessment during one 12-month period, the insurer or insurer~~  
 197 ~~group may apply recalculated recoupment factors to policies~~  
 198 ~~issued or renewed during one or more succeeding 12-month~~  
 199 ~~periods. If, at the end of a 12-month period, the insurer or~~  
 200 ~~insurer group has collected from the combined kinds or lines of~~  
 201 ~~policies subject to assessment more than the total amount of the~~  
 202 ~~assessment paid by the insurer or insurer group, the excess~~  
 203 ~~amount shall be disbursed as follows:~~

Page 7 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

204 1. The association, office, and insurers remitting  
 205 assessments pursuant to paragraph (a) or paragraph (e) must  
 206 comply with the following:

207 a. In the order levying an assessment, the office shall  
 208 specify the actual percentage amount to be collected uniformly  
 209 from all the policyholders of insurers subject to the assessment  
 210 and the date on which the assessment year begins, which may not  
 211 begin before 90 days after the association board certifies such  
 212 an assessment.

213 b. Insurers shall make an initial payment to the  
 214 association before the beginning of the assessment year on or  
 215 before the date specified in the order of the office.

216 c. Insurers that have written insurance in the calendar  
 217 year before the year in which the assessment is certified by the  
 218 board shall make an initial payment based on the net direct  
 219 written premium amount from the previous calendar year as set  
 220 forth in the insurers annual statement, multiplied by the  
 221 uniform percentage of premium specified in the order issued by  
 222 the office. Insurers that have not written insurance in the  
 223 previous calendar year in any of the lines under the account  
 224 which are being assessed, but which are writing insurance as of,  
 225 or after, the date the board certifies the assessment to the  
 226 office, shall pay an amount based on a good faith estimate of  
 227 the amount of net direct written premium anticipated to be  
 228 written in the subject lines of business for the assessment  
 229 year, multiplied by the uniform percentage of premium specified  
 230 in the order issued by the office.

231 d. Insurers shall file a reconciliation report with the  
 232 association which indicates the amount of the initial payment to

Page 8 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15 2015836c1

233 the association before the assessment year, whether such amount  
 234 was based on net direct written premium contained in a previous  
 235 calendar year annual statement or a good faith projection, the  
 236 amount actually collected during the assessment year, and such  
 237 other information contained on a form adopted by the association  
 238 and provided to the insurers in advance. If the insurer  
 239 collected from policyholders more than the amount initially  
 240 paid, the insurer shall pay the excess amount to the  
 241 association. If the insurer collected from policyholders an  
 242 amount which is less than the amount initially paid to the  
 243 association, the association shall credit the insurer that  
 244 amount against future assessments. Such payment reconciliation  
 245 report, and any payment of excess amounts collected from  
 246 policyholders, shall be completed and remitted to the  
 247 association within 90 days after the end of the assessment year.  
 248 The association shall send a final reconciliation report on all  
 249 insurers to the office within 120 days after each assessment  
 250 year.

251 e. Insurers remitting reconciliation reports under this  
 252 paragraph to the association are subject to s. 626.9541(1)(e).  
 253 ~~If the excess amount does not exceed 15 percent of the total~~  
 254 ~~assessment paid by the insurer or insurer group, the excess~~  
 255 ~~amount shall be remitted to the association within 60 days after~~  
 256 ~~the end of the 12-month period in which the excess recoupment~~  
 257 ~~charges were collected.~~

258 2. For assessments required under paragraph (a) or  
 259 paragraph (e), the association may use a monthly installment  
 260 method instead of the method described in sub-subparagraphs 1.b.  
 261 and c. or in combination thereof based on the association's

597-02115-15 2015836c1

262 projected cash flow. If the association projects that it has  
 263 cash on hand for the payment of anticipated claims in the  
 264 applicable account for at least 6 months, the board may make an  
 265 estimate of the assessment needed and may recommend to the  
 266 office the assessment percentage that may be collected as a  
 267 monthly assessment. The office may, in the order levying the  
 268 assessment on insurers, specify that the assessment is due and  
 269 payable monthly as the funds are collected from insureds  
 270 throughout the assessment year, in which case the assessment  
 271 shall be a uniform percentage of premium collected during the  
 272 assessment year and shall be collected from all policyholders  
 273 with policies in the classes protected by the account. All  
 274 insurers shall collect the assessment without regard to whether  
 275 the insurers reported premium in the year preceding the  
 276 assessment. Insurers are not required to advance funds if the  
 277 association and the office elect to use the monthly installment  
 278 option. All funds collected shall be retained by the association  
 279 for the payment of current or future claims. This subparagraph  
 280 does not alter the obligation of an insurer to remit assessments  
 281 levied pursuant to this subsection to the association. ~~If the~~  
 282 ~~excess amount exceeds 15 percent of the total assessment paid by~~  
 283 ~~the insurer or insurer group, the excess amount shall be~~  
 284 ~~returned to the insurer's or insurer group's current~~  
 285 ~~policyholders by refunds or premium credits. The association~~  
 286 ~~shall use any remitted excess recoupment amounts to reduce~~  
 287 ~~future assessments.~~

288 ~~(g) Amounts recouped pursuant to this subsection for~~  
 289 ~~assessments levied under paragraph (a) due to insolvencies on or~~  
 290 ~~after July 1, 2010, are considered premium solely for premium~~

597-02115-15

2015836c1

291 ~~tax purposes and are not subject to fees or commissions.~~  
 292 ~~However,~~ Insurers shall treat the failure of an insured to pay a  
 293 recoupment charge as a failure to pay the premium.

294 (h) Assessments levied under this subsection are levied  
 295 upon insurers. This subsection does not create a cause of action  
 296 by a policyholder with respect to the levying of, or a  
 297 policyholder's duty to pay, such assessments.

298 (i) Assessments levied under this subsection are not  
 299 premium and are not subject to the premium tax, to any fees, or  
 300 to any commissions. An insurer is liable for any emergency  
 301 assessments that the insurer collects and shall treat the  
 302 failure of an insured to pay an emergency assessment as a  
 303 failure to pay the premium. An insurer is not liable for  
 304 uncollectible emergency assessments.

305 ~~(h) At least 15 days before applying the recoupment factor~~  
 306 ~~to any policies, the insurer or insurer group shall file with~~  
 307 ~~the office a statement for informational purposes only setting~~  
 308 ~~forth the amount of the recoupment factor and an explanation of~~  
 309 ~~how the recoupment factor will be applied. Such statement shall~~  
 310 ~~include documentation of the assessment paid by the insurer or~~  
 311 ~~insurer group and the arithmetic calculations supporting the~~  
 312 ~~recoupment factor. The insurer or insurer group may use the~~  
 313 ~~recoupment factor at any time after the expiration of the 15-day~~  
 314 ~~period. The insurer or insurer group need submit only one~~  
 315 ~~informational statement for all lines of business using the same~~  
 316 ~~recoupment factor.~~

317 ~~(i) No later than 90 days after the insurer or insurer~~  
 318 ~~group has completed the recoupment process, the insurer or~~  
 319 ~~insurer group shall file with the office, for information~~

597-02115-15

2015836c1

320 ~~purposes only, a final accounting report documenting the~~  
 321 ~~recoupment. The report shall provide the amounts of assessments~~  
 322 ~~paid by the insurer or insurer group, the amounts and~~  
 323 ~~percentages recouped by year from each affected line of~~  
 324 ~~business, and the direct written premium subject to recoupment~~  
 325 ~~by year. The insurer or insurer group need submit only one~~  
 326 ~~report for all lines of business using the same recoupment~~  
 327 ~~factor.~~

328 (4) The office department may exempt or temporarily defer  
 329 any insurer from any regular or emergency assessment if the  
 330 office finds that the insurer is impaired or insolvent or if an  
 331 assessment would result in such insurer's financial statement  
 332 reflecting an amount of capital or surplus less than the sum of  
 333 the minimum amount required by any jurisdiction in which the  
 334 insurer is authorized to transact insurance.

335 Section 3. Section 631.64, Florida Statutes, is amended to  
 336 read:

337 631.64 Recognition of assessments in rates.—Charges or  
 338 recoupments shall be separately displayed on premium statements  
 339 to enable policyholders to determine the amount charged for  
 340 association assessments but may not be included in rates filed  
 341 and approved by the office. The rates and premiums charged for  
 342 insurance policies to which this part applies may include  
 343 amounts sufficient to recoup a sum equal to the amounts paid to  
 344 the association by the member insurer less any amounts returned  
 345 to the member insurer by the association, and such rates shall  
 346 not be deemed excessive because they contain an amount  
 347 reasonably calculated to recoup assessments paid by the member  
 348 insurer.

597-02115-15

2015836c1

349 Section 4. Subsection (5) of section 627.727, Florida  
350 Statutes, is amended to read:

351 627.727 Motor vehicle insurance; uninsured and underinsured  
352 vehicle coverage; insolvent insurer protection.—

353 (5) Any person having a claim against an insolvent insurer  
354 as defined in s. 631.54(6) under ~~the provisions of~~ this section  
355 shall present such claim for payment to the Florida Insurance  
356 Guaranty Association only. In the event of a payment to a any  
357 person in settlement of a claim arising under ~~the provisions of~~  
358 this section, the association is not subrogated or entitled to  
359 ~~any~~ recovery against the claimant's insurer. The association,  
360 however, has the rights of recovery as set forth in chapter 631  
361 in the proceeds recoverable from the assets of the insolvent  
362 insurer.

363 Section 5. Subsection (1) of section 631.55, Florida  
364 Statutes, is amended to read:

365 631.55 Creation of the association.—

366 (1) There is created a nonprofit corporation to be known as  
367 the "Florida Insurance Guaranty Association, Incorporated." All  
368 insurers defined as member insurers in s. 631.54(7) shall be  
369 members of the association as a condition of their authority to  
370 transact insurance in this state, and, further, as a condition  
371 of such authority, an insurer ~~must shall~~ agree to reimburse the  
372 association for all claim payments the association makes on the  
373 ~~said~~ insurer's behalf if such insurer is subsequently  
374 rehabilitated. The association shall perform its functions under  
375 a plan of operation established and approved under s. 631.58 and  
376 shall exercise its powers through a board of directors  
377 established under s. 631.56. The corporation shall have all

Page 13 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02115-15

2015836c1

378 those powers granted or permitted nonprofit corporations, as  
379 provided in chapter 617.

380 Section 6. This act shall take effect July 1, 2015.

Page 14 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/02/2015

Meeting Date

836

Bill Number (if applicable)

Topic FIGA

Amendment Barcode (if applicable)

Name DON BROWN

Job Title LOBBYIST

Address POB 866

Phone 850-865-9280

Street

DFS, FL 32435

Email DON@DONBROWNFLORIDA.COM

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SECURITY FIRST

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**  
20th District

March 10, 2015

The Honorable Alan Hays, Chairman  
Senate Appropriations Sub-Committee on General Government  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 11 AM 9:41  
SENATE CHAIRMAN  
STAFF DIR. STAFF

Dear Chairman Hays:

I respectfully request consideration of Senate Bill 836/Florida Insurance Guaranty Association by the Senate Appropriations Sub-Committee on General Government at your earliest convenience. The bill was referred favorably from the Senate Banking and Insurance Committee on March 10.

This bill clarifies current law allowing for FIGA to spread out the timing of the collection of funds. This will address some of the burdens relating to the assessments required of hundreds of companies and also assist the Office of Insurance Regulation with their workload.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala  
State Senator  
District 20

Cc: Jamie DeLoach, Staff Director; Lisa Waddell, Administrative Assistant

REPLY TO:  
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799  
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/SB 876 (742686)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Dean

SUBJECT: Beirut Memorial

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>FP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 876 requires the Florida Veteran's Memorial Garden to include a memorial to honor those who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

The bill has an indeterminate fiscal impact.

The bill has an effective date of July 1, 2015.

**II. Present Situation:**

**Beirut Attack**

In July of 1982, President Reagan authorized the deployment of U.S. Marines to join a multinational force (MNF) alongside French and Italian troops to contribute to peacekeeping efforts in Lebanon.<sup>1</sup> Lebanon was in the midst of a civil war that threatened the stability of the region and raised the specter of a wider war.<sup>2</sup> Syria and Israel were at ends supporting opposing

---

<sup>1</sup> U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, <https://history.state.gov/milestones/1981-1988/lebanon> (last visited March 2, 2015).

<sup>2</sup> *Id.*

Lebanese factions and perpetuating violence in an attempt to gain control of the country. In response, the MNF was tasked to protect Palestinian civilians from the ongoing conflict.<sup>3</sup>

On October 23, 1983, the headquarters and barracks of the 1<sup>st</sup> Battalion, 9<sup>th</sup> Marines Regiment in Beirut, Lebanon was attacked.<sup>4</sup> A truck carrying 2,000 pounds of explosives drove into the facility, exploded and collapsed the structure killing 220 Marines and 21 other members of the United States Armed Forces.<sup>5</sup> In February of 1984, President Reagan ordered that the Marines withdraw from Lebanon.<sup>6</sup>

### **Managing Agency for the Capitol Center**

Chapter 272, F.S., provides that the Capitol Center<sup>7</sup> is under the general control and supervision of the DMS,<sup>8</sup> which includes the management and maintenance of both the grounds and buildings.<sup>9</sup> Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.<sup>10</sup> This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.<sup>11</sup> After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.<sup>12</sup>

The “Capitol Complex” is defined to include:

“that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.”<sup>13</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> Marines Blog: The Official Blog of the United States Marine Corps, *30<sup>th</sup> Anniversary of Beirut Bombing: Survivor Shares his Story*, <http://marines.dodlive.mil/2013/10/22/30th-anniversary-of-beirut-bombing-survivor-shares-his-story/> (last visited March 2, 2015).

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

<sup>6</sup> U.S. Department of State, Office of the Historian, *The Reagan Administration and Lebanon, 1981-1984*, <https://history.state.gov/milestones/1981-1988/lebanon> (last visited March 2, 2015).

<sup>7</sup> Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

<sup>8</sup> Section 272.03, F.S.

<sup>9</sup> Section 272.09, F.S.

<sup>10</sup> Section 272.07, F.S.

<sup>11</sup> Department of Management Services, Senate Bill 608 Agency Analysis (February 19, 2014) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

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

<sup>13</sup> Section 281.01, F.S.



## Capitol Complex Monuments

The construction and placement of a monument on the premises of the Capitol Complex is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.<sup>14</sup> Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.<sup>15</sup> The DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments. Monuments constructed on or after July 1, 2014, are required to be placed in the memorial garden.<sup>16</sup>

Among the statutorily authorized Capitol Complex memorials to honor military service members are:

- The Florida Veterans' Walk of Honor;<sup>17</sup>
- The Florida Veterans' Memorial Garden;<sup>18</sup> and
- The POW-MIA Chair of Honor Memorial.<sup>19</sup>

The Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are administered by the direct-support organization (DSO) of the Department of Veteran's Affairs without funding from the state.<sup>20</sup> However, donations made to the Florida Veterans' Walk of Honor and the Florida Veterans' Memorial Garden are credited to the DSO of the Department of Veterans' Affairs and used to support and maintain the Florida Veteran's Walk of Honor, the Florida Veterans' Memorial Garden, and other efforts of the DSO.<sup>21</sup>

### III. Effect of Proposed Changes:

This bill creates s. 265.0031(4), F.S., to require the Florida Veterans' Memorial Garden to include a memorial in remembrance of the 241 members of the United States Armed Forces who lost their lives in the October 23, 1983, attack on the U.S. Armed Forces in Beirut, Lebanon.

The bill provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

---

<sup>14</sup> Section 265.111(2), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

<sup>17</sup> Section 265.0031, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 265.00301, F.S.

<sup>20</sup> Section 265.0031(2), F.S.

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under PCS/SB 876, the cost to construct the memorial is indeterminate, as the design for the memorial has not been completed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 265.0031 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute requires the Florida Veterans' Memorial Garden to include a memorial in remembrance of the 241 members of the United States Armed Forces who lost their lives on October 23, 1983, in Beirut, Lebanon.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



916652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (4) is added to section 265.0031,  
Florida Statutes, to read:

265.0031 Florida Veterans' Walk of Honor and Florida  
Veterans' Memorial Garden.—

(4) The Florida Veterans' Memorial Garden must include a  
memorial in remembrance of the 241 members of the United States



916652

11 Armed Forces who lost their lives on October 23, 1983, in  
12 Beirut, Lebanon.

13 Section 2. This act shall take effect July 1, 2015.

14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the enacting clause  
18 and insert:

19

A bill to be entitled

20

An act relating to the Beirut Memorial; amending s.

21

265.0031, F.S.; requiring that the Florida Veterans'

22

Memorial Garden include the Beirut Memorial; providing

23

an effective date.

By Senator Dean

5-01222-15

2015876\_\_

1 A bill to be entitled  
 2 An act relating to the Beirut Memorial; creating s.  
 3 265.005, F.S.; providing legislative intent; requiring  
 4 the Department of Management Services to establish a  
 5 Beirut Memorial, subject to legislative appropriation;  
 6 requiring the department to consider recommendations  
 7 of the Department of Veterans' Affairs and the Florida  
 8 Historical Commission regarding specific aspects of  
 9 the memorial; requiring the Department of Management  
 10 Services to coordinate with the Division of Historical  
 11 Resources regarding design and placement of the  
 12 memorial; providing an effective date.

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

16 Section 1. Section 265.005, Florida Statutes, is created to  
 17 read:

18 265.005 Beirut Memorial.-

19 (1) It is the intent of the Legislature to recognize and  
 20 honor the sacrifices endured by members of the United States  
 21 Armed Forces who lost their lives as a result of the explosion  
 22 of a truck laden with compressed gas-enhanced explosives which  
 23 collapsed the headquarters building of the 1st Battalion, 8th  
 24 Marines Regiment in Beirut, Lebanon, on October 23, 1983.

25 (2) The Department of Management Services shall, subject to  
 26 legislative appropriation, establish a Beirut Memorial. The  
 27 Department of Management Services shall approve the design and  
 28 placement of the Beirut Memorial in the Capitol Complex, as  
 29 defined in s. 281.01, after considering recommendations from the

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

5-01222-15

2015876\_\_

30 Department of Veterans' Affairs and, pursuant to ss. 265.111 and  
 31 267.0612(9), the Florida Historical Commission with regard to  
 32 the appropriate design and placement of the memorial. The  
 33 Department of Management Services shall also coordinate with the  
 34 Division of Historical Resources of the Department of State  
 35 regarding the memorial's design and placement, subject to the  
 36 division's powers and duties under s. 267.031.

37 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**  
5th District

March 10, 2015

The Honorable Alan Hays  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 876, relating to the Beirut Memorial, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Jamie DeLoach, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 10 PM 3:07  
SENT TO: CHAIRMAN  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 1134 (125558)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Hays

SUBJECT: Blanket Health Insurance

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1134 expands and clarifies the types of special groups of individuals that may be covered by a blanket health insurance policy or contract. Blanket health insurance covers special groups of individuals under a master policy or contract, as delineated in s. 627.659, F.S., generally while they are engaging in specified activities or operations.

There is no fiscal impact to the state.

The bill is effective July 1, 2015.

**II. Present Situation:**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.<sup>1</sup> Blanket health insurance covers special groups of individuals under a policy or contract issued to the following groups:<sup>2</sup>

- A common carrier;
- An employer;
- A volunteer fire department;

---

<sup>1</sup> Section 20.121(3)(a)1., F.S.

<sup>2</sup> Section 627.659, F.S.



- A school, school district, college, university, or other institution of learning;
- An organization or branch of the Boys Scouts of America, Future Farmers of America, religious or educational organizations, or similar organizations;
- An individual, firm, or corporation holding or operating summer camps or other meetings;
- A newspaper;
- A health care provider;
- An HMO; and
- Other specified entities.

Blanket policies and contracts are issued to a policyholder, such as a school, business, or an organization, and provide coverage to a group of individuals or participants who share a common activity or operation of the policyholder. An individual application is not required from an individual covered under a blanket health insurance policy or contract. Generally, the insurer is not required to provide a written certificate of the insurance coverage to each insured person.<sup>3</sup> The certificate is subject to filing and approval with the OIR pursuant to ss. 627.410 and 627.640, F.S.

### **III. Effect of Proposed Changes:**

The bill substantially revises and expands the special groups of individuals that are eligible under a blanket health insurance policy or contract. The bill would expand the special groups to include policies or contracts issued to:

- An operator, an owner, or a lessee of a means of transportation. Currently, a common carrier is eligible.
- Employers covering insured employees' dependents or guests, who are defined by reference to an activity or operation of the policyholder.
- Local emergency management agency or other group of first responders.
- Organization or branches of an instructional, charitable, recreational, or civic body.
- Individuals, firms, or corporations holding or operating meetings, such as meetings for educational, charitable, or civic purposes.
- Other publishers besides newspapers. Such a policy or contract may only provide coverage for accident or disability income insurance, or a combination thereof; limited scope dental or vision benefits; coverage for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.
- Coordinators of fertility medicine relationships, such as surrogacy agency, which is deemed to be a policyholder, covering donors, recipients, or surrogates.
- Sports teams or camps, or a sponsors thereof.
- Travel agencies or other organizations that provides travel-related services.
- Associations having at least 25 individuals that has been organized and maintained for one year for purposes other than that of obtaining insurance coverage.
- Financial institutions, a parent holding company of a financial institution, or

---

<sup>3</sup> An insurer is required to furnish a written certificate disclosing the essential features of the coverage to each person covered under a policy issued pursuant to s. 627.659(3), F.S., relating to policies issued to a school, district school system, college, university, or other institution of learning. Section 627.660(6), F.S.

- A trustee or agent of a financial institution or a parent holding company. Such a policy or contract may only provide coverage for accident or disability income insurance, or a combination thereof; limited scope dental or vision benefits; coverage for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

The bill takes effect July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

PCS/CS/SB 1134 would allow additional groups to obtain blanket health insurance coverage. According to advocates of the bill, although this coverage is not a substitute for liability insurance, such blanket policies may assist in reducing liability claims and offer reimbursement to participants for medical and other accidental injury-related expenses.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends section 627.659 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The CS revises and clarifies the groups that would be eligible for blanket health insurance coverage.

**CS by Banking and Insurance on March 17, 2015:**

The CS eliminates the discretionary authority of the OIR to determine additional risks or classes of risks not specified in statute that would be eligible for blanket health insurance coverage.

- B. **Amendments:**

None.



296964

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Hays)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 36 - 96  
and insert:  
volunteer fire department, ~~or~~ first aid group, local emergency  
management agency as defined in s. 252.34, or other such  
volunteer group of first responders as defined in s. 112.1815,  
which is shall be deemed to be the policyholder, covering all or  
any grouping of the members or employees of the policyholder or  
covering all or any grouping of participants which is defined by



296964

11 reference to an activity or operation sponsored or supervised by  
12 the policyholder ~~such department or group.~~

13 (5) ~~Under a policy or contract issued~~ To an organization,  
14 or branch thereof, such as the Boy Scouts of America, the Future  
15 Farmers of America, a religious, instructional, ~~or~~ educational,  
16 charitable, recreational, or civic body ~~bodies,~~ or similar  
17 organization ~~organizations,~~ or to an individual, firm, or  
18 corporation, holding or operating meetings, such as summer camps  
19 or other meetings for religious, instructive, educational,  
20 charitable, ~~or~~ recreational, or civic purposes, which  
21 organization, branch, or body is deemed to be the policyholder,  
22 covering all or any grouping of participants which is defined by  
23 reference to an activity or operation of the policyholder,  
24 including those who attend the ~~attending such~~ camps or meetings,  
25 such as ~~including~~ counselors, instructors, and persons in other  
26 administrative positions.

27 (6) ~~Under a policy or contract issued~~ In the name of a  
28 newspaper or other publisher, which is ~~shall be~~ deemed to be the  
29 policyholder, covering independent contractor newspaper or  
30 publication delivery persons. Such a policy or contract may only  
31 provide coverage for accident or disability income insurance, or  
32 a combination thereof; limited scope dental or vision benefits;  
33 coverage for a specified disease or illness; or hospital  
34 indemnity or other fixed indemnity insurance.

35 (7) ~~Under a policy or contract issued~~ In the name of a  
36 health care provider, which is is ~~shall be~~ deemed to be the  
37 policyholder, covering patients, or in the name of a coordinator  
38 of fertility medicine relationships, such as a surrogacy agency,  
39 which is deemed to be the policyholder, covering donors,



296964

40 recipients, or surrogates. This coverage may be offered to the  
41 patients, donors, recipients, or surrogates of such  
42 policyholders, a health care provider but may not be required as  
43 made a condition of receiving care. The benefits provided under  
44 the such policy or contract are shall not be assignable to any  
45 health care provider.

46 (8) Under a policy or contract issued To a any health  
47 maintenance organization licensed pursuant to the provisions of  
48 part I of chapter 641, which is shall be deemed to be the  
49 policyholder, covering the subscribers of the health maintenance  
50 organization. Payment may be made directly to the health  
51 maintenance organization by the blanket health insurer for  
52 health care services rendered by providers pursuant to the  
53 health care delivery plan.

54 (9) To a sports team or camp, or a sponsor thereof, which  
55 is deemed to be the policyholder, covering all or any grouping  
56 of members, campers, participants, employees, officials, or  
57 supervisors.

58 (10) To a travel agency or other organization that provides  
59 travel-related services, which is deemed to be the policyholder,  
60 covering all or any grouping of persons to whom the policyholder  
61 provides travel or travel-related services.

62 (11) To an association having a constitution and bylaws,  
63 having at least 25 individual members, and having been organized  
64 and maintained in good faith for a period of 1 year for purposes  
65 other than that of obtaining insurance, which association is  
66 deemed to be the policyholder, covering all or any grouping of  
67 the members of the association.

68 (12) To a financial institution as defined in s. 655.005, a



296964

69 parent holding company of the financial institution, or a  
70 trustee or agent designated by the financial institution or  
71 parent holding company, which is deemed to be the policyholder,  
72 covering accountholders, cardholders, debtors, or guarantors.  
73 Such a policy or contract may only provide coverage for accident  
74 or disability income insurance, or a combination thereof;  
75 limited scope dental or vision benefits; coverage for a  
76 specified disease or illness; or hospital indemnity or other  
77 fixed indemnity insurance.

78  
79 ===== T I T L E   A M E N D M E N T =====

80 And the title is amended as follows:

81       Delete line 5

82 and insert:

83       insurance coverage; limiting the types of insurance  
84       coverages that may be provided to specified groups;  
85       providing an effective date.

By the Committee on Banking and Insurance; and Senator Hays

597-02401-15

20151134c1

A bill to be entitled

An act relating to blanket health insurance; amending s. 627.659, F.S.; expanding the types of individuals and entities which are eligible for blanket health insurance coverage; providing an effective date.

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

Section 1. Section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket health insurance is ~~that form of~~ health insurance that which covers special groups of individuals under a policy or contract issued as enumerated in one of the following subsections:

(1) ~~Under a policy or contract issued~~ To a any common carrier, or to an operator, an owner, or a lessee of a means of transportation, which ~~is shall be~~ deemed to be the policyholder, covering a group that is defined as all persons who may become passengers on such common carrier or means of transportation.

(2) ~~Under a policy or contract issued~~ To an employer, who ~~is shall be~~ deemed to be the policyholder, covering all or any grouping group of employees or insured employees' dependents or guests, who are defined by reference to an activity or operation of the policyholder ~~exceptional hazards incident to such employment,~~ or under a policy or contract issued to an employer if when all of its employees are covered under the any such policy or contract.

(3) ~~Under a policy issued~~ To a school, district school system, college, university, or other institution of learning,

597-02401-15

20151134c1

or to an ~~the~~ official ~~or officials~~ of the ~~such~~ institution, insuring all or any grouping of the institution's students, ~~and~~ teachers, and employees. ~~The any such~~ policy ~~issued~~ may insure the spouse or dependent children of the insured student, teacher, or employee.

(4) ~~Under a policy or contract issued~~ In the name of a any volunteer fire department, ~~or~~ first aid group, emergency management group, or other first responder ~~such volunteer~~ group, which ~~is shall be~~ deemed to be the policyholder, covering all or any grouping of the members or employees of the policyholder or covering all or any grouping of participants which is defined by reference to an activity or operation sponsored or supervised by the policyholder ~~such department or group.~~

(5) ~~Under a policy or contract issued~~ To an organization, or branch thereof, such as the Boy Scouts of America, the Future Farmers of America, a religious, instructional, ~~or~~ educational, charitable, recreational, or civic body ~~bodies,~~ or similar organization organizations, or to an individual, firm, or corporation, holding or operating meetings, such as summer camps or other meetings for religious, instructive, educational, charitable, or recreational, or civic purposes, which organization, branch, or body is deemed to be the policyholder, covering all or any grouping of participants which is defined by reference to an activity or operation of the policyholder, including those who attend the attending such camps or meetings, ~~such as including~~ counselors, instructors, and persons in other administrative positions.

(6) ~~Under a policy or contract issued~~ In the name of a newspaper or other publisher, which ~~is shall be~~ deemed to be the



597-02401-15 20151134c1

59 policyholder, covering independent contractor newspaper or  
60 publication delivery persons.

61 ~~(7) Under a policy or contract issued~~ In the name of a  
62 health care provider or coordinator of health services, which is  
63 ~~shall be~~ deemed to be the policyholder, covering patients,  
64 donors, or surrogates. This coverage may be offered to patients,  
65 donors, or surrogates of the policyholder, a health care  
66 ~~provider~~ but may not be required as made a condition of  
67 receiving care. The benefits provided under the such policy or  
68 contract are ~~shall not be~~ assignable to any health care  
69 provider.

70 ~~(8) Under a policy or contract issued~~ To a any health  
71 maintenance organization licensed pursuant to the provisions of  
72 part I of chapter 641, which is ~~shall be~~ deemed to be the  
73 policyholder, covering the subscribers of the health maintenance  
74 organization. Payment may be made directly to the health  
75 maintenance organization by the blanket health insurer for  
76 health care services rendered by providers pursuant to the  
77 health care delivery plan.

78 (9) To a sports team or camp, or a sponsor thereof, which  
79 is deemed to be the policyholder, covering all or any grouping  
80 of members, campers, participants, employees, officials, or  
81 supervisors.

82 (10) To a travel agency or other organization that provides  
83 travel-related services, which is deemed to be the policyholder,  
84 covering all or any grouping of persons to whom the policyholder  
85 provides travel or travel-related services.

86 (11) To an association having a constitution and bylaws,  
87 having at least 25 individual members, and having been organized

597-02401-15 20151134c1

88 and maintained in good faith for a period of 1 year for purposes  
89 other than that of obtaining insurance, which association is  
90 deemed to be the policyholder, covering all or any grouping of  
91 the members of the association.

92 (12) To a bank or other financial institution, a vendor of  
93 the institution, or a parent holding company of the institution,  
94 or to a trustee or agent of such institution, vendor, or  
95 company, which is deemed to be the policyholder, covering  
96 accountholders, cardholders, debtors, guarantors, or purchasers.

97 Section 2. This act shall take effect July 1, 2015.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 1136

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Title Insurance

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1136 revises procedures for dealing with insolvent title insurers. There is no guaranty fund for title insurers in Florida. If funds are necessary to pay the claims of title insurers in rehabilitation, all title insurers doing business in Florida are liable for an assessment to pay those claims. The Department of Financial Services (DFS or receiver) and Office of Insurance Regulation (OIR) determine the amount of money necessary and order an assessment. The title insurers recover the assessment by collecting a surcharge on each title policy issued in Florida. To prevent an insurer from gaining a competitive advantage, each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments. Current law provides that surcharges collected in excess of the assessment amount are paid to the state.

This bill creates a mechanism for using excess surcharges to reduce the time that surcharges are collected. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring the excess to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400 F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver must be paid to the Insurance Regulatory Trust Fund within the DFS.

The bill also allows the OIR to order an additional surcharge in situations where a surcharge is being collected.

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based on the requirement that excess surcharges held by DFS be deposited into the trust fund.

The bill is effective July 1, 2015.

## II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.<sup>1</sup> Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.<sup>2</sup> Title insurance agents and agencies are licensed and regulated by the DFS while title insurance companies are licensed and regulated by the OIR.

### Rehabilitation of a Title Insurer

Chapter 631, F.S., relates to insurer insolvency. Sections 631.400 and 631.401, F.S., specifically govern title insurer insolvency. If the OIR believes an insurer is impaired or insolvent, it notifies the DFS and provides supporting information.<sup>3</sup> The DFS through its Division of Rehabilitation and Liquidation (receiver) may commence a proceeding in circuit court for an order directing that it liquidate or rehabilitate the insurer.<sup>4</sup> Once the court enters an order directing the receiver to rehabilitate a title insurer, the receiver reviews the condition of the insurer and files a plan of rehabilitation with the court for approval.<sup>5</sup> The rehabilitation plan provides that policies on properties located in Florida will remain in force subject the ability to assess other title insurers<sup>6</sup> and provides a mechanism for canceling policies on out of state properties.<sup>7</sup>

### Assessments

There is no guaranty fund for title insurers in Florida. All title insurers doing business in Florida are liable for an assessment to pay unpaid title insurance claims and expenses for any title insurer

---

<sup>1</sup> Section 624.608, F.S.

<sup>2</sup> See *Lawyers Title Insurance Co. Inc., v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4<sup>th</sup> DCA 2003).

<sup>3</sup> See s. 631.031, F.S.

<sup>4</sup> See generally ss. 631.031-631.152, F.S.

<sup>5</sup> See s. 631.400(1), F.S.

<sup>6</sup> See s. 631.400(1)(a), F.S.

<sup>7</sup> See s. 631.400(1)(b)-(f), F.S.

ordered into rehabilitation.<sup>8</sup> Before an assessment is ordered, the receiver reviews the condition of the insurer to determine the amount necessary for the payment of known claims, loss adjustment expenses, and the cost of the administration of the rehabilitation expenses.<sup>9</sup> If insurer funds are not sufficient to cover the necessary amount, the receiver requests that the OIR order an assessment.<sup>10</sup> The OIR orders other title insurers<sup>11</sup> to pay assessments based on a pro rata share of the total direct written premium in Florida.<sup>12</sup> The assessment must be paid to the receiver within 90 days.<sup>13</sup>

### **Recovery of the Assessments**

Section 631.401, F.S., provides a mechanism for title insurers to recoup the assessments. When the OIR orders an assessment, it also orders a surcharge on each title policy issued thereafter.<sup>14</sup> The surcharge amount is estimated to allow insurers to recover the assessment amount in not more than seven years.<sup>15</sup> A title insurer cannot retain more in surcharges for an assessment than the amount paid.<sup>16</sup> Section 631.401(1), F.S., allows the OIR to increase the surcharge if additional insurers become impaired but does not allow the OIR to increase the surcharge if additional assessments are needed for one insurer. The OIR reports that the inability to increase the surcharge can result in accounting difficulties for the OIR and the insurers.<sup>17</sup>

Each title insurer is required to continue to collect the surcharge until all title insurers have recovered their assessments.<sup>18</sup> This prevents a title insurer from gaining a competitive advantage by selling policies without a surcharge while other title insurance continue to collect a surcharge.<sup>19</sup> Each title insurer is required to notify the OIR when it has recovered its assessed amount and the OIR notifies all companies to cease collecting surcharges once each company has recovered its assessed amount.<sup>20</sup>

Any surcharges collected in excess of the amount assessed are paid to the Insurance Regulatory Trust Fund.<sup>21</sup>

---

<sup>8</sup> See s. 631.400(2), F.S.

<sup>9</sup> See s. 631.400(3), F.S.

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

<sup>11</sup> According to information provided by the DFS, there are 18 title insurers authorized to do business in Florida.

<sup>12</sup> See s. 631.400(4), F.S.

<sup>13</sup> See s. 631.400(5), F.S. The statute also allows companies to pay the receiver through an installment plan.

<sup>14</sup> See s. 631.401(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> See s. 631.401(5), F.S.

<sup>17</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>18</sup> See s. 631.401(6), F.S.

<sup>19</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

<sup>20</sup> See s. 631.401(6), F.S.

<sup>21</sup> See s. 631.401(7), F.S.

### **Experience with Title Insurers in Receivership**

Sections 631.400 and 631.401, F.S., were enacted in 2011.<sup>22</sup> Since the enactment of the statutes, assessments and surcharges have been ordered for two title insurer receiverships.<sup>23</sup> There is currently a \$3.28 surcharge on title insurance policies that has been in effect since September 2014.<sup>24</sup> Excess surcharges have not been collected thus far but it is anticipated that excess surcharges will be collected in the future.

### **III. Effect of Proposed Changes:**

This bill amends s. 631.401(1), F.S., to allow the OIR to order an additional surcharge in situations where a surcharge is currently in effect but the OIR determines that an additional surcharge is necessary. According to the OIR, this will reduce accounting problems that could arise in situations where multiple surcharges are imposed.<sup>25</sup>

This bill provides a mechanism in s. 631.401(6), F.S., for dealing with the collection of excess surcharges. It provides that when a company has collected surcharges in excess of the amount it was assessed, the company shall pay the excess to the receiver. The receiver must maintain the money in an excess surcharge account and may use the excess surcharges only:

- To reduce or eliminate the amount of a future assessment for a title insurer currently in receivership or that later enters receivership; or
- To reduce the amount of time that consumers in the state are subject to surcharges by transferring excess surcharges to title insurers that have not fully collected surcharges equal to the amount of the aggregate assessments they paid pursuant to s. 631.400, F.S.

If the receiver has no active title insurer receiverships for 12 consecutive months or if there have been no payable claims against any title insurer receivership for 60 consecutive months, all excess surcharges held by the receiver shall be paid to the Insurance Regulatory Trust Fund.

The bill also amends the following subsections of s. 631.401, F.S., to revise and clarify the title insurance assessment process:

- Section 631.401(5), F.S., to provide that a title insurer may not retain more in surcharges than the amount of aggregate assessments paid by that insurer. Any surcharges collected in excess of the amount of the aggregate assessments paid by a title insurer must be paid to the receiver.
- Section 631.401(2), F.S., to provide that the surcharge will be listed on the settlement statement as a “surcharge” and clarify that the surcharge is not premium and is not subject to premium tax.
- Section 631.401(3), F.S., to provide that title insurers not subject to a particular assessment must still collect the surcharge and remit the surcharge to the receiver.

---

<sup>22</sup> See ch. 2011-226, L.O.F.

<sup>23</sup> See *In re: 2012 Title Insurance Assessment for the Rehabilitation of National Title Insurance Company*, OIR Case No. 127302-12 (September 4, 2012) and *In re: 2014 Title Insurance Assessment for the Rehabilitation of K.E.L. Title Insurance Company*, OIR Case No. 150289-14 (June 5, 2014).

<sup>24</sup> Interview with the staff of the DFS and the OIR.

<sup>25</sup> See Office of Insurance Regulation, *HB 927/SB 1136 Agency Bill Analysis* (February 25, 2015)(on file with the Committee on Banking and Insurance).

- Section 631.401(4), F.S., to provide that surcharges do not need to be remitted by agents to insurers with the premium. This is to avoid co-mingling of premium and surcharge funds.
- Section 631.401(9), F.S., to provide that the Financial Services Commission may adopt rules specifying procedures for the collection, use, and transfer of surcharges, including excess surcharges and the DFS may adopt rules for claiming, distributing, and using excess surcharge funds held by the receiver.

This bill takes effect on July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1136 could have the effect of reducing the time that surcharges are collected. This would reduce the amount paid by purchasers of title insurance.

C. Government Sector Impact:

The Insurance Regulatory Trust Fund will receive an indeterminate amount of additional funds based upon the requirement for excess surcharges held by the DFS to be deposited into the trust fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 631.401 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment that:

- Revised current law to allow the OIR to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than continuing the surcharges until all title insurers that paid the assessment have recovered their payment.
- Clarified a provision to provide that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments.
- Corrected the entity receiving rulemaking authority under the bill to reflect the Financial Services Commission as the agency head of the OIR and added rulemaking authority for the DFS to allow it to create a process to claim against and distribute funds from the excess surcharge account created by the bill.
- Revised the condition precedent to paying the excess surcharges held by the receiver into the Insurance Regulatory Trust Fund.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Hukill

597-02402-15

20151136c1

1 A bill to be entitled  
 2 An act relating to title insurance; amending s.  
 3 631.401, F.S.; revising procedures and requirements  
 4 relating to the recovery of assessments from title  
 5 insurers through surcharges assessed on policies;  
 6 revising provisions relating to surcharges collected  
 7 in excess of the assessments paid by title insurers;  
 8 revising requirements for the payment of excess  
 9 surcharges to the Insurance Regulatory Trust Fund;  
 10 authorizing the Financial Services Commission and the  
 11 Department of Financial Services to adopt rules for  
 12 certain purposes; providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Section 631.401, Florida Statutes, is amended to  
 17 read:  
 18 631.401 Recovery of assessments and assumed policy  
 19 obligations.—  
 20 (1) Upon the making of any assessment allowed by s.  
 21 631.400, the office shall order a surcharge or, if a surcharge  
 22 is currently in effect, an additional surcharge amount on each  
 23 title insurance policy thereafter issued insuring an interest in  
 24 real property in this state. The office shall set the per  
 25 transaction surcharge at an amount estimated to generate  
 26 sufficient funds to recover the amount assessed over a period of  
 27 not more than 7 years. The amount of the surcharge ordered under  
 28 this section may not exceed \$25 per transaction for each  
 29 impaired title insurer. ~~If additional surcharges are occasioned~~

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02402-15

20151136c1

30 ~~by additional title insurers becoming impaired, the office shall~~  
 31 ~~order an increase in the amount of the surcharge to reflect the~~  
 32 ~~aggregate surcharge.~~  
 33 (2) The party responsible for the payment of title  
 34 insurance premium, unless otherwise agreed between the parties,  
 35 shall be responsible for the payment of the surcharge. No  
 36 surcharge will be due or owing as to any policy of title  
 37 insurance subject to issued at the simultaneous issue premium  
 38 ~~rate. For all other purposes,~~ The surcharge will be considered a  
 39 governmental assessment to be separately stated on any  
 40 settlement statement as a surcharge. The surcharge is not  
 41 premium and is not subject to premium tax or reserve  
 42 requirements under chapter 625.  
 43 (3) Title insurers doing business in this state which are  
 44 not subject to a given assessment writing no premiums in the  
 45 prior calendar year shall collect the same per transaction  
 46 surcharge as provided by this section. Such surcharge collected  
 47 shall be paid to the receiver within 60 days after receipt to be  
 48 maintained in an excess surcharge account and used only as  
 49 provided in subsection (6) from the title agent or agency.  
 50 (4) Each title insurance agent, agency, or direct title  
 51 operation shall collect the surcharge as to each title insurance  
 52 policy written and remit those surcharges ~~along with the~~  
 53 ~~policies and premiums~~ within 60 days to the title insurer on  
 54 which whom the policy was written.  
 55 (5) A title insurer may not retain more in surcharges ~~for~~  
 56 ~~an ordered assessment~~ than the amount of aggregate assessments  
 57 paid by the assessment that title insurer paid. Any surcharges  
 58 collected in excess of the amount of the aggregate assessments

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



597-02402-15 20151136c1

59 paid by a title insurer shall be paid as provided in subsection  
 60 (6). As used in this section, the term "aggregate assessments"  
 61 means the total amount of assessments ordered by the office  
 62 under s. 631.400.

63 (6) Each title insurer collecting surcharges shall promptly  
 64 notify the office when it has collected surcharges equal to the  
 65 amount of the aggregate assessments ~~assessment~~ paid pursuant to  
 66 s. 631.400. The office shall notify all companies, including  
 67 those collecting surcharges as required by subsection (3), to  
 68 cease collecting surcharges when notified that all aggregate  
 69 assessments have been recovered by the title insurers that wrote  
 70 policies in the state during the previous calendar year. Any  
 71 surcharges collected by a title insurer in excess of the total  
 72 amount it was assessed for aggregate assessments shall be paid  
 73 quarterly to the receiver to be maintained in the excess  
 74 surcharge account by the receiver. Excess surcharges may be used  
 75 by the receiver for the following purposes only:

76 (a) To reduce or eliminate the amount of a future  
 77 assessment for a title insurer that is in receivership at the  
 78 time of the assessment or that later enters receivership; or  
 79 (b) To reduce the amount of time that consumers in the  
 80 state are subject to surcharges by transferring excess  
 81 surcharges to title insurers that have not fully collected  
 82 surcharges equal to the amount of the aggregate assessments paid  
 83 by title insurers pursuant to s. 631.400.

84 (7) In conjunction with the filing of each quarterly  
 85 financial statement, each title insurer shall provide the office  
 86 with an accounting of assessments paid and surcharges collected  
 87 during the period.

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02402-15 20151136c1

88 (8) If the receiver has no active title insurer  
 89 receiverships for 12 consecutive months or if there have been no  
 90 payable claims against any title insurer receivership for 60  
 91 consecutive months, all excess surcharges held by the receiver  
 92 under this section ~~Any surcharges collected in excess of the~~  
 93 ~~amount assessed~~ shall be paid into ~~to~~ the Insurance Regulatory  
 94 Trust Fund.

95 (9) The Financial Services Commission may adopt rules  
 96 specifying procedures for the collection, use, and transfer of  
 97 surcharges, including excess surcharges.

98 (10) The department may adopt rules specifying procedures  
 99 for claiming, distributing, and using excess surcharge account  
 100 funds held by the receiver under this section and for the  
 101 purposes specified in subsection (6).

102 Section 2. This act shall take effect July 1, 2015.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

1136  
Bill Number (if applicable)

Topic Excess Surcharge Reform

Amendment Barcode (if applicable)

Name ALEXANDRA OVERHOPF

Job Title EXEC. DIR

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email alex@flta.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

4-2-15

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1136

Meeting Date

Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name Beth Vecchioli

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St., Ste 600

Phone 850-425-5623

Street

Tallah FL 32301

Email beth.vecchioli@hthw.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Stewart Title Guaranty Co.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Finance and Tax, *Chair*  
Communications, Energy, and Public Utilities,  
*Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Fiscal Policy

**JOINT COMMITTEE:**

Joint Committee on Public Counsel Oversight

**SENATOR DOROTHY L. HUKILL**  
8th District

March 17, 2015

The Honorable Alan Hays  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 1136 – Title Insurance

Dear Chairman Hays:

Senate Bill 1136, relating Title Insurance has been referred to the Appropriations Subcommittee on General Government Committee. I am requesting your consideration on placing SB 1136 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Jamie DeLoach, Staff Director of the Appropriations Subcommittee on General Government Committee  
Lisa Waddell, Administrative Assistant of the Appropriations Subcommittee on General Government Committee

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 17 PM 2:34  
SENATOR: CHAIRMAN \_\_\_\_\_  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**REPLY TO:**

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/SB 1148 (135278)

INTRODUCER: Appropriations Subcommittee on General Government and Senator Stargel

SUBJECT: Firesafety

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/SB 1148 makes the following changes with regards to the regulation by the Fire Prevention Code of agriculture property:

- Defines “Agricultural pole barn” and exempts such barns from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Defines a “nonresidential farm building” and specifies certain uses allowing such buildings to be exempt for the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Requires the State Fire Marshal to conduct a study on the use of nonresidential farm buildings for certain assemblies as defined in the fire code.
- Requires the State Fire Marshal to convene a working group of various stakeholders to assist with the study.
- Authorizes a local fire official to consider the Fire Safety Evaluation System found in the National Fire Protection Association (NFPA) 101A Life Safety Code when identifying alternatives to a firesafety code with regards to existing buildings.

There is no fiscal impact to state funds.

The bill is effective July 1, 2015.

## II. Present Situation:

### **Division of the State Fire Marshal (State Fire Marshal)**

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>1</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>2</sup>

The Division of the State Fire Marshal (Division) consists of the following four bureaus: the Bureau of Fire and Arson Investigations, the Bureau of Fire Standards and Training, the Bureau of Forensic Fire and Explosive Analysis, and Bureau of Fire Prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.<sup>3</sup>

### **National Fire Protection Association (NFPA) 101 Life Safety Code**

The National Fire Protection Association (NFPA) publishes the NFPA 101 Life Safety Code. The Life Safety Code is used to protect the public by developing standards on building construction, protection, and occupancy features that minimize the effects of fire and related hazards. The Life Safety Code covers life safety in both new and existing structures.<sup>4</sup> Under current law, the State Fire Marshal must adopt the Life Safety Code.<sup>5</sup> The current Florida Fire Prevention Code and the Life Safety Code incorporates the NFPA 101 Life Safety Code as adopted by the State Fire Marshal.<sup>6</sup>

### **NFPA Occupancy Definitions<sup>7</sup>**

- “Assembly Occupancy” is defined by the NFPA as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or used as a special amusement building, regardless of occupant load.

---

<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

<sup>2</sup> s. 633.202(1), F.S.

<sup>3</sup> State Fire Marshal website: <http://www.myfloridacfo.com/sfm/> (Last visited March 14, 2015).

<sup>4</sup> <http://www.nfpa.org/aboutthecodes> (Last visited March 14, 2015).

<sup>5</sup> s. 633.202(2), F.S.

<sup>6</sup> s. 633.104(1), F.S.

<sup>7</sup> <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (Last visited March 14, 2015).

- “Mercantile Occupancy” is defined by the NFPA as an occupancy used for the display and sale of merchandise.
- “Business Occupancy” is defined by the NFPA as an occupancy used for the transaction of business other than mercantile.

### **Nonresidential Farm Buildings**

Section 604.50, F.S., defines a nonresidential farm building as any temporary or permanent building or support structure located on a farm or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house. This definition does not provide any exemptions from the Florida Fire Prevention Code.

### **III. Effect of Proposed Changes:**

The bill defines an “Agricultural pole barn” as a nonresidential farm building in which 90 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Furthermore, the section states such pole barns are exempt for the Florida Fire Prevention Code, National Codes and the Life Safety Code.

The bill defines a nonresidential farm building for purposes of the Florida Fire Prevention Code as having the same meaning as provided in s. 604.50, F.S. The bill allows two scenarios for when such buildings can be exempt from the Florida Fire Prevention Code, National Codes and the Life Safety Code:

- If occupancy is limited by the property owner to no more than 35 persons and the building is not used by the public for direct sales or as an educational outreach facility, or
- The building is used by the owner for assembly, business, or mercantile occupancies, as defined in the Florida Fire Prevention Code, is not used for lodging purposes, each event has no more than 100 persons occupying the building at one time, there are at least two openings, a minimum of 36 inches wide and 80 inches high, the building provides at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles, and no combustible or flammable liquids are stored inside the building during the event.

By exempting a nonresidential farm building from the Florida Fire Prevention Code, National Codes, and the Life Safety Code, the formula used for determining safe occupancy size of a building will not apply.

The bill requires the State Fire Marshal to conduct a study on the secondary use of nonresidential farm buildings as assembly occupancies with more than 100 individuals in attendance. The State Fire Marshal is directed to convene a workgroup on or before September 1, 2015, to assist with the study. The workgroup must include a representative of the Florida Agritourism Association, the Florida Farm Bureau, the Department of Agriculture and Consumer Services, the Florida Fire Chiefs Association, the Florida Professional Firefighters Association, the Florida Fire Marshals

and Inspectors Association, and the Florida Volunteer Firefighters Association. The workgroup may include other interested parties.

If the study determines that an assembly occupancy requires life safety or fire prevention standards different from those currently specified in the Florida Fire Prevention Code, the State Fire Marshal must adopt alternative standards by rule and such rulemaking must begin on or before December 1, 2015.

The bill makes a technical change regarding the configuration of a tent. No longer must a tent be up to 30 feet by 30 feet but rather the change in the bill limits tents to no more than a total of 900 square feet in order to be exempt from the Florida Fire Prevention Code and National Codes.

Lastly, when establishing minimum firesafety standards for existing buildings, the bill allows a local fire official to consider the Fire Safety Evaluation System found in NFPA 101A, Guide on Alternative Solutions to Life Safety, that has been adopted by the State Fire Marshal, as an acceptable source for the identification of low-cost, reasonable alternatives.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

According to the DFS, PCS/SB 1148 may reduce the number and amount of permit review fees imposed by local governments. Local Governments currently have the authority to inspect and review structures for the types of events exempted from the Florida Fire Prevention Code in this bill.

B. Private Sector Impact:

Pole barns and nonresidential farm buildings used in specific circumstances are exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code. Exemptions from such codes could be a cost savings to such owners.



C. **Government Sector Impact:**

The State Fire Marshal is directed to conduct a study and convene a workgroup to review exemptions for nonresidential farm buildings when used for certain assembly occupancies. According to the DFS, existing resources are sufficient to conduct the study and fulfill the workgroup responsibilities included in the bill.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 633.202 and 633.208.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute amends the requirements necessary for an exemption to fire safety codes when an agricultural pole barn is used for assembly, business, or mercantile occupancies. These changes are:

- The building must not be used for lodging purposes;
- Each event has no more than 100 occupying the building at one time;
- There are at least two openings with a minimum of 36 inches wide and 80 inches high;
- There are at least seven square feet per person in attendance if the building is not concentrated with tables, chairs, or other obstacles, and 15 square feet per person if the building is concentrated with tables, chairs or other obstacles; and
- There is no storage of combustible or flammable liquids inside the building during the event.

B. **Amendments:**

None.



941126

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 36 - 76

and insert:

more than 35 persons, and which is not used by the public ~~for~~  
~~direct sales or~~ as an educational outreach facility, is exempt  
from the Florida Fire Prevention Code, including the national  
codes and Life Safety Code incorporated by reference. ~~This~~  
~~paragraph does not include structures used for residential or~~  
~~assembly occupancies, as defined in the Florida Fire Prevention~~



941126

11 ~~Code.~~

12 (c) Notwithstanding any other provision of law, a  
13 nonresidential farm building is exempt from the Florida Fire  
14 Prevention Code, including the national codes and the Life  
15 Safety Code incorporated by reference, if all of the following  
16 conditions are met:

17 1. The nonresidential farm building is used occasionally by  
18 the owner only for the secondary purposes of assembly, business,  
19 or mercantile occupancy, as defined in the Florida Fire  
20 Prevention Code, and is not used for lodging purposes.

21 2. Each event has less than 100 persons occupying the  
22 building at one time.

23 3. There are at least two means of egress or openings of at  
24 least 36 inches in width and 80 inches in height.

25 4. The nonresidential farm building provides at least 7  
26 square feet per person in attendance if the building is not  
27 concentrated with chairs, tables, or other obstacles, and 15  
28 square feet per person in attendance if the building is  
29 concentrated with chairs, tables, or other obstacles.

30 5. The storage of combustible or flammable liquids inside  
31 the nonresidential farm building during each event is not  
32 permitted.

33 (d) The local fire official may request to be notified of  
34 an event that is subject to the conditions of paragraph (c).

35 (e) Notwithstanding any other provision of law, an  
36 agricultural pole barn is exempt from the Florida Fire  
37 Prevention Code, including the national fire codes and the Life  
38 Safety Code incorporated by reference.

39 (f) The State Fire Marshal shall conduct a study on the



941126

40 secondary use of nonresidential farm buildings as assembly  
41 occupancies that exceed 100 persons in attendance and on the  
42 development of a fire safety evaluation system for  
43 nonresidential farm buildings used as assembly occupancies.

44 1. The State Fire Marshal shall convene a workgroup on or  
45 before September 1, 2015, to assist with the study. The  
46 workgroup must include a representative of the Florida  
47 Agritourism Association, the Florida Farm Bureau, the Department  
48 of Agriculture and Consumer Services, the Florida Fire Chiefs  
49 Association, the Florida Professional Firefighters Association,  
50 the Florida Fire Marshals and Inspectors Association, and the  
51 Florida Volunteer Firefighters Association. The workgroup may  
52 include other interested parties.

53 2. If the study determines that the secondary use of  
54 nonresidential farm buildings as described in this paragraph  
55 requires alternative life safety or fire prevention standards  
56 instead of those currently specified in the Florida Fire  
57 Prevention Code, the State Fire Marshal shall in coordination  
58 with the Department of Agriculture and Consumer Services adopt  
59 the alternative standards by rule. Such rulemaking shall be

60  
61 ===== T I T L E A M E N D M E N T =====

62 And the title is amended as follows:

63 Delete lines 4 - 6

64 and insert:

65 buildings and agricultural pole barns, rather than  
66 specified structures located on agricultural property,  
67 from the Florida Fire Prevention Code under specified  
68 circumstances; authorizing the local fire official to



941126

69  
70

request notification of certain events held in a  
nonresidential farm building;

By Senator Stargel

15-00960A-15

20151148\_\_

1 A bill to be entitled  
 2 An act relating to firesafety; amending s. 633.202,  
 3 F.S.; defining terms; exempting nonresidential farm  
 4 buildings, rather than specified structures located on  
 5 agricultural property, from the Florida Fire  
 6 Prevention Code under specified circumstances;  
 7 requiring the State Fire Marshal to conduct a study  
 8 addressing certain secondary uses of nonresidential  
 9 farm buildings; requiring the State Fire Marshal to  
 10 convene a workgroup by a specified date to assist with  
 11 the study; requiring the State Fire Marshal to  
 12 initiate rulemaking by a specified date if the study  
 13 determines that certain life safety or fire prevention  
 14 standards are required; revising the maximum  
 15 measurements of a tent that is exempt from the Florida  
 16 Fire Prevention Code; amending s. 633.208, F.S.;

17 authorizing a local fire official to consider a  
 18 specified publication when identifying an alternative  
 19 to a firesafety code; providing an effective date.

20

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

22

23 Section 1. Subsection (16) of section 633.202, Florida  
 24 Statutes, is amended to read:

25 633.202 Florida Fire Prevention Code.—

26 (16) (a) As used in this subsection, the term:

27 1. "Agricultural pole barn" means a nonresidential farm  
 28 building in which 90 percent or more of the perimeter walls are  
 29 permanently open and allow free ingress and egress.

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

15-00960A-15

20151148\_\_

30 2. "Nonresidential farm building" has the same meaning  
 31 provided in s. 604.50.

32 ~~(b) A nonresidential farm building structure, located on~~  
 33 ~~property that is classified for ad valorem purposes as~~  
 34 ~~agricultural, which is part of a farming or ranching operation,~~  
 35 in which the occupancy is limited by the property owner to no  
 36 more than 35 persons, and which is not used by the public for  
 37 direct sales or as an educational outreach facility, is exempt  
 38 from the Florida Fire Prevention Code, including the national  
 39 codes and Life Safety Code incorporated by reference. ~~This~~  
 40 ~~paragraph does not include structures used for residential or~~  
 41 ~~assembly occupancies, as defined in the Florida Fire Prevention~~  
 42 ~~Code.~~

43 (c) Notwithstanding any other provision of law, a  
 44 nonresidential farm building is exempt from the Florida Fire  
 45 Prevention Code, including the national codes and the Life  
 46 Safety Code incorporated by reference, if:

47 1. The nonresidential farm building is used by the owner  
 48 for assembly, business, or mercantile occupancies, as defined in  
 49 the Florida Fire Prevention Code, no more than a total of 20  
 50 times per year; and

51 2. Each occupancy under subparagraph 1. lasts no longer  
 52 than 72 hours and has no more than 150 individuals in  
 53 attendance.

54 (d) Notwithstanding any other provision of law, an  
 55 agricultural pole barn is exempt from the Florida Fire  
 56 Prevention Code, including the national codes and the Life  
 57 Safety Code incorporated by reference.

58 (e) The State Fire Marshal shall conduct a study on the

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

15-00960A-15

20151148\_\_

59 secondary use of nonresidential farm buildings as assembly  
 60 occupancies that occur more than 20 times per year and as  
 61 assembly occupancies with more than 150 individuals in  
 62 attendance.

63 1. The State Fire Marshal shall convene a workgroup on or  
 64 before September 1, 2015, to assist with the study. The  
 65 workgroup must include a representative of the Florida  
 66 Agritourism Association, the Florida Farm Bureau, the Department  
 67 of Agriculture and Consumer Services, the Florida Fire Chiefs  
 68 Association, the Florida Professional Firefighters Association,  
 69 the Florida Fire Marshals and Inspectors Association, and the  
 70 Florida Volunteer Firefighters Association. The workgroup may  
 71 include other interested parties.

72 2. If the study determines that an assembly occupancy  
 73 described under this paragraph requires life safety or fire  
 74 prevention standards different from those currently specified in  
 75 the Florida Fire Prevention Code, the State Fire Marshal shall  
 76 adopt the alternative standards by rule. Such rulemaking must be  
 77 initiated on or before December 1, 2015.

78 (17) ~~(b)~~ A tent up to 900 square 30 feet by 30 feet is  
 79 exempt from the Florida Fire Prevention Code, including the  
 80 national codes incorporated by reference.

81 Section 2. Subsection (5) of section 633.208, Florida  
 82 Statutes, is amended to read:

83 633.208 Minimum firesafety standards.—

84 (5) With regard to existing buildings, the Legislature  
 85 recognizes that it is not always practical to apply any or all  
 86 of the provisions of the Florida Fire Prevention Code and that  
 87 physical limitations may require disproportionate effort or

15-00960A-15

20151148\_\_

88 expense with little increase in fire or life safety. Before  
 89 ~~Prior to~~ applying the minimum firesafety code to an existing  
 90 building, the local fire official shall determine that a threat  
 91 to lifesafety or property exists. If a threat to lifesafety or  
 92 property exists, the fire official shall apply the applicable  
 93 firesafety code for existing buildings to the extent practical  
 94 to assure a reasonable degree of lifesafety and safety of  
 95 property or the fire official shall fashion a reasonable  
 96 alternative that which affords an equivalent degree of  
 97 lifesafety and safety of property. The local fire official may  
 98 consider the Fire Safety Evaluation System found in NFPA 101A,  
 99 Guide on Alternative Solutions to Life Safety, adopted by the  
 100 State Fire Marshal, as an acceptable source for the  
 101 identification of low-cost, reasonable alternatives. The  
 102 decision of the local fire official may be appealed to the local  
 103 administrative board described in s. 553.73.

104 Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

1148

Bill Number (if applicable)

941126

Amendment Barcode (if applicable)

Topic Fire Safety

Name Adam Basford

Job Title Leg. Affairs Director

Address 315 S Calhoun # 650

Phone 222-2557

Street

Tallahassee

City

FL 32301

State

Zip

Email adam.basford@ffbs.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Farm Bureau

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2

Meeting Date

1148

Bill Number (if applicable)

Topic Fire SAFETY

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title \_\_\_\_\_

Address PO Box 16011

Phone 850-228-1296

Street

TALLAHASSEE

FL

32302

Email Jim@magnohistrategiesllc.ca

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA NURSERY, GROWERS & LANDSCAPE ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

1148

Bill Number (if applicable)

Topic FIRE SAFETY

Amendment Barcode (if applicable)

Name JOHN PASQUALONE

Job Title EXECUTIVE DIRECTOR

Address PO BOX 325

Phone 772-932-1555

Street HOME LOWN FL 33475

Email john.pasqualone@ffma.org

Speaking: [ ] For [ ] Against [X] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing FL FIRE MARSHALS & INSPECTORS ASSOC.

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

1148

Bill Number (if applicable)

Topic Firesafety

Amendment Barcode (if applicable)

Name Jon Tees

Job Title Deputy Director Legislative Affairs DMCS

Address PL 12 The Capitol

Phone 617-7700

Street

Tallahassee FL 32399

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Dept. of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: CS/SB 1190

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Insurer Solvency

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1190 substantially revises the solvency requirements for health maintenance organizations (HMOs) in the areas of minimum surplus, premium-to-surplus writing ratios, risk-based capital, financial reporting, financial management, and governance. These changes will require HMOs to meet the same regulatory requirements as insurers in these areas, thereby increasing consumer protections against insolvencies. The bill also increases the cap on HMO financial examination costs for examinations conducted by the Office of Insurance Regulation (OIR).

The OIR is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company or HMO, monitoring the financial condition through examinations and audits, and procedures for the administrative supervision, rehabilitation, or liquidation of a company if it is in unsound financial condition or insolvent.

Increasing the cap that the HMOs pay for examinations from \$50,000 to \$100,000 will result in a reduction of expenditures of state funds from the Insurance Regulatory Trust Fund within the Department of Financial Services.

The bill is effective upon becoming law, except as specified.

## II. Present Situation:

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.<sup>1</sup> The Florida Insurance Code contains many provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. Section 624.401, F.S., generally requires insurers and other risk-bearing entities to obtain a certificate of authority prior to engaging in insurance transactions and to meet certain initial and ongoing solvency requirements, such as minimum capital and surplus requirements, writing ratios, and financial reporting requirements.

### Minimum Surplus Requirements Initial Licensure

For purposes of obtaining a certificate of authority, s. 624.408, F.S., requires an insurer writing health benefit plans<sup>2</sup> or long-term plans to maintain a minimum surplus as to policyholders of not less than the greater of \$2.5 million or four percent of the insurer's total liabilities plus six percent of the insurer's liabilities relative to health insurance.<sup>3</sup> An HMO is required to have a minimum surplus of not less than the greater of \$1.5 million, 10 percent of total liabilities, or two percent of total, annualized premiums. The current minimum surplus dollar thresholds for licensure have not changed for life and health insurers since 1989 and, for HMOs, since 1988.<sup>4</sup>

### Requirements after Licensure

To maintain a certificate of authority to transact insurance, life and health insurers are required to maintain a minimum surplus as to policyholders not less than the greater of \$1.5 million, or four percent of the insurer's total liabilities, plus six percent of the insurer's liabilities relative to health insurance.<sup>5</sup> The HMOs are required to meet the same requirements provided for initial licensure. The current minimum surplus dollar thresholds applicable to life and health insurers and HMOs beyond licensure have not changed since 1989 for life and health insurers,<sup>6</sup> and since 1998 for HMOs.<sup>7</sup>

### Risk-Based Capital

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. The RBC standard provides a safety net for insurers and provides state insurance regulators with authority for timely corrective action. On or before March 1 of each year, insurers and multi-state HMOs and prepaid limited health services organizations (PLHSOs)<sup>8</sup> must file risk-based capital reports and plans with the National Association of Insurance Commissioners (NAIC), while all

---

<sup>1</sup> Section 20.121(3)(a), F.S.

<sup>2</sup> Section 627.6699, F.S., defines the term, "health benefit plan," to mean any hospital or medical policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract.

<sup>3</sup> Section 624.407, F.S.

<sup>4</sup> Sections 25 and 26, ch. 89-360, Laws of Florida (insurers); s. 5, ch. 88-388, Laws of Florida (HMOs).

<sup>5</sup> Section 624.407, F.S.

<sup>6</sup> Section 26, ch. 89-360, Laws of Florida.

<sup>7</sup> Section 20, ch. 98-159, Laws of Florida. The change to \$1.5 million enacted in 1998 was phased in over three years.

<sup>8</sup> A PLHSO provides limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment that is authorized under chapter 636, F.S.

domestic insurers must also file a copy with the OIR, in accordance with statutory RBC requirements.<sup>9</sup> As of September 30, 2014, there was one multi-state HMO and four multi-state PLHSOs in Florida.<sup>10</sup>

### **Premium-to-Surplus Writing Ratios**

Insurers are subject to premium-to-surplus ratios that determine the amount of premium they can write based on the amount of surplus. Section 624.4095, F.S., sets maximum ratios of premiums written to surplus as to policyholders. The basic ratio is 10-to-1 for gross written premiums and 4-to-10 for net written premiums.<sup>11</sup> The HMOs are not subject to such a requirement.

### **Management Services Organizations**

For the purpose of determining the financial condition or solvency of an HMO and pursuant to s. 641.35, F.S., the OIR provides that specified assets can be included as admitted assets and other assets are excluded as non-admitted assets according to statutory accounting principles. Statutory accounting principles are characterized as a conservative approach since it evaluates the HMO's liquidity and the ability to pay claims in the future.

Certain entities, such as "management services organizations" (MSOs) provide services for HMOs. A MSO may provide management and administrative services to a practice, or it may acquire a practice's assets (thereby providing capital to the practice) and subsequently enter into agreements to provide the practice with space, equipment, or both.<sup>12</sup> Non-healthcare provider investors, a hospital, a group of physicians, a joint venture between a hospital and physicians, or a health plan may own a MSO.<sup>13</sup> A MSO is not regulated by the OIR; therefore, the OIR is unaware of its financial condition. If an HMO records a MSO transaction as a receivable or asset on its financial statements, the OIR is unable to determine if these transactions and amounts are accurate and that sufficient assets are available to pay losses and claims. Therefore, if a MSO receivable is recorded as an admitted asset, it could misrepresent the financial condition or solvency of an HMO. According to the OIR, very few HMOs currently book MSO receivables as admitted assets.

### **Financial Reporting**

Section 624.424, F.S., requires insurers to submit annual and quarterly financial statements and an annual audited financial report. Insurers must file annual financial reports with the OIR on or before March 1. The HMOs and PLHSOs must file "within 3 months after the end of its fiscal year." Unlike insurers and HMOs, PLHSOs must also file a 4<sup>th</sup> quarter financial report, in

---

<sup>9</sup> Section 624.4085, F.S.

<sup>10</sup> Office of Insurance Regulation, Senate Bill 1190 Analysis (March 5, 2015) (on file with Banking and Insurance Committee).

<sup>11</sup> This ratio is modified by a factor of 0.8 for health insurance. This means that premiums may not be more than 3.2 times surplus. However, this provision does not apply to life and health insurers which have a surplus as to policyholders greater than \$40 million and which have written health insurance during each of the immediately preceding five calendar years.

<sup>12</sup> Gregory D. Anderson and Emily B. Grey, *The MSO'S Prognosis after the ACA: A Viable Integration Tool?* Physicians and Physician Organizations Law Institute, February 11 and 12, 2013, Phoenix, Arizona.

<sup>13</sup> *Id.*

addition to the three other quarterly reports. For PLHSOs, the audited financial statements are submitted as part of the annual report.

## **Governance and Financial Management**

### ***Board of Directors***

Florida law requires domestic insurers to be managed by a board of at least five directors.<sup>14</sup> A majority of the directors must be U.S. citizens. Current law does not impose similar requirements upon HMOs. Florida law also prescribes standards for insurer directors in discharging their duties, including among others, consideration of the benefits to the insurer by remaining independent. Former officers and directors of insolvent insurers serving within two years of the insolvency may not serve in that capacity for another insurer without demonstrating that his or her actions or omissions were not a significant contributing cause of the insolvency.

### ***Dividends***

Stock insurers and HMOs may only pay dividends<sup>15</sup> out of available and accumulated surplus funds derived from realized net operating profits on their business and net realized capital gains. The HMOs must receive approval from the OIR to pay dividends or distribute cash if, immediately before or after such distribution, their available and accumulated surplus funds are or would be less than zero. The OIR approval is not required if the HMO would have at least 115 percent of required statutory surplus after payment of the dividend (i.e., ordinary dividends). Under current law, an HMO with negative retained earnings may still pay a dividend without OIR approval.

Stock insurer dividend payments or distributions to stockholders made without the prior written approval of the OIR must not exceed the larger of:

- The lesser of ten percent of surplus or net gain from operations (life and health companies) or net income (property and casualty companies), not including realized capital gains, plus a two year carry forward for property and casualty companies;
- Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains;
- The lesser of ten percent of surplus or net investment income (net gain before capital gains for life and health companies) plus a three-year carry forward (two-year carry forward for life and health companies) with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains.

The OIR may approve a stock insurer dividend or distribution in excess of the maximum amount if it determines that the distribution or dividend does not jeopardize the financial condition of the insurer.

Any director of an HMO or domestic stock or mutual insurer who knowingly votes for or concurs in declaration or payment of a dividend to stockholders or members in violation of these provisions is guilty of a misdemeanor of the second degree, and is jointly and severally liable for

---

<sup>14</sup> Section 628.231, F.S.

<sup>15</sup> Sections 628.371 and 641.365, F.S.

any loss sustained by creditors of the insurer. Any stockholder receiving such an illegal dividend is liable in the amount thereof to the insurer. The OIR may revoke or suspend the Certificate of Authority of an insurer, which has declared or paid such an illegal dividend.<sup>16</sup>

### **OIR Examination Costs**

The OIR is required to examine the “affairs, transactions, accounts, business records and assets” of each authorized HMO as often as it deems expedient for the protection of the public, but no less frequently than once every five years.<sup>17</sup> Insurers subject to financial examination must reimburse the OIR for 100 percent of the examination costs incurred. These funds are deposited into the Insurance Regulatory Trust Fund (Trust Fund).<sup>18</sup> By contrast, an HMO examination cost reimbursement is capped at \$50,000, with any excess amounts paid out of the Trust Fund. Generally, this results in a subsidy of HMO examination costs exceeding \$50,000.

## **III. Effect of Proposed Changes:**

### **Minimum Surplus Requirements**

**Sections 1, 2, 6, and 7** provide the identical minimum surplus requirements for initial licensure and the maintenance of a license for an HMO or a life and health insurer writing health benefit plans or long-term care plans (ss. 624.407 and 624.408, F.S.). The bill increases the minimum dollar threshold for a certificate of authority to \$10 million, up from the current \$1.5 million required of HMOs and the \$2.5 million required of life and health insurers.<sup>19</sup> It also extends the two percent of total annualized premium surplus threshold currently applied to HMOs to life and health insurers issuing health benefit plans. Current law requires life and health insurers and HMOs applying for an original certificate of authority to have minimum surplus in an amount that is the greater of a set dollar amount, or percentage of total liabilities or, in the case of HMOs, a percentage of total annualized premium.

The bill makes the minimum surplus required to be maintained by an HMO and a life and health insurer writing health benefit plans or long-term care plans after licensure, identical. The minimum surplus dollar thresholds required to be maintained after licensure is increased to \$10 million, from the current \$1.5 million for both HMOs and life and health insurers.

For newly licensed companies, the increased minimum surplus required to be maintained takes effect upon the bill becoming a law. For currently licensed companies (i.e., those holding a COA before the effective date of the act), the change in the minimum surplus dollar threshold required to be maintained is phased in over ten years, as follows:

- As of July 1, 2017: \$3 million
- As of July 1, 2021: \$6 million
- As of July 1, 2025: \$10 million

---

<sup>16</sup>Section 628.391, F.S.

<sup>17</sup> Section 641.27, F.S.

<sup>18</sup> Section 624.320, F.S.

<sup>19</sup> Section 624.407, F.S.



As of the end of the 3<sup>rd</sup> quarter in 2014, Florida had 33 active HMOs and 454 active life and health insurers. Based on a preliminary analysis, the OIR found that 11 of these 487 existing companies could be impacted by the proposed revisions to surplus maintenance requirements—this includes six domestic HMOs, three domestic insurers and two foreign insurers. However, the bill authorizes the OIR to reduce the required level of surplus for health insurers and HMOs on a case-by-case basis if it finds it to be “in the public interest.” In making this determination, the OIR may consider factors including, a company having fewer than 6,000 policies in force, less than \$1 million in premium, or a limited geographic service area. This provision is similar to existing statutory authority provided to the OIR when similar surplus changes affecting residential property insurers were enacted in 2011. Although the OIR determination is discretionary and not tied to any one factor, all 11 companies appear to meet at least one of these criteria.

### **Risk-Based Capital Requirements**

**Section 3.** The risk-based capital requirements for insurers are applied to newly licensed single-state HMOs and prepaid limited health services organizations (PLHSOs) (i.e., those initially authorized on or after July 1, 2015). As of September 30, 2014, there were 32 single-state HMO’s and 18 single-state PLHSOs. Single-state HMOs and PLHSOs in existence prior to July 1, 2015, will be grandfathered in under the bill and not subject to these new risk-based capital requirements.

### **Premium-to-Surplus Writing Ratios**

**Section 6** subjects HMOs to the same (gross) premium-to-surplus writing ratio applicable to life and health insurers, which is a writing ratio of 10-to-1 on a gross premium basis (s. 624.4095, F.S.). Premium-to-surplus ratios on a net premium basis are not relevant to HMOs. In calculating the ratios for HMOs, the bill requires that risk revenue be included in addition to premium. For new HMOs (i.e., those not holding a certificate of authority before the effective date of the act), the 10-to-1 premium to surplus writing ratio is imposed effective upon the bill becoming a law; for existing HMOs (i.e., those licensed before the effective date of the act), the change is phased in over ten years, as follows:

- As of July 1, 2017: 30-to-1
- As of July 1, 2021: 20-to-1
- As of July 1, 2025: 10-to-1

### **Management Services Organizations**

**Sections 5 and 10** define “receivables from a management services organization” (MSO) under contract with health maintenance organizations and requires such receivables to be classified as non-admitted assets. “Management services organization” is defined in the bill as “an entity providing one or more medical practice management services to health care providers, including, but not limited to, administrative, financial, operational, personnel, records management, educational, compliance, and managed care services.”

## **Financial Reporting**

**Sections 4 and 8** align PLHSO and HMO annual and quarterly reporting requirements with that of life and health insurers. For example, the bill changes the due date for submitting the annual financial report from “within 3 months after the end of its fiscal year” (i.e., April 1) to March 1. The section also eliminates the PLHSO 4<sup>th</sup> quarter report—a report insurers and HMOs are not currently required to file. The financial information in the 4<sup>th</sup> quarter report is reviewed in the context of the annual report. The bill also provides that the PLHSO and HMO annual audited financial statements are standalone filings due June 1, instead of “3 months after the end of its fiscal year.”

The bill also requires PLHSOs and HMOs to adhere to insurer audit rules adopted by the Financial Services Commission (e.g., Rule 69O-137.002, F.A.C.), beginning with financial statements filed for calendar year 2015.

## **Governance and Financial Management**

**Section 6** applies stock insurer board of director provisions (s. 628.231, F.S.) to HMOs. It also extends current restrictions applicable to former officers and directors of insolvent insurers to former officers and directors of HMOs. (s. 624.4073, F.S.)

**Sections 6 and 11** extend the provisions (ss. 628.371 and 628.391, F.S.) applicable to insurers for the payment of dividends to HMOs. While the standards applicable to HMOs for paying dividends will change, sanctions for payment of illegal dividends remains the same since they are treated the same for both insurers and HMOs under current law. Dividends paid when unassigned surplus is negative will require approval. Section 641.365, F.S., relating to the payment of dividends by an HMO, is repealed.

## **OIR Examination Costs**

**Section 9** increases the OIR financial examination cost cap from \$50,000 to \$100,000 for an HMO.

## **Miscellaneous**

**Sections 12 and 13** provide a technical, conforming cross reference.

**Section 14.** The Division of Law Revision and Information is directed to replace the phrase “the effective date of this act” where it occurs in this act with the date the act becomes law.

**Section 15.** Except as otherwise provided, the bill takes effect upon becoming a law.

## **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of CS/SB 1190 on the private sector is indeterminate. According to HMO representatives, sometimes the HMOs are asked by the OIR to waive the current fee cap and pay the additional costs. The increase in the cap for examination costs will increase examination costs for HMOs.

C. Government Sector Impact:

The bill has an indeterminate positive fiscal impact to the Insurance Regulatory Trust fund from increasing the cap HMOs must pay for examinations from \$50,000 to \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407, 624.408, 624.4085, 636.043, 641.19, 641.201, 641.225, 641.26, 641.27, 641.35, 817.234 and 817.50.

This bill repeals section 641.365 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 17, 2015:**

The bill increases the cap on the costs of an OIR financial examination an HMO must

incur from \$50,000 to \$100,000, rather than requiring the HMO to reimburse the actual costs.

The bill clarifies the formula for calculating the minimum surplus requirements applicable for insurers and HMOs.

**B. Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Lee

597-02405-15

20151190c1

1 A bill to be entitled  
 2 An act relating to insurer solvency; amending s.  
 3 624.407, F.S.; revising the amount of surplus which  
 4 must be possessed by insurers applying for an original  
 5 certificate of authority; defining the term "health  
 6 benefit plan"; amending s. 624.408, F.S.; revising the  
 7 amount of surplus which must be possessed by insurers  
 8 in order to retain a certificate of authority;  
 9 authorizing the Office of Insurance Regulation to  
 10 reduce certain surplus requirements under specified  
 11 circumstances; defining the term "health benefit  
 12 plan"; amending s. 624.4085, F.S.; revising the term  
 13 "life and health insurer" to include specified health  
 14 maintenance and prepaid limited health service  
 15 organizations; amending s. 636.043, F.S.; revising the  
 16 due date and required content for the mandatory annual  
 17 report of a prepaid limited health service  
 18 organization to the office; revising the time periods  
 19 to be covered by such organization's required  
 20 quarterly reports to the office; amending s. 641.19,  
 21 F.S.; defining the term "management services  
 22 organization"; amending s. 641.201, F.S.; providing  
 23 that a health maintenance organization is considered  
 24 an insurer for purposes of specified provisions of law  
 25 relating to insolvent insurers, requirements for the  
 26 directors of domestic insurers, the payment of  
 27 dividends and distributions of other property by  
 28 domestic stock insurers, penalties for domestic and  
 29 mutual stock insurers that illegally pay dividends,

Page 1 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15

20151190c1

30 and certain restrictions on premiums written;  
 31 providing that health maintenance organizations are  
 32 considered life and health insurers for purposes of  
 33 specified provisions of law relating to insurer  
 34 surplus requirements; amending s. 641.225, F.S.;  
 35 conforming provisions to changes made by the act;  
 36 amending s. 641.26, F.S.; revising the due date and  
 37 required content for the mandatory annual report and  
 38 audited financial statement of a health maintenance  
 39 organization which must be submitted to the office;  
 40 amending s. 641.27, F.S.; revising the annual limit  
 41 applicable to health maintenance organizations for the  
 42 examination expenses incurred by the office; amending  
 43 s. 641.35, F.S.; excluding receivables from a  
 44 management services organization from being included  
 45 in the assets of a health maintenance organization for  
 46 purposes of determining the organization's financial  
 47 condition; repealing s. 641.365, F.S., relating to the  
 48 payment of dividends and distributions of other  
 49 property by health maintenance organizations; amending  
 50 ss. 817.234 and 817.50, F.S.; conforming cross-  
 51 references; providing a directive to the Division of  
 52 Law Revision and Information; providing an effective  
 53 date.

54  
 55 Be It Enacted by the Legislature of the State of Florida:

56  
 57 Section 1. Section 624.407, Florida Statutes, is amended to  
 58 read:

Page 2 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15

20151190c1

59 624.407 Surplus required ~~of, new~~ insurers applying for an  
60 original certificate of authority.-

61 (1) To receive authority to transact any one kind or  
62 combinations of kinds of insurance, as defined in part V of this  
63 chapter, an insurer applying for its original certificate of  
64 authority in this state must ~~shall~~ possess surplus as to  
65 policyholders in at least the following amount greater of:

66 (a) For a property and casualty insurer, \$5 million or 10  
67 percent of the insurer's total liabilities, whichever is  
68 greater, except for a domestic insurer that transacts  
69 residential property insurance and is:

70 1. Not a wholly owned subsidiary of an insurer domiciled in  
71 any other state, which must have a surplus of \$15 million.

72 2. A wholly owned subsidiary of an insurer domiciled in any  
73 other state, which must have a surplus of \$50 million. ~~or \$2.5~~  
74 ~~million for any other insurer;~~

75 (b) For a life insurer insurers, \$2.5 million or 4 percent  
76 of the insurer's total liabilities, whichever is greater.

77 (c) For a life and health insurer that will issue a health  
78 benefit plan or a long-term care insurance policy on or after  
79 the effective date of this act, the greater of:

80 1. The sum of \$10 million plus the amount of startup  
81 losses, excluding profits, projected to be incurred on the  
82 insurer's startup projection until the projection reflects  
83 statutory net profits for 12 consecutive months; insurers,

84 2. Four 4 percent of the insurer's total liabilities, plus  
85 6 percent of the insurer's liabilities relative to health  
86 insurance, based on the insurer's startup projection; or

87 3. Two percent of the insurer's total projected premiums

597-02405-15

20151190c1

88 relative to health insurance, based on the insurer's startup  
89 projection.

90 (d) For a life and health insurer that is not subject to  
91 paragraph (c), the greater of:

92 1. The sum of \$2.5 million; or

93 2. Four percent of the insurer's total liabilities, plus 6  
94 percent of the insurer's liabilities relative to health  
95 insurance.

96 (e) For all other insurers, the greater of \$2.5 million or  
97 other than life insurers and life and health insurers, 10  
98 percent of the insurer's total liabilities. ~~or~~

99 ~~(e) Notwithstanding paragraph (a) or paragraph (d), for a~~  
100 ~~domestic insurer that transacts residential property insurance~~  
101 ~~and is:~~

102 1. Not a wholly owned subsidiary of an insurer domiciled in  
103 any other state, \$15 million.

104 2. A wholly owned subsidiary of an insurer domiciled in any  
105 other state, \$50 million.

106 (2) Notwithstanding subsection (1), a new insurer may not  
107 be required to have surplus as to policyholders greater than  
108 \$100 million.

109 (3) The requirements of this section shall be based upon  
110 all the kinds of insurance actually transacted or to be  
111 transacted by the insurer in any and all areas in which it  
112 operates, regardless of whether ~~or not~~ only a portion of such  
113 kinds of insurance are transacted in this state.

114 (4) As to surplus as to policyholders required for  
115 qualification to transact one or more kinds of insurance,  
116 domestic mutual insurers are governed by chapter 628, and

597-02405-15 20151190c1

117 domestic reciprocal insurers are governed by chapter 629.  
 118 (5) For the purposes of this section, liabilities do not  
 119 include liabilities required under s. 625.041(5). For purposes  
 120 of computing minimum surplus as to policyholders pursuant to s.  
 121 625.305(1), liabilities include liabilities required under s.  
 122 625.041(5).  
 123 (6) As used in this section, the term "health benefit plan"  
 124 has the same meaning as in s. 627.6699.  
 125 Section 2. Section 624.408, Florida Statutes, is amended to  
 126 read:  
 127 624.408 Surplus required ~~for~~ current insurers to maintain  
 128 a certificate of authority.-  
 129 (1) To maintain a certificate of authority to transact any  
 130 one kind or combinations of kinds of insurance, as defined in  
 131 part V of this chapter, an insurer in this state must at all  
 132 times maintain surplus as to policyholders in at least the  
 133 following amount greater of:  
 134 (a) ~~Except as provided in paragraphs (c), (f), and (g),~~  
 135 ~~\$1.5 million-~~  
 136 ~~(b) For a life insurer insurers, \$1.5 million or 4 percent~~  
 137 ~~of the insurer's total liabilities, whichever is greater.~~  
 138 (b) For a life and health insurer that is authorized to  
 139 issue a health benefit plan or long-term care insurance policy,  
 140 the greater of:  
 141 1. Four percent of the insurer's total liabilities, plus 6  
 142 percent of the insurer's liabilities relative to health  
 143 insurance;  
 144 2. Two percent of the insurer's total annualized premium  
 145 relative to health insurance; or

Page 5 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15 20151190c1

146 3. If the insurer:  
 147 a. Does not hold a certificate of authority before the  
 148 effective date of this act, \$10 million; or  
 149 b. Holds a certificate of authority before the effective  
 150 date of this act, \$1.5 million until June 30, 2017; \$3 million  
 151 on or after July 1, 2017, and until June 30, 2021; \$6 million on  
 152 or after July 1, 2021, and until June 30, 2025; and \$10 million  
 153 on or after July 1, 2025.  
 154  
 155 The office may reduce the surplus requirement imposed under sub-  
 156 paragraph 3.a. or sub-paragraph 3.b. if the office finds  
 157 the reduction to be in the public interest because the insurer  
 158 is not writing new business in this state, the insurer is  
 159 writing business only within a limited geographic service area,  
 160 the insurer has premiums in force of less than \$1 million  
 161 annually, or the insurer has a policy count of fewer than 6,000,  
 162 or because of any other factor relevant to making such a  
 163 finding.  
 164 (c) For a life and health insurer that is not subject to  
 165 paragraph (b) insurers, the greater of:  
 166 1. The sum of \$1.5 million; or  
 167 2. Four 4 percent of the insurer's total liabilities, plus  
 168 6 percent of the insurer's liabilities relative to health  
 169 insurance.  
 170 (d) ~~For all insurers other than mortgage guaranty insurers,~~  
 171 ~~life insurers, and life and health insurers, 10 percent of the~~  
 172 ~~insurer's total liabilities-~~  
 173 ~~(e) For a property and casualty insurer insurers, \$4~~  
 174 ~~million, except for a property and casualty insurer insurers~~

Page 6 of 21

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15 20151190c1

175 authorized to underwrite any line of residential property  
176 insurance.

177 ~~(e)(f)~~ For a residential property insurer:

178 1. insurers Not holding a certificate of authority before  
179 July 1, 2011, \$15 million.

180 ~~2.(g) For residential property insurers~~ Holding a  
181 certificate of authority before July 1, 2011, \$5 million and  
182 until June 30, 2016, \$5 million; \$10 million on or after July 1,  
183 2016, and until June 30, 2021, \$10 million; and \$15 million on  
184 or after July 1, 2021, \$15 million.

185

186 The office may reduce the surplus requirement under this  
187 paragraph in paragraphs (f) and (g) if the insurer is not  
188 writing new business, has premiums in force of less than \$1  
189 million per year in residential property insurance, or is a  
190 mutual insurance company.

191 (f) For all other insurers, the greater of \$1.5 million or  
192 10 percent of the insurer's total liabilities.

193 (2) For purposes of this section, liabilities do not  
194 include liabilities required under s. 625.041(5). For purposes  
195 of computing minimum surplus as to policyholders pursuant to s.  
196 625.305(1), liabilities include liabilities required under s.  
197 625.041(5).

198 (3) This section does not require an insurer to have  
199 surplus as to policyholders greater than \$100 million.

200 (4) A mortgage guaranty insurer shall maintain a minimum  
201 surplus as required by s. 635.042.

202 (5) As used in this section, the term "health benefit plan"  
203 has the same meaning as in s. 627.6699.

597-02405-15 20151190c1

204 Section 3. Effective July 1, 2015, paragraph (g) of  
205 subsection (1) of section 624.4085, Florida Statutes, is amended  
206 to read:

207 624.4085 Risk-based capital requirements for insurers.—

208 (1) As used in this section, the term:

209 (g) "Life and health insurer" means an insurer authorized  
210 or eligible under the Florida Insurance Code to underwrite life  
211 or health insurance. The term also includes:

212 1. A property and casualty insurer that writes accident and  
213 health insurance only.

214 2. Effective January 1, 2015, the term also includes a  
215 health maintenance organization that is authorized in this state  
216 and one or more other states, jurisdictions, or countries and a  
217 prepaid limited health service organization that is authorized  
218 in this state and one or more other states, jurisdictions, or  
219 countries.

220 3. A health maintenance organization and a prepaid limited  
221 health service organization initially authorized in this state  
222 on or after July 1, 2015, and not authorized in any other state,  
223 jurisdiction, or country.

224

225 As used in this paragraph, the term "health maintenance  
226 organization" has the same meaning as in s. 641.19 and the term  
227 "prepaid limited health service organization" has the same  
228 meaning as in s. 636.003.

229 Section 4. Effective July 1, 2015, subsection (1),  
230 paragraph (a) of subsection (2), and subsections (4) and (6) of  
231 section 636.043, Florida Statutes, are amended to read:

232 636.043 Annual, quarterly, and miscellaneous reports.—



597-02405-15

20151190c1

233 (1) Each prepaid limited health service organization must  
 234 file an annual report with the office on or before March 1 of  
 235 each year showing its condition on the last day of the  
 236 immediately preceding calendar year. ~~The annually, within 3~~  
 237 ~~months after the end of its fiscal year, a report must be~~  
 238 verified by the notarized oath of at least two officers covering  
 239 the preceding calendar year. ~~Any organization licensed prior to~~  
 240 ~~October 1, 1993, shall not be required to file a financial~~  
 241 ~~statement, as required by paragraph (2) (a), based on statutory~~  
 242 ~~accounting principles until the first annual report for fiscal~~  
 243 ~~years ending after December 31, 1994.~~

244 (2) ~~The such~~ report must be on forms prescribed by the  
 245 commission and must include:

246 (a)1. A statutory financial statement of the organization  
 247 prepared in accordance with statutory accounting principles and  
 248 filed by electronic means in a computer-readable format  
 249 acceptable to the office, including its balance sheet, income  
 250 statement, and statement of changes in cash flow for the  
 251 preceding year, certified by an independent certified public  
 252 accountant, or a consolidated audited financial statement of its  
 253 parent company prepared on the basis of statutory accounting  
 254 principles, certified by an independent certified public  
 255 accountant, attached to which must be consolidating financial  
 256 statements of the parent company, including the prepaid limited  
 257 health service organization.

258 2. Any entity subject to this chapter may make written  
 259 application to the office for approval to file audited financial  
 260 statements prepared in accordance with generally accepted  
 261 accounting principles in lieu of statutory financial statements.

597-02405-15

20151190c1

262 The office shall approve the application if it finds it to be in  
 263 the best interest of the subscribers. An application for  
 264 exemption is required each year and must be filed with the  
 265 office at least 2 months prior to the end of the fiscal year for  
 266 which the exemption is being requested.

267 (4) (a) Each authorized prepaid limited health service  
 268 organization must file a quarterly report for each calendar  
 269 quarter. The report for the quarter ending March 31 shall be  
 270 filed with the office on or before May 15, the report for the  
 271 quarter ending June 30 shall be filed on or before August 15,  
 272 and the report for the quarter ending September 30 shall be  
 273 filed on or before November 15. The quarterly report must be  
 274 verified by the notarized oath of two officers of the  
 275 organization within 45 days after the end of the quarter. The  
 276 report ~~must shall~~ contain:

277 1. ~~(a)~~ A financial statement prepared in accordance with  
 278 statutory accounting principles. Any entity licensed before  
 279 October 1, 1993, is shall not be required to file a financial  
 280 statement based on statutory accounting principles until the  
 281 first quarterly filing after the entity files its annual  
 282 financial statement based on statutory accounting principles as  
 283 required by subsection (1).

284 2. ~~(b)~~ A listing of providers.

285 3. ~~(c)~~ Such other information relating to the performance of  
 286 the prepaid limited health service organization as is reasonably  
 287 required by the commission or office.

288 (b) On or before June 1, each authorized prepaid limited  
 289 health service organization shall annually file with the office  
 290 an audited financial statement of the organization for the

597-02405-15

20151190c1

291 preceding year ending December 31. The office may require the  
 292 organization to file an audited financial report earlier than  
 293 June 1 upon notifying the organization at least 90 days in  
 294 advance. The audited financial statement must include:

295 1. A balance sheet, income statement, and statement of  
 296 changes in cash flow for the preceding year, all of which must  
 297 be certified by an independent certified public accountant; or

298 2. A consolidated audited financial statement of the  
 299 organization's parent company, prepared on the basis of  
 300 statutory accounting principles, which must be certified by an  
 301 independent certified public accountant and to which are  
 302 attached the consolidated financial statements of the parent  
 303 company, including those of the prepaid limited health service  
 304 organization.

305  
 306 Beginning with the financial statement filed for the year ending  
 307 December 31, 2015, the audited financial statement or  
 308 consolidated audited financial statement required by this  
 309 paragraph is subject to commission rules applicable to insurer  
 310 audits.

311 (6) Each authorized prepaid limited health service  
 312 organization shall retain an independent certified public  
 313 accountant, ~~hereinafter referred to as "CPA,"~~ who agrees by  
 314 written contract with the prepaid limited health service  
 315 organization to comply with ~~the provisions of~~ this act. The  
 316 contract must state that:

317 (a) The independent certified public accountant must CPA  
 318 ~~will~~ provide to the prepaid limited health service organization  
 319 audited statutory financial statements consistent with this act.

Page 11 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15

20151190c1

320 (b) Any determination by the independent certified public  
 321 accountant CPA that the prepaid limited health service  
 322 organization does not meet minimum surplus requirements as set  
 323 forth in this act ~~must will~~ be stated by the independent  
 324 certified public accountant CPA, in writing, in the audited  
 325 financial statement.

326 (c) The completed workpapers and any written communications  
 327 between the independent certified public accountant CPA and the  
 328 prepaid limited health service organization relating to the  
 329 audit of the prepaid limited health service organization ~~must~~  
 330 ~~will~~ be made available for review on a visual-inspection-only  
 331 basis by the office at the offices of the prepaid limited health  
 332 service organization, at the office, or at any other reasonable  
 333 place as mutually agreed between the office and the prepaid  
 334 limited health service organization. The independent certified  
 335 public accountant CPA must retain for review the workpapers and  
 336 written communications for a period of not less than 6 years.

337 Section 5. Present subsections (14) through (22) of section  
 338 641.19, Florida Statutes, are redesignated as subsections (15)  
 339 through (23), respectively, and a new subsection (14) is added  
 340 to that section, to read:

341 641.19 Definitions.—As used in this part, the term:

342 (14) "Management services organization" means an entity  
 343 that provides one or more medical practice management services  
 344 to health care providers, including, but not limited to,  
 345 administrative, financial, operational, personnel, records  
 346 management, educational, compliance, and managed care services.

347 Section 6. Section 641.201, Florida Statutes, is amended to  
 348 read:

Page 12 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15

20151190c1

349 641.201 Applicability of other laws.—

350 (1) Except as provided in this part, health maintenance  
 351 organizations are shall be governed by the provisions of this  
 352 part and part III of this chapter and are shall be exempt from  
 353 all other provisions of the Florida Insurance Code except those  
 354 provisions of the Florida Insurance Code that are explicitly  
 355 made applicable to health maintenance organizations.

356 (2) Health maintenance organizations are considered  
 357 insurers for purposes of:

358 (a) Sections 624.4073, 628.231, 628.371, and 628.391.

359 (b) Section 624.4095, except that:

360 1. The ratio of actual or projected annual gross written  
 361 premiums to current or projected surplus as to policyholders for  
 362 a health maintenance organization holding a certificate of  
 363 authority before the effective date of this act, may not exceed  
 364 30 to 1 on or after July 1, 2017, until June 30, 2021; 20 to 1  
 365 on or after July 1, 2021, until June 30, 2025; and 10 to 1 on or  
 366 after July 1, 2025.

367 2. In calculating the premium-to-surplus ratio of a health  
 368 maintenance organization pursuant to s. 624.4095(1), actual or  
 369 projected risk revenue must be added to actual or projected  
 370 written premiums.

371 (3) Health maintenance organizations are considered life  
 372 and health insurers for purposes of ss. 624.407 and 624.408.

373 Section 7. Subsections (1) and (2) of section 641.225,  
 374 Florida Statutes, are amended to read:

375 641.225 Surplus requirements.—

376 (1) Each health maintenance organization shall at all times  
 377 maintain a minimum surplus as provided in s. 624.408 in an

Page 13 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15

20151190c1

378 ~~amount that is the greater of \$1,500,000, or 10 percent of total~~  
 379 ~~liabilities, or 2 percent of total annualized premium.~~

380 (2) The office ~~may shall~~ not issue a certificate of  
 381 authority, except as provided in subsection (3), unless the  
 382 health maintenance organization has at least the a minimum  
 383 surplus required in s. 624.407 in an amount which is the greater  
 384 ~~of:~~

385 ~~(a) Ten percent of their total liabilities based on their~~  
 386 ~~startup projection as set forth in this part;~~

387 ~~(b) Two percent of their total projected premiums based on~~  
 388 ~~their startup projection as set forth in this part; or~~

389 ~~(c) \$1,500,000, plus all startup losses, excluding profits,~~  
 390 ~~projected to be incurred on their startup projection until the~~  
 391 ~~projection reflects statutory net profits for 12 consecutive~~  
 392 ~~months.~~

393 Section 8. Effective July 1, 2015, subsections (1), (3),  
 394 and (5) of section 641.26, Florida Statutes, are amended to  
 395 read:

396 641.26 Annual and quarterly reports.—

397 (1) Each Every health maintenance organization must file an  
 398 annual report with the office on or before March 1 of each year  
 399 showing its condition on the last day of the immediately  
 400 preceding calendar year. The report must be shall, annually  
 401 within 3 months after the end of its fiscal year, or within an  
 402 extension of time therefor as the office, for good cause, may  
 403 grant, in a form prescribed by the commission, file a report  
 404 with the office, verified by the notarized oath of two officers  
 405 of the organization or, if not a corporation, of two persons who  
 406 are principal managing directors of the affairs of the

Page 14 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02405-15 20151190c1

407 organization, on a form prescribed by the commission. For good  
 408 cause, the office may grant the organization an extension of  
 409 time to file the report. The report must properly notarized,  
 410 showing its condition on the last day of the immediately  
 411 preceding reporting period. Such report shall include:

412 (a) A financial statement of the health maintenance  
 413 organization filed by electronic means in a computer-readable  
 414 form using a format acceptable to the office.

415 (b) A financial statement of the health maintenance  
 416 organization filed on forms acceptable to the office.

417 ~~(c) An audited financial statement of the health~~  
 418 ~~maintenance organization, including its balance sheet and a~~  
 419 ~~statement of operations for the preceding year certified by an~~  
 420 ~~independent certified public accountant, prepared in accordance~~  
 421 ~~with statutory accounting principles.~~

422 (c) ~~(d)~~ The number of health maintenance contracts issued  
 423 and outstanding and the number of health maintenance contracts  
 424 terminated.

425 (d) ~~(e)~~ The number and amount of damage claims for medical  
 426 injury initiated against the health maintenance organization and  
 427 any of the providers engaged by it during the reporting year,  
 428 broken down into claims with and without formal legal process,  
 429 and the disposition, if any, of each such claim.

430 (e) ~~(f)~~ An actuarial certification that:

431 1. The health maintenance organization is actuarially  
 432 sound, which certification must ~~shall~~ consider the rates,  
 433 benefits, and expenses of, and any other funds available for the  
 434 payment of obligations of, the organization.

435 2. The rates being charged or to be charged are actuarially

597-02405-15 20151190c1

436 adequate to the end of the period for which rates have been  
 437 guaranteed.

438 3. Incurred but not reported claims and claims reported but  
 439 not fully paid have been adequately provided for.

440 4. The health maintenance organization has adequately  
 441 provided for all obligations required by s. 641.35(3)(a).

442 ~~(g) A report prepared by the certified public accountant~~  
 443 ~~and filed with the office describing material weaknesses in the~~  
 444 ~~health maintenance organization's internal control structure as~~  
 445 ~~noted by the certified public accountant during the audit. The~~  
 446 ~~report must be filed with the annual audited financial report as~~  
 447 ~~required in paragraph (c). The health maintenance organization~~  
 448 ~~shall provide a description of remedial actions taken or~~  
 449 ~~proposed to correct material weaknesses, if the actions are not~~  
 450 ~~described in the independent certified public accountant's~~  
 451 ~~report.~~

452 (f) ~~(h)~~ Such other information relating to the performance  
 453 of health maintenance organizations as is required by the  
 454 commission or office.

455 (3) (a) ~~Each~~ Every health maintenance organization shall  
 456 file quarterly, for the first three calendar quarters of each  
 457 year, an unaudited financial statement of the organization as  
 458 described in paragraphs (1)(a) and (b). The statement for the  
 459 quarter ending March 31 shall be filed with the office on or  
 460 before May 15, the statement for the quarter ending June 30  
 461 shall be filed on or before August 15, and the statement for the  
 462 quarter ending September 30 shall be filed on or before November  
 463 15. The quarterly report must ~~shall~~ be verified by the notarized  
 464 oath of two officers of the organization, ~~properly notarized.~~

597-02405-15

20151190c1

465 (b) Each health maintenance organization shall file  
 466 annually, for the preceding year ending December 31, an audited  
 467 financial statement of the organization. The statement for the  
 468 year ending December 31 must be filed with the office on or  
 469 before the following June 1. The office may require a health  
 470 maintenance organization to file an audited financial report  
 471 earlier than June 1 upon notifying the organization at least 90  
 472 days in advance. The audited financial statement must include a  
 473 balance sheet and statement of operations for the preceding year  
 474 certified by an independent certified public accountant and must  
 475 be prepared in accordance with statutory accounting principles.  
 476 The audited financial statement filed for the year ending  
 477 December 31, 2015, is subject to commission rules applicable to  
 478 insurer audits.

479 (5) Each authorized health maintenance organization shall  
 480 retain an independent certified public accountant, ~~referred to~~  
 481 ~~in this section as "CPA,"~~ who agrees by written contract with  
 482 the health maintenance organization to comply with ~~the~~  
 483 ~~provisions of~~ this part.

484 (a) The independent certified public accountant CPA shall  
 485 provide to the health maintenance organization HMO audited  
 486 financial statements consistent with this part.

487 (b) Any determination by the independent certified public  
 488 accountant CPA that the health maintenance organization does not  
 489 meet minimum surplus requirements as set forth in this part must  
 490 ~~shall~~ be stated by the independent certified public accountant  
 491 CPA, in writing, in the audited financial statement.

492 (c) The completed work papers and any written  
 493 communications between the independent certified public

597-02405-15

20151190c1

494 accountant CPA firm and the health maintenance organization  
 495 relating to the audit of the health maintenance organization  
 496 shall be made available for review on a visual-inspection-only  
 497 basis by the office at the offices of the health maintenance  
 498 organization, at the office, or at any other reasonable place as  
 499 mutually agreed between the office and the health maintenance  
 500 organization. The independent certified public accountant CPA  
 501 must retain for review the work papers and written  
 502 communications for a period of not less than 6 years.

503 (d) The independent certified public accountant CPA shall  
 504 provide to the office a written report describing material  
 505 weaknesses in the health maintenance organization's internal  
 506 control structure as noted during the audit. The report must be  
 507 filed with the annual audited financial statement required under  
 508 paragraph (3) (b). The health maintenance organization must  
 509 provide a description of remedial actions taken or proposed to  
 510 be taken to correct material weaknesses, if the actions are not  
 511 described in the written report provided to the office by the  
 512 independent certified public accountant.

513 Section 9. Effective July 1, 2015, section 641.27, Florida  
 514 Statutes, is amended to read:

515 641.27 Examination by the office department.-

516 (1) The office shall examine the affairs, transactions,  
 517 accounts, business records, and assets of any health maintenance  
 518 organization as often as it deems it expedient for the  
 519 protection of the people of this state, but not less frequently  
 520 than once every 5 years. However, except when the medical  
 521 records are requested and copies furnished pursuant to s.  
 522 456.057, medical records of individuals and records of

597-02405-15 20151190c1

523 physicians providing service under contract to the health  
 524 maintenance organization ~~are shall~~ not be subject to audit,  
 525 although they may be subject to subpoena by court order upon a  
 526 showing of good cause. For the purpose of examinations, the  
 527 office may administer oaths to and examine the officers and  
 528 agents of a health maintenance organization concerning its  
 529 business and affairs. The examination of each health maintenance  
 530 organization by the office shall be subject to the same terms  
 531 and conditions as apply to insurers under chapter 624. In no  
 532 event shall expenses of all examinations exceed a maximum of  
 533 \$100,000 ~~\$50,000~~ for any 1-year period. Any rehabilitation,  
 534 liquidation, conservation, or dissolution of a health  
 535 maintenance organization shall be conducted under the  
 536 supervision of the department, which shall have all power with  
 537 respect thereto granted to it under the laws governing the  
 538 rehabilitation, liquidation, reorganization, conservation, or  
 539 dissolution of life insurance companies.

540 (2) The office may contract, at reasonable fees for work  
 541 performed, with qualified, impartial outside sources to perform  
 542 audits or examinations or portions thereof pertaining to the  
 543 qualification of an entity for issuance of a certificate of  
 544 authority or to determine continued compliance with the  
 545 requirements of this part, in which case the payment must be  
 546 made directly to the contracted examiner by the health  
 547 maintenance organization examined, in accordance with the rates  
 548 and terms agreed to by the office and the examiner. Any  
 549 contracted assistance shall be under the direct supervision of  
 550 the office. The results of any contracted assistance ~~are shall~~  
 551 ~~be~~ subject to the review of, and approval, disapproval, or

597-02405-15 20151190c1

552 modification by, the office.

553 Section 10. Paragraph (j) is added to subsection (2) of  
 554 section 641.35, Florida Statutes, to read:  
 555 641.35 Assets, liabilities, and investments.—  
 556 (2) ASSETS NOT ALLOWED.—In addition to assets impliedly  
 557 excluded by the provisions of subsection (1), the following  
 558 assets ~~are expressly shall~~ not be allowed as assets in any  
 559 determination of the financial condition of a health maintenance  
 560 organization:  
 561 (j) Beginning on or after January 1, 2016, any receivables  
 562 from a management services organization pursuant to contract  
 563 with the health maintenance organization.

564 Section 11. Section 641.365, Florida Statutes, is repealed.

565 Section 12. Paragraph (b) of subsection (2) of section  
 566 817.234, Florida Statutes, is amended to read:  
 567 817.234 False and fraudulent insurance claims.—  
 568 (2)  
 569 (b) In addition to any other provision of law, systematic  
 570 upcoding by a provider, as defined in s. 641.19(14), with the  
 571 intent to obtain reimbursement otherwise not due from an insurer  
 572 is punishable as provided in s. 641.52(5).

573 Section 13. Subsection (1) of section 817.50, Florida  
 574 Statutes, is amended to read:  
 575 817.50 Fraudulently obtaining goods, services, etc., from a  
 576 health care provider.—  
 577 (1) Whoever shall, willfully and with intent to defraud,  
 578 obtain or attempt to obtain goods, products, merchandise, or  
 579 services from any health care provider in this state, as defined  
 580 in s. 641.19(14), commits a misdemeanor of the second degree,

597-02405-15

20151190c1

581 punishable as provided in s. 775.082 or s. 775.083.

582       Section 14. The Division of Law Revision and Information is  
583 directed to replace the phrase "the effective date of this act"  
584 where it occurs in this act with the date the act becomes a law.

585       Section 15. Except as otherwise provided, this act shall  
586 take effect upon becoming a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 1222 (570694)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Richter

SUBJECT: Division of Insurance Agent and Agency Services

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>FP</u>	<u>                    </u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1222 revises requirements relating to various insurance agent licensing examinations and various insurance agent education requirements. The bill:

- Provides that licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers;
- Revises the notice requirements an agent must provide when recommending the surrender of an annuity contract or life insurance policy. Also requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner;
- Removes a restriction that limits general lines agents to selling health insurance only for companies which also sell property, casualty, or surety insurance;
- Provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance;
- Removes the requirement that persons seeking licensure as a customer representative pass a written examination;
- Changes the education requirements for persons seeking licensure as a customer representative to reflect new designations or name changes by educational institutions;
- Exempts applicants for licensure as general lines agents or all-lines adjusters from certain examination requirements if they have a degree in insurance or designations from various insurance industry organizations;



- Requires agents to maintain certain policy records for five years after policy expiration;
- Allows agents to deliver notices of insolvency by electronic mail with delivery receipt required; and
- Revises the requirements for prelicensure education courses for life insurance agents, health insurance agents, and other licensees by specifying hours of coursework required or designations accepted in lieu of coursework.
- Eliminates the requirement that a surplus lines agent quarterly submit an affidavit attesting that the agent has submitted all surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO) and that the required diligent effort was made to place such coverages with admitted insurers. The requirement is no longer needed because the FSLSO has implemented auditing procedures to confirm the information.

There is no fiscal impact to state funds.

The bill is effective July 1, 2015.

## II. Present Situation:

In general, insurance agents transact insurance on behalf of an insurer or insurers. Insurance agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.

### General Lines Agents and Health Insurance Agents

A general lines agent is authorized to transact, for commercial or noncommercial purposes, one or more of the following kinds of insurance: property insurance, casualty insurance, surety insurance, health insurance, or marine insurance.<sup>1</sup> In order to be licensed as a general lines agent, one must complete certain prerequisites, pass an examination, submit fingerprints for a background check, and complete an application. Prerequisites include completion of a classroom course on insurance,<sup>2</sup> completion of at least one year in responsible insurance duties as a substantially full-time bona fide employee in all lines of property and casualty insurance, completion of at least one year of responsible insurance duties as a customer representative, limited customer representative, or service representative and completion of classroom courses approved by the DFS, or completion 15 semester hours of college credit in property and casualty insurance.<sup>3</sup>

A general lines agent can only transact health insurance for an insurer if the agent also represents that insurer for property or casualty or surety insurance.<sup>4</sup> A health agent is authorized to transact health insurance.<sup>5</sup> In order to receive either license, applicants must complete required training

---

<sup>1</sup> See s. 626.015(5), F.S.

<sup>2</sup> The course is a 200 hour course. See [http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-20.htm#\\_VPx0TfnF8eF](http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-20.htm#_VPx0TfnF8eF) (last accessed on March 8, 2015).

<sup>3</sup> See s. 626.732, F.S.

<sup>4</sup> See s. 626.015(5)(d), F.S.

<sup>5</sup> See s. 626.015(6), F.S.

and pass a state examination. A general lines agent may complete a 200 hour course which includes training on health insurance while a health agent may complete a 40 hour course on health insurance.<sup>6</sup> According to the DFS, persons preparing to take the examination for licensure as a general lines agent or as a health agent study health insurance as part of their required training and the same examination questions on health insurance are used in each examination.<sup>7</sup> Section 626.8311, F.S., provides education and experience requirements for obtaining a health insurance license. The requirements include:

- Successful completion of 40 hours of classroom courses in insurance, three hours of which must be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees; or
- Successful completion of a correspondence course in insurance, three hours of which shall be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of health insurance by employers to their employees.

Employment by the DFS or the Office of Insurance Regulation (OIR) in health regulatory matters may count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause. Licensure in another state may also fulfil experience requirements.

### **Agents in Charge of an Insurance Agency**

Section 626.0428, F.S., requires that an agent who can transact all lines of insurance transacted at an insurance agency be in charge of an insurance agency. The DFS suggests that it is not necessary for the agent-in-charge to be licensed to sell all types of insurance that might be transacted at a particular agency.<sup>8</sup>

### **Customer Representatives**

A “customer representative” means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.<sup>9</sup> A customer representative license is more limited than a general lines agent license. For example, a customer representative is a salaried employee of an agent or agency and cannot earn commissions. The customer representative license does not cover life insurance.<sup>10</sup>

---

<sup>6</sup> <http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-20.htm#.VPxtovnf8eE> (explaining the training and examination requirements for a general lines agent)(last accessed March 8, 2015); <http://www.myfloridacfo.com/division/agents/Licensure/General/docs/2-40.htm#.VPxt7PnF8eE> (explaining the training and examination requirements for a health agent)(last accessed March 8, 2015).

<sup>7</sup> Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

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

<sup>9</sup> *See* s. 626.015(4), F.S.

<sup>10</sup> *See* s. 626.7354, F.S.

To obtain a license as a customer representative, an applicant must, within the two years next preceding the date the application for license was filed, complete a course in insurance, three hours of which shall be on the subject matter of ethics or has had at least six months' experience in responsible insurance duties as a substantially full-time employee.<sup>11</sup> The insurance course must include instruction on the subject of unauthorized entities engaging in the business of insurance.<sup>12</sup> An applicant can also obtain a customer representative license by passing a licensure examination but the DFS reports that very few applicants obtain a license via examination.<sup>13</sup>

### **Licensure Examinations**

Section 626.221(2), F.S., provides exemptions from licensure examination requirements for some applicants for various insurance licenses. Section 626.221(2)(g), F.S., exempts an applicant from the examination requirement for a life or health agent if the applicant has received the designation "chartered life underwriter" from the American College of Life Underwriters and has been engaged in the insurance business within the past four years, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code.

Applicants for general lines agent licenses, all-lines adjuster licenses, and personal lines agent licenses must pass a state examination even if they have a college degree in insurance. The DFS reports that, unlike Florida, other states grant licenses to applicants with college degrees in insurance or significant college coursework in insurance.<sup>14</sup>

### **Record Retention**

Section 626.748, F.S., requires an agent to maintain records of policies transacted by him or her so that the policyholders or the DFS can obtain all necessary information. The current law does not provide for the destruction of records.

### **Life Insurance Agents**

Section 626.7851, F.S., sets forth education or experience requirements for becoming a life insurance agent. The requirements include:

- Successful completion of 40 hours of classroom courses in insurance, three hours of which shall be on the subject matter of ethics or other authorized course of study approved by the DFS. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of life insurance by employers to their employees;
- Successful completion of a correspondence course in insurance, three hours of which shall be on the subject matter of ethics, satisfactory to the DFS. Courses must include instruction on

---

<sup>11</sup> See s. 626.7351, F.S.

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

<sup>13</sup> See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>14</sup> See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

the subject matter of unauthorized entities engaging in the business of insurance, to include the Florida Nonprofit Multiple-Employer Welfare Arrangement Act and the Employee Retirement Income Security Act as it relates to the provision of life insurance by employers to their employees.

Employment by the DFS or the OIR in life and health regulatory matters can count as required experience if the application for the examination is made within 90 days after leaving employment and if the employee was not terminated for cause. Licensure in another state may also fulfil experience requirements.

### **Surplus Lines Agent Affidavit**

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.<sup>15</sup> Section 626.916, F.S., requires the insurance agent to make a diligent effort<sup>16</sup> to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market. Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or office) within 30 days after the effective date of the transaction.<sup>17</sup> They must also transmit service fees to the office each month and must transmit assessment and tax payments to the office quarterly.<sup>18</sup> Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO.<sup>19</sup> The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.<sup>20</sup> The FSLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.<sup>21</sup>

### **Credit Card Transactions**

Section 501.0117, F.S., prohibits a seller from imposing a surcharge on the buyer for electing to use a credit card in lieu of payment by cash or check. Violation of s. 501.0117, F.S., is a second degree misdemeanor.

Section 626.9541(1)(o)2., F.S., provides, in part:

This provision shall not be deemed to prohibit... the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by

<sup>15</sup> See s. 626.915(3), F.S.

<sup>16</sup> Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

<sup>17</sup> See s. 626.921, F.S. (requiring reports of transactions as required by the FSLSO Plan of Operation); Florida Surplus Lines Office, *Agent's Procedures Manual*, (Jan. 2015) <http://www.fslso.com/publications/manuals/Agents.Procedures.Manual.pdf> (requiring reports within 30 days).

<sup>18</sup> See ss. 626.932, 626.9325, F.S.

<sup>19</sup> See s. 626.931(1), F.S.

<sup>20</sup> See s. 626.932(2), F.S.

<sup>21</sup> E-mail from the FSLSO (on file with the Committee on Banking and Insurance).

a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer.

According to the DFS, there is a conflict between the two statutes. Section 626.9541(1)(o)2., F.S., allows an insurer that accepts payment by credit card to charge customers the exact amount of a fee charged by a credit card facility in connection with the use of the card while s. 501.0117, F.S., prohibits such charges.<sup>22</sup>

### **Surrender of an Annuity or Life Insurance Policy**

Section 627.4553, F.S., requires an insurance agent, insurer, or person performing insurance agent activities under an exemption from licensure (who recommends a consumer surrender an annuity or life insurance policy having a cash value) to provide a consumer with information relating to the product being surrendered (before execution of the surrender) if no recommendation to purchase another such policy with the proceeds is made. The information must include the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction.

## **III. Effect of Proposed Changes:**

### **General Lines Agents – s. 626.015, F.S., and s. 626.311, F.S.**

**Sections 1 and 6** allow a general lines agent to transact health insurance. The bill removes the restriction that limits a general lines agent to selling health insurance only for companies which also sell property, casualty, or surety insurance. According to the Department of Financial Services (DFS), this change will reduce redundant training because general lines agents and health agents receive the same training and testing on health insurance.<sup>23</sup>

**Section 7** amends s. 626.732, F.S., relating to the prerequisites to obtaining a general lines agent license. The bill places the 200 hour course requirement in statute and removes obsolete references to correspondence courses. It makes technical changes to clarify the method that customer representatives, services representatives, and personal lines agents may upgrade their licenses to a general lines agent license.

### **Agents in Charge of an Insurance Agency – s. 626.0428, F.S.**

**Section 2** provides that the agent-in-charge of an insurance agency must be licensed to transact at least two of the lines of insurance being handled at an agency location instead of being licensed to handle all lines of insurance. If only one line of insurance is sold at an agency, the agent-in-charge must be licensed for that line of insurance.

---

<sup>22</sup> See Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>23</sup> Department of Financial Services, HB 1133 Bill Analysis (March 6, 2015)(on file with the Senate Committee on Banking and Insurance).

**Customer Representatives – s. 626.221, F.S., and s. 626.7351, F.S.**

**Section 3** removes the requirement that persons seeking licensure as a customer representative pass a written examination. According to the DFS, customer representatives are unique to Florida and most applicants for the license obtain it by completing education requirements and exempting from the examination.<sup>24</sup>

**Section 8** changes the education requirements for customer representatives. Instead of completing courses approved by the DFS, the applicant can obtain the license by earning specific designations or completing college coursework. The time frame within which the applicant must achieve the designation or complete college coursework is increased from two years to four years after the application is submitted to the DFS. The designations include:

- Accredited Advisor in Insurance, Associate in General Insurance, or Accredited Customer Service Representative from the Insurance Institute of America;
- Certified Insurance Counselor from the Society of Certified Insurance Service Counselors;
- Certified Professional Service Representative from the National Foundation for CPSRs;
- Certified Insurance Service Representative from the Society of Certified Insurance Service Representatives;
- Certified Insurance Representative from All-Lines Training;
- Professional Customer Service Representative from the Professional Career Institute;
- Registered Customer Service Representative from a regionally accredited postsecondary institution in the state whose curriculum is approved by the DFS and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or
- A degree from an accredited institution of higher learning approved by the DFS when the degree includes a minimum of nine credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance.

The bill requires the DFS to adopt rules establishing standards for the approval of curriculum.

**Licensure Examinations – s. 626.221, F.S., and s. 626.241, F.S.**

**Section 3** revises certain exemptions from the licensure examination. The bill:

- Revises the existing exemption from examination for a life or health agent. The applicant no longer would be required to have been engaged in the insurance business within the past four years. Current law is clarified by specifying that the exemption is available if the applicant has received the designation “chartered life underwriter” from the American College of Financial Services.
- Applies to an applicant for a personal lines agent license or all-lines agent license, the existing exemption from licensure examination for an applicant for a general lines agent who has received the designation “chartered property and casualty underwriter from the American Institute for Chartered Property Casualty Underwriters. The exemption no longer requires the applicant to have been engaged in the insurance business within the past four years.

---

<sup>24</sup> *Id.*

- Exempts an applicant from the examination requirement as general lines agent or an all-lines adjuster if the applicant has received a degree in insurance<sup>25</sup> from an accredited institution of higher learning approved by the DFS, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as personal lines agent if the applicant has received a degree from an accredited institution of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in insurance, except that the applicant may be examined on pertinent provisions of the Florida Insurance Code;
- Exempts an applicant from the examination requirement as all-lines adjuster if the applicant has a designation of Associate in Claims from the Insurance Institute of America or a Certified Claims Adjuster from AE21 Incorporated;
- Exempts an applicant from the examination requirement as a life agent or as a health agent if the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products; and
- Exempts an applicant from the examination requirement if the applicant qualifies for a license transfer from another state.

The section also makes conforming changes to reflect that applicants for licensure as a customer representative will no longer be required to take a licensure examination;

**Section 4** provides that the life insurance examination covers annuities and variable contracts. The examination covers the subject but the statute does not reflect current practice.

#### **Life Insurance Agents – s. 626.7851, F.S.**

**Section 10** revises the requirement placed on life agent applicants, other than chartered life underwriters, to demonstrate sufficient knowledge, experience, or education to obtain a license. The bill revises the existing ways to satisfy this requirement and adds a fifth option.

Under current law, 40 hours of coursework in insurance is one option. The bill specifies that the 40 hours must consist of instruction in life insurance, annuities, and variable contracts, including three hours on ethics. Current law requiring instruction on unauthorized entities engaging in the business of insurance is maintained. Currently, the instruction only is required in statute to cover insurance generally, though the DFS has authority to determine the types of coursework that satisfy the requirement. The coursework must be approved by the DFS. The bill removes references to correspondence courses.

Alternatively, the bill provides that an applicant can complete at least 60 hours of coursework approved by the DFS in multiple areas of insurance, including life insurance, annuities, and variable contracts. The coursework must include at least three hours instruction in ethics and instruction on the subject of unauthorized entities engaging in the practice of insurance. The bill provides that a person who has earned or maintained an active designation as a Chartered Financial Consultant from the American College of Financial Services or a Fellow,

---

<sup>25</sup> The bill requires that the degree indicate a minimum of 18 credit hours of instruction in insurance including specific instruction in property, casualty, health, and commercial insurance.

Life Management Institute from the Life Management Institute has the experience requirements to become a life insurance agent.

An applicant that held an active license in life insurance may continue to meet this requirement, as under current law. However, under the bill, having held a license in life and health from another state does not qualify.

The bill revises the fifth option by stating that an employee of the DFS or the OIR in life insurance matters who applies for the examination within four years, instead of 90 days, satisfies the education/experience requirement to take the examination.

### **Health Insurance Agents – s. 626.8311, F.S.**

**Section 11** revises the requirement placed on health agent applicants, other than chartered life underwriters, to demonstrate sufficient knowledge, experience, or education to obtain a license. The bill revises the existing ways to satisfy this requirement and adds a fifth option.

Under current law, 40 hours of coursework in insurance is one option. The bill specifies that the 40 hours of pre-licensure education for a health agent license applicant must consist of instruction in health insurance approved by the DFS. The bill removes references to correspondence courses. Currently, the instruction only is required in statute to cover insurance generally, though the DFS has authority to determine the types of coursework that satisfy the requirement.

The bill provides that an applicant can complete at least 60 hours of coursework approved by the DFS in multiple areas of insurance, including health insurance. The coursework must include at least three hours instruction in ethics and instruction on the subject of unauthorized entities engaging in the practice of insurance.

The bill provides that a person who has earned or maintained an active designation as a Registered Health Underwriter, Chartered Healthcare Consultant, or a Registered Employee Benefits Consultant from the American College of Financial Services, a Certified Employee Benefit Specialist from the Wharton School of the University of Pennsylvania, or a Health Insurance Associate from America's Health Insurance Plans has the experience requirements to become a life insurance agent.

An applicant that held an active license in health insurance may continue to meet this requirement, as under current law. However, under the bill, having held a license in life and health from another state does not qualify.

The bill provides that an employee of the DFS or the OIR in health insurance matters who applies for the examination within four years, instead of 90 days, satisfies the education/experience requirement to take the examination.



**Surplus Lines – 626.931, F.S.**

**Section 12** repeals s. 626.931(1) and (2), F.S., which require a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the Florida Surplus Lines Service Office (FSLSO) and requiring that such reports include an affidavit of diligent effort. The FSLSO reports that the provisions are no longer necessary. The FSLSO receives the information relating to the surplus lines transactions from the agents and the insurers and has implemented audit procedures to verify the information.

Conforming changes are made to in **Section 13** to s. 626.932, F.S., **Section 14** to s. 626.935, F.S., and **Section 15** to s. 626.936, F.S.

**Credit Card Transactions – s. 626.9541(1)(o)2., F.S.**

**Section 16** provides that notwithstanding any other provision of law, licensed agents can charge and collect the “exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card” in addition to the premium charged by insurers.

**Surrender of an Annuity or Life Insurance Policy – s. 627.4553, F.S.**

**Section 17** amends s. 627.4553, F.S., relating to the surrender of an annuity or life insurance policy. The bill defines “surrender” under this section as the voluntary surrender, at the request of the owner of the annuity contract or life insurance policy, before its maturity date in exchange for the cash surrender value which results in the surrender or termination of the annuity or life insurance policy. A surrender under this section does not occur due to involuntary termination required by contract or policy terms or any transactions other than a surrender.

The bill revises some of the written notices that an agent must provide when recommending the surrender of an annuity or life insurance policy. The revisions generally reduce the specificity of the notice an agent must provide and eliminates the requirement that notice be provided on a form that satisfies a DFS agency rule. The requirement to provide notice of the actual amount of the surrender charge is revised to instead require the agent to provide an estimate of the surrender charge. An agent must provide written information relating to the possibility of tax consequences instead of providing the amount of tax consequences resulting from the transaction. Also, the agent must describe the investment performance guarantees being forfeited rather than giving the value of guarantees being forfeited. The bill also requires the agent to maintain a copy of the written information provided and the date the information was provided to the owner.

**Other Provisions of the Bill**

**Section 5** amends s. 626.2817, F.S., to provide that prelicensure course providers may not grant credit to students unless the student attends at least 75 percent of the required course hours. Currently, there is no standard in law for course attendance. The section also removes references to “monitor groups” because they have not been in existence for some time. The groups acted as monitors when the licensure examinations were on paper but no longer exist now that the DFS administers examinations by computer.

**Section 9** amends s. 626.748, F.S., to require an agent to maintain records of insurance transactions for at least five years after the policy expires. Such records include daily reports, applications, change endorsements, and documents signed or initialed by the insured.

**Section 18** amends s. 631.341, F.S., to provide that agents may give notices of insolvency to insureds by electronic mail with delivery receipt required. Current law allows notice by registered or certified mail.

**Section 19** of this bill provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.0428, 626.221, 626.241, 626.2817, 626.311, 626.732, 626.7351, 626.748, 626.7851, 626.8311, 626.931, 626.932, 626.935, 626.936, 626.9541, 627.4553, and 631.341.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute:

- Revises the notice requirements an agent must provide when recommending the surrender of an annuity contract or life insurance policy.
- Eliminates the requirement that a surplus lines agent quarterly submit an affidavit attesting that the agent has submitted all surplus lines insurance transactions to the Florida Surplus Lines Service Office and that the required diligent effort was made to place such coverages with admitted insurers.

**CS by Banking and Insurance on March 17, 2015:**

- Removes provisions from the bill relating to regulation of instruction schools for bail bond agents.
- Removes provisions from the bill relating to prelicensure requirements for all-lines adjusters.
- Exempts an applicant from the examination requirement as a life agent or as a health agent is the applicant has received a degree of higher learning approved by the DFS and has a minimum of nine credit hours of instruction in life or health insurance products.
- Adds experience requirements to allow applicants to qualify to take the examination as a life and health agent.

**B. Amendments:**

None.



491438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 542 and 543

insert:

Section 1. Section 626.931, Florida Statutes, is amended to  
read:

626.931 ~~Agent affidavit and~~ Insurer reporting  
requirements.-

~~(1) Each surplus lines agent shall on or before the 45th  
day following each calendar quarter file with the Florida~~



491438

11 ~~Surplus Lines Service Office an affidavit, on forms as~~  
12 ~~prescribed and furnished by the Florida Surplus Lines Service~~  
13 ~~Office, stating that all surplus lines insurance transacted by~~  
14 ~~him or her during such calendar quarter has been submitted to~~  
15 ~~the Florida Surplus Lines Service Office as required.~~

16 ~~(2) The affidavit of the surplus lines agent shall include~~  
17 ~~efforts made to place coverages with authorized insurers and the~~  
18 ~~results thereof.~~

19 ~~(1)~~(3) Each foreign insurer accepting premiums shall, on or  
20 before the end of the month following each calendar quarter,  
21 file with the Florida Surplus Lines Service Office a verified  
22 report of all surplus lines insurance transacted by such insurer  
23 for insurance risks located in this state during such calendar  
24 quarter.

25 ~~(2)~~(4) Each alien insurer accepting premiums shall, on or  
26 before June 30 of each year, file with the Florida Surplus Lines  
27 Service Office a verified report of all surplus lines insurance  
28 transacted by such insurer for insurance risks located in this  
29 state during the preceding calendar year.

30 ~~(3)~~(5) The department may waive the filing requirements  
31 described in subsections (1) and (2) ~~(3) and (4)~~.

32 ~~(4)~~(6) Each insurer's report and supporting information  
33 shall be in a computer-readable format as determined by the  
34 Florida Surplus Lines Service Office or shall be submitted on  
35 forms prescribed by the Florida Surplus Lines Service Office and  
36 shall show for each applicable agent:

37 (a) A listing of all policies, certificates, cover notes,  
38 or other forms of confirmation of insurance coverage or any  
39 substitutions thereof or endorsements thereto and the



491438

40 identifying number; and

41 (b) Any additional information required by the department  
42 or Florida Surplus Lines Service Office.

43 Section 2. Paragraph (a) of subsection (2) of section  
44 626.932, Florida Statutes, is amended to read:

45 626.932 Surplus lines tax.—

46 (2) (a) The surplus lines agent shall make payable to the  
47 department the tax related to each calendar quarter's business  
48 as reported to the Florida Surplus Lines Service Office, and  
49 remit the tax to the Florida Surplus Lines Service Office on or  
50 before the 45th day following each calendar quarter ~~at the same~~  
51 ~~time as provided for the filing of the quarterly affidavit,~~  
52 ~~under s. 626.931.~~ The Florida Surplus Lines Service Office shall  
53 forward to the department the taxes and any interest collected  
54 pursuant to paragraph (b), within 10 days of receipt.

55 Section 3. Paragraph (d) of subsection (1) of section  
56 626.935, Florida Statutes, is amended to read:

57 626.935 Suspension, revocation, or refusal of surplus lines  
58 agent's license.—

59 (1) The department shall deny an application for, suspend,  
60 revoke, or refuse to renew the appointment of a surplus lines  
61 agent and all other licenses and appointments held by the  
62 licensee under this code, on any of the following grounds:

63 ~~(d) Failure to make and file his or her affidavit or~~  
64 ~~reports when due as required by s. 626.931.~~

65 Section 4. Subsection (1) of section 626.936, Florida  
66 Statutes, is amended to read:

67 626.936 Failure to file reports or pay tax or service fee;  
68 administrative penalty.—



491438

69           (1) Any licensed surplus lines agent who neglects to file a  
70 report ~~or an affidavit~~ in the form and within the time required  
71 or provided for in the Surplus Lines Law may be fined up to \$50  
72 per day for each day the neglect continues, beginning the day  
73 after the report ~~or affidavit~~ was due until the date the report  
74 ~~or affidavit~~ is received. All sums collected under this section  
75 shall be deposited into the Insurance Regulatory Trust Fund.  
76

77 ===== T I T L E   A M E N D M E N T =====

78 And the title is amended as follows:

79           Delete line 29

80 and insert:

81           respectively; amending s. 626.931, F.S.; deleting  
82 provisions that require surplus lines agents to file a  
83 quarterly affidavit with the Florida Surplus Lines  
84 Office; amending ss. 626.932, 626.935, and 626.936,  
85 F.S.; conforming provisions to changes made by act;  
86 amending s. 626.9541, F.S.; providing



350260

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 682 - 700

and insert:

627.4553 Recommendations to surrender.-

(1) If an insurance agent recommends the surrender of an annuity contract or life insurance policy containing a cash value and does not recommend that the proceeds from the surrender be used to fund or purchase another annuity contract or life insurance policy, before execution of the surrender, the





350260

11 insurance agent, ~~or insurance company if no agent is involved,~~  
12 shall provide written ~~, on a form that satisfies the~~  
13 ~~requirements of the rule adopted by the department,~~ information  
14 relating to the contract annuity or policy to be surrendered.  
15 Such information must ~~shall~~ include, but is not limited to, the  
16 amount of any estimated surrender charge, the loss of any  
17 minimum interest rate guarantees, the possibility amount of any  
18 tax consequences ~~resulting from the transaction,~~ the estimated  
19 amount of any forfeited death benefit, and a description of the  
20 ~~value of~~ any other investment performance guarantees being  
21 forfeited as a result of the transaction. The agent shall  
22 maintain a copy of the information and the date that the  
23 information was provided to the owner. This section also applies  
24 to a person performing insurance agent activities pursuant to an  
25 exemption from licensure under this part.

26 (2) For purposes of this section, the term "surrender"  
27 means the voluntary surrender at the request of the owner of the  
28 annuity contract or life insurance policy before its maturity  
29 date in exchange for the contract's or policy's current cash  
30 surrender value which results in the surrender or termination of  
31 the contract or policy. The term excludes any involuntary  
32 termination that is otherwise required by the terms of the  
33 contract or policy and all transactions other than a surrender,  
34 such as the maturity of the contract or policy, a contract or  
35 policy loan, a lapse for nonpayment of premium, a withdrawal of  
36 the contract or policy values, an annuitization, or the exercise  
37 of reduced paid-up or extended-term nonforfeiture options.

38  
39 ===== T I T L E A M E N D M E N T =====



350260

40 And the title is amended as follows:  
41       Delete lines 34 - 35  
42 and insert:  
43       certain information upon surrender of an annuity  
44       contract or life insurance policy under certain  
45       circumstances; defining the term "surrender";

By the Committee on Banking and Insurance; and Senator Richter

597-02404-15

20151222c1

1 A bill to be entitled  
 2 An act relating to the Division of Insurance Agent and  
 3 Agency Services; amending s. 626.015, F.S.; revising  
 4 the definition of "general lines agent," to remove a  
 5 restriction with respect to agents transacting health  
 6 insurance; limiting the types of health insurance  
 7 agents; amending s. 626.0428, F.S.; revising licensure  
 8 requirements of certain agents in charge of an  
 9 agency's place of business; amending s. 626.221, F.S.;  
 10 revising examination requirements and exemptions for  
 11 applicants for certain agent and adjuster licenses;  
 12 amending s. 626.241, F.S.; revising the scope of  
 13 license examinations for agents and adjusters;  
 14 amending s. 626.2817, F.S.; revising requirements of  
 15 certain prelicensure education courses for insurance  
 16 agents and other licensees; amending s. 626.311, F.S.;  
 17 conforming provisions to changes made by the act;  
 18 amending s. 626.732, F.S.; revising requirements  
 19 relating to knowledge, experience, and instruction for  
 20 applicants for a license as a general lines or  
 21 personal lines agent; amending s. 626.7351, F.S.;  
 22 revising qualifications for a customer  
 23 representative's license; amending s. 626.748, F.S.;  
 24 requiring agents to maintain certain records for a  
 25 specified time period after policy expiration;  
 26 amending ss. 626.7851 and 626.8311, F.S.; revising  
 27 requirements relating to the knowledge, experience, or  
 28 instruction for life agents and health agents,  
 29 respectively; amending s. 626.9541, F.S.; providing

Page 1 of 25

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15

20151222c1

30 that certain provisions relating to illegal dealings  
 31 in premiums are applicable notwithstanding any other  
 32 provision of law; amending s. 627.4553, F.S.;  
 33 requiring an insurance agent to provide and retain  
 34 certain information upon surrender of an annuity or  
 35 life insurance policy under certain circumstances;  
 36 amending s. 631.341, F.S.; authorizing certain notices  
 37 of insolvency to be delivered to policyholders by  
 38 certain methods; providing an effective date.

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

41  
 42 Section 1. Paragraph (d) of subsection (5) of section  
 43 626.015, Florida Statutes, is amended to read:  
 44 626.015 Definitions.—As used in this part:  
 45 (5) "General lines agent" means an agent transacting any  
 46 one or more of the following kinds of insurance:  
 47 (d) Health insurance, ~~when transacted by an insurer also~~  
 48 ~~represented by the same agent as to property or casualty or~~  
 49 ~~surety insurance.~~  
 50 Section 2. Paragraph (a) of subsection (4) of section  
 51 626.0428, Florida Statutes, is amended to read:  
 52 626.0428 Agency personnel powers, duties, and limitations.—  
 53 (4) (a) Each place of business established by an agent or  
 54 agency, firm, corporation, or association must be in the active  
 55 full-time charge of a licensed and appointed agent holding the  
 56 required agent licenses to transact at least two of the lines of  
 57 insurance being handled at the location. If only one line of  
 58 insurance is handled at the location, the agent in charge must

Page 2 of 25

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15 20151222c1

59 hold the required agent license to transact that line of  
60 insurance.

61 Section 3. Subsection (1) and paragraphs (g) through (l) of  
62 subsection (2) of section 626.221, Florida Statutes, are amended  
63 to read:

64 626.221 Examination requirement; exemptions.—

65 (1) The department shall not issue any license as agent,  
66 ~~customer representative~~, or adjuster to any individual who has  
67 not qualified for, taken, and passed to the satisfaction of the  
68 department a written examination of the scope prescribed in s.  
69 626.241.

70 (2) However, an examination is not necessary for any of the  
71 following:

72 (g) An applicant for a license as a life or health agent  
73 who has received the designation of chartered life underwriter  
74 (CLU) from the American College of Financial Services Life  
75 Underwriters and has been engaged in the insurance business  
76 within the past 4 years, except that the applicant may be  
77 examined on pertinent provisions of this code.

78 (h) An applicant for license as a general lines agent,  
79 personal lines agent, or all-lines customer representative, or  
80 adjuster who has received the designation of chartered property  
81 and casualty underwriter (CPCU) from the American Institute for  
82 Chartered Property Casualty and Liability Underwriters and has  
83 ~~been engaged in the insurance business within the past 4 years~~,  
84 except that the applicant may be examined on pertinent  
85 provisions of this code.

86 (i) An applicant for license as a general lines agent or an  
87 all-lines adjuster who has received a degree in insurance from

597-02404-15 20151222c1

88 an accredited institution of higher learning approved by the  
89 department, except that the applicant may be examined on  
90 pertinent provisions of this code. Qualifying degrees must  
91 indicate a minimum of 18 credit hours of insurance instruction,  
92 including specific instruction in the areas of property,  
93 casualty, health, and commercial insurance customer  
94 ~~representative who has earned the designation of Accredited~~  
95 ~~Advisor in Insurance (AAI) from the Insurance Institute of~~  
96 ~~America, the designation of Certified Insurance Counselor (CIC)~~  
97 ~~from the Society of Certified Insurance Service Counselors, the~~  
98 ~~designation of Accredited Customer Service Representative (ACSR)~~  
99 ~~from the Independent Insurance Agents of America, the~~  
100 ~~designation of Certified Professional Service Representative~~  
101 ~~(CPSR) from the National Foundation for Certified Professional~~  
102 ~~Service Representatives, the designation of Certified Insurance~~  
103 ~~Service Representative (CISR) from the Society of Certified~~  
104 ~~Insurance Service Representatives, or the designation of~~  
105 ~~Certified Insurance Representative (CIR) from the National~~  
106 ~~Association of Christian Catastrophe Insurance Adjusters. Also,~~  
107 ~~an applicant for license as a customer representative who has~~  
108 ~~earned an associate degree or bachelor's degree from an~~  
109 ~~accredited college or university and has completed at least 9~~  
110 ~~academic hours of property and casualty insurance curriculum, or~~  
111 ~~the equivalent, or has earned the designation of Certified~~  
112 ~~Customer Service Representative (CCSR) from the Florida~~  
113 ~~Association of Insurance Agents, or the designation of~~  
114 ~~Registered Customer Service Representative (RCSR) from a~~  
115 ~~regionally accredited postsecondary institution in this state,~~  
116 ~~or the designation of Professional Customer Service~~

597-02404-15

20151222c1

117 ~~Representative (PCSR) from the Professional Career Institute,~~  
 118 ~~whose curriculum has been approved by the department and which~~  
 119 ~~includes comprehensive analysis of basic property and casualty~~  
 120 ~~lines of insurance and testing at least equal to that of~~  
 121 ~~standard department testing for the customer representative~~  
 122 ~~license. The department shall adopt rules establishing standards~~  
 123 ~~for the approval of curriculum.~~

124 (j) An applicant for license as a personal lines agent who has  
 125 received a degree from an accredited institution of higher  
 126 learning approved by the department, except that the applicant  
 127 may be examined on pertinent provisions of this code. Qualifying  
 128 degrees must indicate a minimum of 9 credit hours of insurance  
 129 instruction, including specific instruction in the areas of  
 130 property, casualty, and inland marine insurance. ~~resident or~~

131 (k) An applicant for license as an ~~nonresident~~ all-lines  
 132 adjuster who has the designation of Accredited Claims Adjuster  
 133 (ACA) from a regionally accredited postsecondary institution in  
 134 this state, Associate in Claims (AIC) from the Insurance  
 135 Institute of America, Professional Claims Adjuster (PCA) from  
 136 the Professional Career Institute, Professional Property  
 137 Insurance Adjuster (PPIA) from the HurriClaim Training Academy,  
 138 Certified Adjuster (CA) from ALL LINES Training, or Certified  
 139 Claims Adjuster (CCA) from ~~AE21 Incorporated the Association of~~  
 140 Property and Casualty Claims Professionals whose curriculum has  
 141 been approved by the department and which includes comprehensive  
 142 analysis of basic property and casualty lines of insurance and  
 143 testing at least equal to that of standard department testing  
 144 for the all-lines adjuster license. The department shall adopt  
 145 rules establishing standards for the approval of curriculum.

597-02404-15

20151222c1

146 (l) An applicant for license as a life agent who has  
 147 received a degree from an accredited institution of higher  
 148 learning approved by the department, except that the applicant  
 149 may be examined on pertinent provisions of this code. Qualifying  
 150 degrees must indicate a minimum of 9 credit hours of insurance  
 151 instruction, including specific instruction in the areas of life  
 152 insurance, annuities, and variable insurance products.

153 (m) An applicant for license as a health agent who has  
 154 received a degree from an accredited institution of higher  
 155 learning approved by the department, except that the applicant  
 156 may be examined on pertinent provisions of this code. Qualifying  
 157 degrees must indicate a minimum of 9 credit hours of insurance  
 158 instruction, including specific instruction in the area of  
 159 health insurance products.

160 (n) ~~(k)~~ An applicant qualifying for a license transfer under  
 161 s. 626.292 if the applicant:

162 1. Has successfully completed the prelicensing examination  
 163 requirements in the applicant's previous home state which are  
 164 substantially equivalent to the examination requirements in this  
 165 state, as determined by the department;

166 2. Has received the designation of chartered property and  
 167 casualty underwriter (CPCU) from the American Institute for  
 168 Property and Liability Underwriters and been engaged in the  
 169 insurance business within the past 4 years if applying to  
 170 transfer a general lines agent license; or

171 3. Has received the designation of chartered life  
 172 underwriter (CLU) from the American College of Life Underwriters  
 173 and been engaged in the insurance business within the past 4  
 174 years if applying to transfer a life or health agent license.

597-02404-15

20151222c1

175 (o)(1) An applicant for a license as a nonresident agent if  
 176 the applicant holds a comparable license in another state with  
 177 similar examination requirements as this state.

178 ~~1. Has successfully completed prelicensing examination~~  
 179 ~~requirements in the applicant's home state which are~~  
 180 ~~substantially equivalent to the examination requirements in this~~  
 181 ~~state, as determined by the department, as a requirement for~~  
 182 ~~obtaining a resident license in his or her home state;~~

183 ~~2. Held a general lines agent license, life agent license,~~  
 184 ~~or health agent license before a written examination was~~  
 185 ~~required;~~

186 ~~3. Has received the designation of chartered property and~~  
 187 ~~casualty underwriter (CPCU) from the American Institute for~~  
 188 ~~Property and Liability Underwriters and has been engaged in the~~  
 189 ~~insurance business within the past 4 years, if an applicant for~~  
 190 ~~a nonresident license as a general lines agent; or~~

191 ~~4. Has received the designation of chartered life~~  
 192 ~~underwriter (CLU) from the American College of Life Underwriters~~  
 193 ~~and been in the insurance business within the past 4 years, if~~  
 194 ~~an applicant for a nonresident license as a life agent or health~~  
 195 ~~agent.~~

196 Section 4. Subsections (1), (2), (3), and (8) of section  
 197 626.241, Florida Statutes, are amended to read:

198 626.241 Scope of examination.—

199 (1) Each examination for a license as an agent, ~~customer~~  
 200 ~~representative~~, or adjuster shall be of such scope as is deemed  
 201 by the department to be reasonably necessary to test the  
 202 applicant's ability and competence and knowledge of the kinds of  
 203 insurance and transactions to be handled under the license

Page 7 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15

20151222c1

204 applied for, of the duties and responsibilities of such a  
 205 licensee, and of the pertinent provisions of the laws of this  
 206 state.

207 (2) Examinations given applicants for license as a general  
 208 lines agent ~~or customer representative~~ shall cover all property,  
 209 casualty, and surety insurances, except as provided in  
 210 subsection (5) relative to limited licenses.

211 (3) Examinations given applicants for a life agent's  
 212 license shall cover life insurance, annuities, and variable  
 213 contracts annuities.

214 (8) An examination for licensure as a personal lines agent  
 215 ~~shall consist of 100 questions~~ and shall be limited in scope to  
 216 the kinds of business transacted under such license.

217 Section 5. Section 626.2817, Florida Statutes, is amended  
 218 to read:

219 626.2817 Regulation of course providers, instructors, and  
 220 ~~school officials, and monitor groups~~ involved in prelicensure  
 221 education for insurance agents and other licensees.—

222 (1) Any course provider, instructor, or school official, ~~or~~  
 223 ~~monitor group~~ must be approved by and registered with the  
 224 department before offering prelicensure education courses for  
 225 insurance agents and other licensees.

226 (2) The department shall adopt rules establishing standards  
 227 for the approval, registration, discipline, or removal from  
 228 registration of course providers, instructors, and school  
 229 ~~officials, and monitor groups~~. The standards must be designed to  
 230 ensure that such persons have the knowledge, competence, and  
 231 integrity to fulfill the educational objectives of the  
 232 prelicensure requirements of this chapter and chapter 648 and to

Page 8 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15 20151222c1

233 assure that insurance agents and licensees are competent to  
 234 engage in the activities authorized under the license.

235 (3) A course provider shall not grant completion credit to  
 236 any student who has not completed at least 75 percent of the  
 237 required course hours of a department approved prelicensure  
 238 course.

239 (4) The department shall adopt rules to establish a process  
 240 for determining compliance with the prelicensure requirements of  
 241 this chapter and chapter 648. The department shall adopt rules  
 242 prescribing the forms necessary to administer the prelicensure  
 243 requirements.

244 Section 6. Subsection (1) of section 626.311, Florida  
 245 Statutes, is amended to read:

246 626.311 Scope of license.—

247 (1) Except as to personal lines agents and limited  
 248 licenses, a general lines agent or customer representative shall  
 249 qualify for all property, marine, casualty, and surety lines  
 250 except bail bonds which require a separate license under chapter  
 251 648. The license of a general lines agent may also covers eever  
 252 health insurance if health insurance is included in the agent's  
 253 appointment by an insurer as to which the licensee is also  
 254 appointed as agent for property or casualty or surety insurance.  
 255 The license of a customer representative shall provide, in  
 256 substance, that it covers all of such classes of insurance that  
 257 his or her appointing general lines agent or agency is currently  
 258 so authorized to transact under the general lines agent's  
 259 license and appointments. No such license shall be issued  
 260 limited to particular classes of insurance except for bail bonds  
 261 which require a separate license under chapter 648 or for

597-02404-15 20151222c1

262 personal lines agents. Personal lines agents are limited to  
 263 transacting business related to property and casualty insurance  
 264 sold to individuals and families for noncommercial purposes.

265 Section 7. Subsections (1) through (5) of section 626.732,  
 266 Florida Statutes, are amended to read:

267 626.732 Requirement as to knowledge, experience, or  
 268 instruction.—

269 (1) Except as provided in subsection (4), an applicant for  
 270 a license as a general lines agent, except for a chartered  
 271 property and casualty underwriter (CPCU), may not be qualified  
 272 or licensed unless, within the 4 years immediately preceding the  
 273 date the application for license is filed with the department,  
 274 the applicant has:

275 (a) Taught or successfully completed 200 hours of  
 276 coursework in property, casualty, surety, health, and marine  
 277 insurance approved by the department ~~classroom courses in~~  
 278 ~~insurance, 3 hours of which must be on the subject matter of~~  
 279 ~~ethics, at a school, college, or extension division thereof,~~  
 280 ~~approved by the department;~~

281 ~~(b) Completed a correspondence course in insurance, 3 hours~~  
 282 ~~of which must be on the subject matter of ethics, which is~~  
 283 ~~regularly offered by accredited institutions of higher learning~~  
 284 ~~in this state or extensions thereof and approved by the~~  
 285 ~~department, and have at least 6 months of responsible insurance~~  
 286 ~~duties as a substantially full-time bona fide employee in all~~  
 287 ~~lines of property and casualty insurance set forth in the~~  
 288 ~~definition of general lines agent under s. 626.015;~~

289 (b)(c) Completed at least 1 year in responsible insurance  
 290 duties as a substantially full-time bona fide employee in all

597-02404-15

20151222c1

291 lines of property and casualty insurance as set forth in the  
 292 definition of a general lines agent under s. 626.015, but  
 293 without the education requirement described in paragraph (a) ~~or~~  
 294 ~~paragraph (b); or~~

295 (c)(d) Completed at least 1 year of responsible insurance  
 296 duties as a licensed and appointed customer representative,  
 297 service representative, or personal lines agent ~~or limited~~  
 298 ~~customer representative in commercial or personal lines of~~  
 299 ~~property and casualty insurance and 40 hours of coursework~~  
 300 ~~classroom courses~~ approved by the department covering the areas  
 301 of property, casualty, surety, health, and marine insurance; ~~or~~

302 ~~(e) Completed at least 1 year of responsible insurance~~  
 303 ~~duties as a licensed and appointed service representative in~~  
 304 ~~commercial or personal lines of property and casualty insurance~~  
 305 ~~and 80 hours of classroom courses approved by the department~~  
 306 ~~covering the areas of property, casualty, surety, health, and~~  
 307 ~~marine insurance.~~

308 (2) Except as provided under subsection (4), an applicant  
 309 for a license as a personal lines agent, except for a chartered  
 310 property and casualty underwriter (CPCU), may not be qualified  
 311 or licensed unless, within the 4 years immediately preceding the  
 312 date the application for license is filed with the department,  
 313 the applicant has:

314 (a) Taught or successfully completed 60 hours of coursework  
 315 in property, casualty, and inland marine insurance approved by  
 316 the department ~~classroom courses in insurance~~, 3 hours of which  
 317 must be on the subject matter of ethics, ~~at a school, college,~~  
 318 ~~or extension division thereof, approved by the department. To~~  
 319 ~~qualify for licensure, the applicant must complete a total of 52~~

597-02404-15

20151222c1

320 ~~hours of classroom courses in insurance;~~

321 ~~(b) Completed a correspondence course in insurance, 3 hours~~  
 322 ~~of which must be on the subject matter of ethics, which is~~  
 323 ~~regularly offered by accredited institutions of higher learning~~  
 324 ~~in this state or extensions thereof and approved by the~~  
 325 ~~department, and completed at least 3 months of responsible~~  
 326 ~~insurance duties as a substantially full-time employee in the~~  
 327 ~~area of property and casualty insurance sold to individuals and~~  
 328 ~~families for noncommercial purposes;~~

329 (b)(e) Completed at least 6 months of responsible insurance  
 330 duties as a substantially full-time employee in the area of  
 331 property and casualty insurance sold to individuals and families  
 332 for noncommercial purposes, but without the education  
 333 requirement described in paragraph (a) ~~or paragraph (b); or~~

334 (c)(d) Completed at least 6 months of responsible insurance  
 335 duties as a licensed and appointed customer representative, ~~or~~  
 336 limited customer representative, or service representative in  
 337 ~~property and casualty insurance sold to individuals and families~~  
 338 ~~for noncommercial purposes and 20 hours of classroom courses~~  
 339 ~~approved by the department which are related to property and~~  
 340 ~~casualty insurance sold to individuals and families for~~  
 341 ~~noncommercial purposes;~~

342 ~~(e) Completed at least 6 months of responsible insurance~~  
 343 ~~duties as a licensed and appointed service representative in~~  
 344 ~~property and casualty insurance sold to individuals and families~~  
 345 ~~for noncommercial purposes and 40 hours of classroom courses~~  
 346 ~~approved by the department related to property and casualty~~  
 347 ~~insurance sold to individuals and families for noncommercial~~  
 348 ~~purposes; or~~



597-02404-15

20151222c1

349 ~~(f) Completed at least 3 years of responsible duties as a~~  
 350 ~~licensed and appointed customer representative in property and~~  
 351 ~~casualty insurance sold to individuals and families for~~  
 352 ~~noncommercial purposes.~~

353 (3) If an applicant's qualifications as required under  
 354 subsection (1) or subsection (2) are based in part upon periods  
 355 of employment in responsible insurance duties, the applicant  
 356 shall submit with the license application, ~~on a form prescribed~~  
 357 ~~by the department,~~ an attestation affidavit of his or her  
 358 employment ~~employer~~ setting forth the period of such employment,  
 359 ~~that the employment was substantially full-time,~~ and giving a  
 360 brief abstract of the nature of the duties performed ~~by the~~  
 361 ~~applicant.~~

362 (4) An individual who was or became qualified to sit for an  
 363 agent's, ~~customer representative's,~~ or adjuster's examination at  
 364 or during the time he or she was employed by the department or  
 365 office and who, while so employed, was employed in responsible  
 366 insurance duties as a full-time bona fide employee may take an  
 367 examination if application for such examination is made within 4  
 368 years ~~90 days~~ after the date of termination of employment with  
 369 the department or office.

370 (5) ~~Classroom and correspondence~~ Courses under subsections  
 371 (1) and (2) must include instruction on the subject matter of  
 372 unauthorized entities engaging in the business of insurance. ~~The~~  
 373 ~~scope of the topic of unauthorized entities must include the~~  
 374 ~~Florida Nonprofit Multiple-Employer Welfare Arrangement Act and~~  
 375 ~~the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001~~  
 376 ~~et seq., as it relates to the provision of health insurance by~~  
 377 ~~employers and the regulation thereof.~~

Page 13 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15

20151222c1

378 Section 8. Subsections (3) and (7) of section 626.7351,  
 379 Florida Statutes, are amended to read:

380 626.7351 Qualifications for customer representative's  
 381 license.—The department shall not grant or issue a license as  
 382 customer representative to any individual found by it to be  
 383 untrustworthy or incompetent, or who does not meet each of the  
 384 following qualifications:

385 (3) Within 4 ~~the 2~~ years ~~next~~ preceding the date that the  
 386 application for license was filed with the department, the  
 387 applicant has earned the designation of Accredited Advisor in  
 388 Insurance (AAI), Associate in General Insurance (AINS), or  
 389 Accredited Customer Service Representative (ACSR) from the  
 390 Insurance Institute of America; the designation of Certified  
 391 Insurance Counselor (CIC) from the Society of Certified  
 392 Insurance Service Counselors; the designation of Certified  
 393 Professional Service Representative (CPSR) from the National  
 394 Foundation for CPSRs; the designation of Certified Insurance  
 395 Service Representative (CISR) from the Society of Certified  
 396 Insurance Service Representatives; the designation of Certified  
 397 Insurance Representative (CIR) from All-Lines Training; the  
 398 designation of Professional Customer Service Representative  
 399 (PCSR) from the Professional Career Institute; the designation  
 400 of Registered Customer Service Representative (RCSR) from a  
 401 regionally accredited postsecondary institution in the state  
 402 whose curriculum is approved by the department and includes  
 403 comprehensive analysis of basic property and casualty lines of  
 404 insurance and testing which demonstrates mastery of the subject;  
 405 or a degree from an accredited institution of higher learning  
 406 approved by the department when the degree includes a minimum of

Page 14 of 25

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02404-15

20151222c1

407 9 credit hours of insurance instruction, including specific  
 408 instruction in the areas of property, casualty, and inland  
 409 marine insurance. The department shall adopt rules establishing  
 410 standards for the approval of curriculum ~~completed a course in~~  
 411 ~~insurance, 3 hours of which shall be on the subject matter of~~  
 412 ~~ethics, approved by the department or has had at least 6 months~~  
 413 ~~experience in responsible insurance duties as a substantially~~  
 414 ~~full-time employee. Courses must include instruction on the~~  
 415 ~~subject matter of unauthorized entities engaging in the business~~  
 416 ~~of insurance. The scope of the topic of unauthorized entities~~  
 417 ~~shall include the Florida Nonprofit Multiple-Employer Welfare~~  
 418 ~~Arrangement Act and the Employee Retirement Income Security Act,~~  
 419 ~~29 U.S.C. ss. 1001 et seq., as such acts relate to the provision~~  
 420 ~~of health insurance by employers and the regulation of such~~  
 421 ~~insurance.~~

422 ~~(7) The applicant has passed any required examination for~~  
 423 ~~license required under s. 626.221.~~

424 Section 9. Section 626.748, Florida Statutes, is amended to  
 425 read:

426 626.748 Agent's records.—Every agent transacting any  
 427 insurance policy must maintain in his or her office, or have  
 428 readily accessible by electronic or photographic means, for a  
 429 period of at least 5 years after policy expiration, such records  
 430 of policies transacted by him or her as to enable the  
 431 policyholders and department to obtain all necessary  
 432 information, including daily reports, applications, change  
 433 endorsements, or documents signed or initialed by the insured  
 434 concerning such policies.

435 Section 10. Section 626.7851, Florida Statutes, is amended

597-02404-15

20151222c1

436 to read:  
 437 626.7851 Requirement as to knowledge, experience, or  
 438 instruction.—~~An~~ ~~he~~ applicant for a license as a life agent,  
 439 except for a chartered life underwriter (CLU), may not shall be  
 440 qualified or licensed unless, within the 4 years immediately  
 441 preceding the date the application for a license is filed with  
 442 the department, the applicant he or she has:

443 (1) Successfully completed 40 hours of coursework approved  
 444 by the department ~~classroom~~ ~~courses~~ in life insurance,  
 445 annuities, and variable contracts. Such coursework, 3 hours of  
 446 which shall be on the subject matter of ethics, satisfactory to  
 447 the department at a school or college, or extension division  
 448 thereof, or other authorized course of study, approved by the  
 449 department. Courses must have included include instruction on  
 450 the subject matter of unauthorized entities engaging in the  
 451 business of insurance and 3 hours on the subject matter of  
 452 ethics, to include the Florida Nonprofit Multiple-Employer  
 453 Welfare Arrangement Act and the Employee Retirement Income  
 454 Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the  
 455 provision of life insurance by employers to their employees and  
 456 the regulation thereof;

457 (2) Successfully completed at least 60 hours of coursework  
 458 approved by the department in multiple areas of insurance,  
 459 including life insurance, annuities, and variable contracts.  
 460 Such coursework must have included instruction on the subject  
 461 matter of unauthorized entities engaging in the business of  
 462 insurance and 3 hours on the subject matter of ethics;

463 (3) Earned or maintained an active designation as a  
 464 Chartered Financial Consultant (ChFC) from the American College

597-02404-15 20151222c1

465 ~~of Financial Services or a Fellow, Life Management Institute~~  
 466 ~~(FLMI) from the Life Management Institute a correspondence~~  
 467 ~~course in insurance, 3 hours of which shall be on the subject~~  
 468 ~~matter of ethics, satisfactory to the department and regularly~~  
 469 ~~offered by accredited institutions of higher learning in this~~  
 470 ~~state or by independent programs of study, approved by the~~  
 471 ~~department. Courses must include instruction on the subject~~  
 472 ~~matter of unauthorized entities engaging in the business of~~  
 473 ~~insurance, to include the Florida Nonprofit Multiple-Employer~~  
 474 ~~Welfare Arrangement Act and the Employee Retirement Income~~  
 475 ~~Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the~~  
 476 ~~provision of life insurance by employers to their employees and~~  
 477 ~~the regulation thereof;~~

478 ~~(4)(3)~~ Held an active license in life, ~~or life and health,~~  
 479 insurance in another state. This provision may not be used  
 480 ~~utilized~~ unless the other state grants reciprocal treatment to  
 481 licensees formerly licensed in Florida; or

482 ~~(5)(4)~~ Been employed by the department or office for at  
 483 least 1 year, full time in life ~~or life and health~~ insurance  
 484 regulatory matters and who was not terminated for cause, and  
 485 application for examination is made within 4 years ~~90 days~~ after  
 486 the date of termination of his or her employment with the  
 487 department or office.

488 Section 11. Section 626.8311, Florida Statutes, is amended  
 489 to read:

490 626.8311 Requirement as to knowledge, experience, or  
 491 instruction.—~~An~~ ~~No~~ applicant for a license as a health agent,  
 492 except for a chartered life underwriter (CLU), may not shall be  
 493 qualified or licensed unless, within the 4 years immediately

597-02404-15 20151222c1

494 preceding the date the application for license is filed with the  
 495 department, the applicant ~~he or she~~ has:

496 (1) Successfully completed 40 hours of coursework approved  
 497 ~~by the department~~ ~~classroom courses~~ in health insurance, 3 hours  
 498 of which must have been ~~shall be~~ on the subject matter of  
 499 ethics, ~~satisfactory to the department at a school or college,~~  
 500 ~~or extension division thereof, or other authorized course of~~  
 501 ~~study, approved by the department.~~ Such coursework ~~Courses~~ must  
 502 have included ~~include~~ instruction on the subject matter of  
 503 unauthorized entities engaging in the business of insurance, to  
 504 include the Florida Nonprofit Multiple-Employer Welfare  
 505 Arrangement Act and the Employee Retirement Income Security Act,  
 506 29 U.S.C. ss. 1001 et seq., as it relates to the provision of  
 507 health insurance by employers to their employees and the  
 508 regulation thereof;

509 (2) Successfully completed at least 60 hours of coursework  
 510 approved by the department in multiple areas of insurance,  
 511 including health insurance. Such coursework must have included  
 512 instruction on the subject matter of unauthorized entities  
 513 engaging in the business of insurance and 3 hours on the subject  
 514 matter of ethics;

515 (3) Earned or maintained an active designation as a  
 516 Registered Health Underwriter (RHU), Chartered Healthcare  
 517 Consultant (ChHC), or Registered Employee Benefits Consultant  
 518 (REBC) from the American College of Financial Services; a  
 519 Certified Employee Benefit Specialist (CEBS) from the Wharton  
 520 School of the University of Pennsylvania; or a Health Insurance  
 521 Associate (HIA) from America's Health Insurance Plans; a  
 522 ~~correspondence course in insurance, 3 hours of which shall be or~~

597-02404-15 20151222c1

523 the subject matter of ethics, satisfactory to the department and  
 524 regularly offered by accredited institutions of higher learning  
 525 in this state or by independent programs of study, approved by  
 526 the department. Courses must include instruction on the subject  
 527 matter of unauthorized entities engaging in the business of  
 528 insurance, to include the Florida Nonprofit Multiple Employer  
 529 Welfare Arrangement Act and the Employee Retirement Income  
 530 Security Act, 29 U.S.C. ss. 1001 et seq., as it relates to the  
 531 provision of health insurance by employers to their employees  
 532 and the regulation thereof;

533 (4)~~(3)~~ Held an active license in health, ~~or life and~~  
 534 ~~health,~~ insurance in another state. This provision may not be  
 535 utilized unless the other state grants reciprocal treatment to  
 536 licensees formerly licensed in Florida; or

537 (5)~~(4)~~ Been employed by the department or office for at  
 538 least 1 year, full time in health insurance regulatory matters  
 539 and who was not terminated for cause, and application for  
 540 examination is made within 4 years ~~90 days~~ after the date of  
 541 termination of his or her employment with the department or  
 542 office.

543 Section 12. Paragraph (o) of subsection (1) of section  
 544 626.9541, Florida Statutes, is amended to read:

545 626.9541 Unfair methods of competition and unfair or  
 546 deceptive acts or practices defined.—

547 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 548 ACTS.—The following are defined as unfair methods of competition  
 549 and unfair or deceptive acts or practices:

550 (o) *Illegal dealings in premiums; excess or reduced charges*  
 551 *for insurance.*—

597-02404-15 20151222c1

552 1. Knowingly collecting any sum as a premium or charge for  
 553 insurance, which is not then provided, or is not in due course  
 554 to be provided, subject to acceptance of the risk by the  
 555 insurer, by an insurance policy issued by an insurer as  
 556 permitted by this code.

557 2. Knowingly collecting as a premium or charge for  
 558 insurance any sum in excess of or less than the premium or  
 559 charge applicable to such insurance, in accordance with the  
 560 applicable classifications and rates as filed with and approved  
 561 by the office, and as specified in the policy; or, in cases when  
 562 classifications, premiums, or rates are not required by this  
 563 code to be so filed and approved, premiums and charges collected  
 564 from a Florida resident in excess of or less than those  
 565 specified in the policy and as fixed by the insurer.

566 Notwithstanding any other provision of law, this provision shall  
 567 not be deemed to prohibit the charging and collection, by  
 568 surplus lines agents licensed under part VIII of this chapter,  
 569 of the amount of applicable state and federal taxes, or fees as  
 570 authorized by s. 626.916(4), in addition to the premium required  
 571 by the insurer or the charging and collection, by licensed  
 572 agents, of the exact amount of any discount or other such fee  
 573 charged by a credit card facility in connection with the use of  
 574 a credit card, as authorized by subparagraph (q)3., in addition  
 575 to the premium required by the insurer. This subparagraph shall  
 576 not be construed to prohibit collection of a premium for a  
 577 universal life or a variable or indeterminate value insurance  
 578 policy made in accordance with the terms of the contract.

579 3.a. Imposing or requesting an additional premium for a  
 580 policy of motor vehicle liability, personal injury protection,

597-02404-15 20151222c1

581 medical payment, or collision insurance or any combination  
 582 thereof or refusing to renew the policy solely because the  
 583 insured was involved in a motor vehicle accident unless the  
 584 insurer's file contains information from which the insurer in  
 585 good faith determines that the insured was substantially at  
 586 fault in the accident.

587 b. An insurer which imposes and collects such a surcharge  
 588 or which refuses to renew such policy shall, in conjunction with  
 589 the notice of premium due or notice of nonrenewal, notify the  
 590 named insured that he or she is entitled to reimbursement of  
 591 such amount or renewal of the policy under the conditions listed  
 592 below and will subsequently reimburse him or her or renew the  
 593 policy, if the named insured demonstrates that the operator  
 594 involved in the accident was:

595 (I) Lawfully parked;

596 (II) Reimbursed by, or on behalf of, a person responsible  
 597 for the accident or has a judgment against such person;

598 (III) Struck in the rear by another vehicle headed in the  
 599 same direction and was not convicted of a moving traffic  
 600 violation in connection with the accident;

601 (IV) Hit by a "hit-and-run" driver, if the accident was  
 602 reported to the proper authorities within 24 hours after  
 603 discovering the accident;

604 (V) Not convicted of a moving traffic violation in  
 605 connection with the accident, but the operator of the other  
 606 automobile involved in such accident was convicted of a moving  
 607 traffic violation;

608 (VI) Finally adjudicated not to be liable by a court of  
 609 competent jurisdiction;

597-02404-15 20151222c1

610 (VII) In receipt of a traffic citation which was dismissed  
 611 or nolle prossed; or

612 (VIII) Not at fault as evidenced by a written statement  
 613 from the insured establishing facts demonstrating lack of fault  
 614 which are not rebutted by information in the insurer's file from  
 615 which the insurer in good faith determines that the insured was  
 616 substantially at fault.

617 c. In addition to the other provisions of this  
 618 subparagraph, an insurer may not fail to renew a policy if the  
 619 insured has had only one accident in which he or she was at  
 620 fault within the current 3-year period. However, an insurer may  
 621 nonrenew a policy for reasons other than accidents in accordance  
 622 with s. 627.728. This subparagraph does not prohibit nonrenewal  
 623 of a policy under which the insured has had three or more  
 624 accidents, regardless of fault, during the most recent 3-year  
 625 period.

626 4. Imposing or requesting an additional premium for, or  
 627 refusing to renew, a policy for motor vehicle insurance solely  
 628 because the insured committed a noncriminal traffic infraction  
 629 as described in s. 318.14 unless the infraction is:

630 a. A second infraction committed within an 18-month period,  
 631 or a third or subsequent infraction committed within a 36-month  
 632 period.

633 b. A violation of s. 316.183, when such violation is a  
 634 result of exceeding the lawful speed limit by more than 15 miles  
 635 per hour.

636 5. Upon the request of the insured, the insurer and  
 637 licensed agent shall supply to the insured the complete proof of  
 638 fault or other criteria which justifies the additional charge or

597-02404-15 20151222c1

639 cancellation.

640 6. No insurer shall impose or request an additional premium  
641 for motor vehicle insurance, cancel or refuse to issue a policy,  
642 or refuse to renew a policy because the insured or the applicant  
643 is a handicapped or physically disabled person, so long as such  
644 handicap or physical disability does not substantially impair  
645 such person's mechanically assisted driving ability.

646 7. No insurer may cancel or otherwise terminate any  
647 insurance contract or coverage, or require execution of a  
648 consent to rate endorsement, during the stated policy term for  
649 the purpose of offering to issue, or issuing, a similar or  
650 identical contract or coverage to the same insured with the same  
651 exposure at a higher premium rate or continuing an existing  
652 contract or coverage with the same exposure at an increased  
653 premium.

654 8. No insurer may issue a nonrenewal notice on any  
655 insurance contract or coverage, or require execution of a  
656 consent to rate endorsement, for the purpose of offering to  
657 issue, or issuing, a similar or identical contract or coverage  
658 to the same insured at a higher premium rate or continuing an  
659 existing contract or coverage at an increased premium without  
660 meeting any applicable notice requirements.

661 9. No insurer shall, with respect to premiums charged for  
662 motor vehicle insurance, unfairly discriminate solely on the  
663 basis of age, sex, marital status, or scholastic achievement.

664 10. Imposing or requesting an additional premium for motor  
665 vehicle comprehensive or uninsured motorist coverage solely  
666 because the insured was involved in a motor vehicle accident or  
667 was convicted of a moving traffic violation.

597-02404-15 20151222c1

668 11. No insurer shall cancel or issue a nonrenewal notice on  
669 any insurance policy or contract without complying with any  
670 applicable cancellation or nonrenewal provision required under  
671 the Florida Insurance Code.

672 12. No insurer shall impose or request an additional  
673 premium, cancel a policy, or issue a nonrenewal notice on any  
674 insurance policy or contract because of any traffic infraction  
675 when adjudication has been withheld and no points have been  
676 assessed pursuant to s. 318.14(9) and (10). However, this  
677 subparagraph does not apply to traffic infractions involving  
678 accidents in which the insurer has incurred a loss due to the  
679 fault of the insured.

680 Section 13. Section 627.4553, Florida Statutes, is amended  
681 to read:

682 627.4553 Recommendations to surrender.—If an insurance  
683 agent recommends the surrender of an annuity or life insurance  
684 policy containing a cash value and does not recommend that the  
685 proceeds from the surrender be used to fund or purchase another  
686 annuity or life insurance policy, before execution of the  
687 surrender, the insurance agent, ~~or insurance company if no agent~~  
688 is involved, shall provide written, ~~on a form that satisfies~~  
689 ~~the requirements of the rule adopted by the department,~~  
690 information relating to the annuity or policy to be surrendered.  
691 Such information shall include, but is not limited to, the  
692 amount of any surrender charge, the loss of any minimum interest  
693 rate guarantees, the possibility ~~amount~~ of ~~any~~ tax consequences  
694 ~~resulting from the transaction~~, the amount of any forfeited  
695 death benefit, and the value of any other investment performance  
696 guarantees being forfeited as a result of the transaction. The

597-02404-15

20151222c1

697 agent shall maintain a copy of the information and the date that  
698 the information was provided to the owner. This section also  
699 applies to a person performing insurance agent activities  
700 pursuant to an exemption from licensure under this part.

701 Section 14. Subsection (2) of section 631.341, Florida  
702 Statutes, is amended to read:

703 631.341 Notice of insolvency to policyholders by insurer,  
704 general agent, or agent.—

705 (2) Unless, within 15 days subsequent to the date of such  
706 notice, all agents referred to in subsection (1) have either  
707 replaced or reinsured in a solvent authorized insurer the  
708 insurance coverages placed by or through such agent in the  
709 delinquent insurer, such agents shall then, by registered or  
710 certified mail, or by e-mail with delivery receipt required,  
711 send to the last known address of any policyholder a written  
712 notice of the insolvency of the delinquent insurer.

713 Section 15. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

1222

Bill Number (if applicable)

491438

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Ceslie Dughi

Job Title \_\_\_\_\_

Address 101 E College

Phone \_\_\_\_\_

Street

Tallah

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fl. Surplus Lines Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

SB 1222  
Bill Number (if applicable)

Topic Division of Insurance Agent + Agency Services Amendment Barcode (if applicable)

Name Laura Pearce SB 1222

Job Title General Counsel

Address \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State Zip

Phone 858-566-8615

Email Lpearce@faia.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla Association of Insurance Agents

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/14  
Meeting Date

1222  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director, DFS

Address \_\_\_\_\_  
Street

Phone 850-413-2890

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email BG.Murphy@myfloridato.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

1222  
Bill Number (if applicable)

Topic AGENTS + AGENCY SERVICES

Amendment Barcode (if applicable)

Name CORAY MATHEWS

Job Title CEO

Address 1390 TIMBERLANE ROAD

Phone 850/893-8245

TALLAHASSEE FL 32310  
City State Zip

Email CORAY@PIAFL.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing PROFESSIONAL INSURANCE AGENTS OF FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April

Meeting Date

1222

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title \_\_\_\_\_

Address 375 W College Ave  
Street  
Tallahassee FL  
City State Zip

Phone 850-425-4000

Email Tim@meenanlawfirm.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing National Assoc. Insurance & Financial Advisors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 1304 (560970)

INTRODUCER: Appropriations Subcommittee on General Government; Governmental Oversight and Accountability Committee; and Senator Latvala

SUBJECT: Inspectors General

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>FP</u>	<u>                    </u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to hire or retain legal counsel and issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., to require the State Board of Administration and the Office of Early Learning to appoint an inspector general and to mandate additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general. The bill prohibits an inspector general and employees of inspector general from holding elective office and provides additional restrictions for an inspector general and their staff for specified political activities.

Also, the bill requires that records must be accessible to an agency inspector general during an audit or investigation. The bill requires specified personnel to cooperate with requests of an agency inspector general during investigations, audits, inspections, reviews and hearings.

In addition, the bill requires, beginning July 1, 2015, certain language be included in state contracts, bids, and proposals.

The bill has an indeterminate fiscal impact.

The bill provides an effective date July 1, 2015.

## II. Present Situation:

### Chief Inspector General

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.<sup>1</sup> The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor<sup>2</sup> and serves as the inspector general for the Executive Office of the Governor.<sup>3</sup> The Chief Inspector General is required to:<sup>4</sup>

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of duties.
- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships,<sup>5</sup> including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, requesting records, monitoring contract compliance, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

---

<sup>1</sup> Section 14.32(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 14.32(4), F.S.

<sup>4</sup> Section 14.32(2), F.S.

<sup>5</sup> Section 14.32(3), F.S.

## Agency Inspectors General

### *Duties*

Section 20.055, F.S., requires that each state agency<sup>6</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency.<sup>7</sup> Each office is responsible for the following:<sup>8</sup>

- Advising in the development of performance measures, standards, and procedures for evaluation of state agency programs.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Reviewing the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Keeping the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.
- Maintaining a balance among audit, investigative, and other accountability activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

### *Appointment*

For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head.<sup>9</sup> For agencies under the jurisdiction of the Governor, the inspector general is be appointed by the Chief Inspector General.<sup>10</sup> The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general

---

<sup>6</sup> Section 20.055(1)(d), F.S., defines the term “state agency” as “each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, and the state courts system.”

<sup>7</sup> Section 20.055(2), F.S.

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

<sup>9</sup> Section 20.055(3)(a), F.S.

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

at least seven days prior to an offer of employment.<sup>11</sup> Inspectors general shall be appointed without regard to political affiliation.<sup>12</sup>

### ***Removal***

Section 20.055(3)(c), F.S., governs removal of inspectors general. Inspectors general may be removed by the agency head for agencies under the jurisdiction of the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties under this section. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

### ***Qualifications***

To ensure that state agency audits are performed in accordance with applicable auditing standards, s. 20.055(4), F.S., provides that the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

- a) A bachelor's degree from an accredited college or university with a major in accounting or business with a minimum of five accounting courses, and five years experience as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or
- b) A master's degree in accounting, business administration, or public administration from an accredited college or university and four years of experience as required in paragraph (a); or
- c) A certified public accountant license issued pursuant to ch. 473, F.S., or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination and four years of experience as required in paragraph (a).

### ***Elected Office/Political Office Restrictions***

There are no current restrictions on inspectors general or office of inspector general staff regarding holding elective office, holding office in a political party or political committee, participating in a political campaign of any candidate for public office, making campaign contributions, or making campaign endorsements, while serving in the office of inspector general.

---

<sup>11</sup> *Id.*

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



### ***Subpoenas***

The Chief Inspector General and agency inspectors general do not currently have the authority to issue subpoenas.

### ***Internal Audits***

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.<sup>13</sup> The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.<sup>14</sup> The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.<sup>15</sup>

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards.<sup>16</sup> All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.<sup>17</sup>

### ***More Duties***

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments.<sup>18</sup> The plan, where appropriate, should include post-audit samplings of payments and accounts.<sup>19</sup> The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors.<sup>20</sup> For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General.<sup>21</sup> The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.<sup>22</sup>

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:<sup>23</sup>

---

<sup>13</sup> Section 20.055(5), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 20.055(5)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 20.055(5)(i), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

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

<sup>22</sup> *Id.*

<sup>23</sup> Section 20.055(6), F.S.

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.<sup>24</sup>
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.<sup>25</sup>
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.<sup>26</sup>
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information.<sup>27</sup>
- At the conclusion of an audit, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.<sup>28</sup>
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>29</sup>

Each inspector general must submit an annual report on its activities to the agency head,<sup>30</sup> and provide any written complaints about the operations of the inspector general.<sup>31</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 14.32, F.S., to authorize the Chief Inspector General or his or her designee to hire or retain legal counsel and to issue and serve subpoenas, for agencies under the Governor's jurisdiction, to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

For noncompliance with issuance of subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of county where the person has their residence or principal place of business to obtain an order requiring the person to appear and testify or produce the requested documents.

The Chief Inspector General is also authorized to require a person to file a statement in writing, under oath or otherwise, as to facts and circumstances to be audited, examined or investigated.

---

<sup>24</sup> Section 20.055(6)(a), F.S.

<sup>25</sup> Section 20.055(6)(b), F.S.

<sup>26</sup> Section 20.055(6)(c), F.S.

<sup>27</sup> Section 20.055(6)(d), F.S.

<sup>28</sup> Section 20.055(6)(e), F.S.

<sup>29</sup> Section 20.055(6)(f), F.S.

<sup>30</sup> Section 20.055(7), F.S.

<sup>31</sup> Section 20.055(8), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

**Section 2** amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency.” The definition of “agency head” is expanded to include the executive directors of the State Board of Administration (SBA) and Office of Early Learning (OEL). The definition of “state agency” is expanded to include SBA and OEL. The bill requires an agency head, or for agencies under the jurisdiction of the Governor, the Chief Inspector General, to conduct a national search for a new inspector general within 60 days after a vacancy or anticipated vacancy in the position of inspector general and to set the salary of the inspector general. The bill allows an interim inspector general to be appointed from other office of inspector general management personnel until a successor is appointed.<sup>32</sup>

The bill outlines additional criteria that candidates must meet to be deemed eligible to fill a position as an inspector general. The bill prohibits an elected official from being appointed as inspector general within five years after the end of the individual’s term of service; however, this restriction does not prohibit the reappointment of a current inspector general.

The bill clarifies that for state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head for administrative purposes.

### *Qualifications*

This bill requires the following qualifications, certifications, training, experience, education and other criteria for inspectors general:

- An inspector general must possess at appointment or obtain within the first year after appointment a certification from the Association of Inspectors General as a certified inspector general.
- An inspector general shall have at least one other related professional certification, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator, or be a licensed attorney.

---

<sup>32</sup> The Department of Children and Families noted the following concerns regarding appointment of an interim inspector general: “It is unclear as to whether the interim inspector general may be utilized from personnel within another agency’s office of inspector general. If an interim inspector general may only be selected from the agency experiencing the vacancy, small inspector general offices may experience a hardship in making an interim appointment.” See Department of Children and Families legislative bill analysis for related bill, HB 371, dated Jan. 30, 2015, that contains similar language on appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

The Department of Financial Services (DFS) noted the following concerns regarding the national search requirements: “Requiring a search, especially a national search may slow down the hiring process. This may cause . . . issues for those Office of Inspector Generals who are relatively small. Presently there are 11 OIG’s who have three or less positions including the IG. Four of the 11 OIG’s are singularly staffed with only the IG and no other professional employees.” The DFS also noted the following concerns regarding the appointment of interim inspector general: “Presently there are 11 OIG’s who are staffed with three or less positions. The only management position in these offices is the IG. This legislation would effectively leave the IG position vacant for extended periods of time pending a national search.” See DFS legislative bill analysis for related bill, HB 371, dated Feb. 18, 2015, that contains similar language on national search requirements and appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

- The inspector general shall have experience managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations.
- The inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field.
- Inspector general is subject to level 2 background screening under ch. 435, F.S.
- A candidate for inspector general shall have a four-year degree from an accredited institution of higher learning or have at least five years of experience in at least one of the following areas:
  - Inspector general.
  - Local, state, or federal law enforcement officer.
  - Local, state or federal court judge.
  - Administration and management of complex audits and investigations.
  - Senior-level auditor or comptroller.
  - Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
  - Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations.
  - An advanced degree in law, accounting, public administration, or other relevant field may substitute for one year of required experience.

The bill appears to create statutory requirements for the appointment of agency inspectors general. The bill does not provide any time frames or procedures for challenging an appointees' qualifications. If it is determined that an inspector general does not meet these new statutory requirements for appointment, the impact on the validity of audits and investigations overseen by that inspector general is unclear.

### ***Political Office/Party Restrictions***

The bill prohibits an inspector general or employee of an office of inspector general from holding office, or being a candidate for an elective office with the state or any municipality, county, or other political subdivision of the state while serving as an inspector general or an employee of an office of inspector general. The bill also prohibits the inspector general and employees in the office of inspector general from holding office in a political party or political committee while employed in the office of inspector general.

### ***Access to Agency Records***

The bill requires the inspector general and staff to have access to any records, data, and other information of the state agency that the inspector general deems necessary to carry out his or her duties.

The inspector general shall have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state if the inspector general deems such access necessary to carry out his or her duties.

The inspector general may also request information or assistance that may be necessary from a state agency or from a federal, state, or local governmental entity.

***Duty to Cooperate***

The bill requires every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.

***Required Statement for Contract/Bid Proposals***

The bill requires beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by this duty to cooperate.

**Section 3** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1304 requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract contain a statement that the entity or individual seeking to contract with the state will comply and cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill requires a national search when hiring an inspector general, which could have costs associated.

Authorizing inspectors general to obtain outside legal counsel has an indeterminate fiscal impact. It is unknown how often counsel would be obtained and the cost associated with such counsel.

#### **VI. Technical Deficiencies:**

The bill (lines 290-294) requires that “each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by this section.” This provision might be more appropriately codified in the state’s procurement statutes.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 14.32 and 20.055.

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute:

- Clarifies the authorization to issue and serve subpoenas and subpoenas duces tecum only pertain to the Chief Inspector General or his or her designee for agencies under the jurisdiction of the Governor;
- Removes provisions relating to the term of office of an inspector general;
- Limits the prohibition on an inspector general, current officer or employee of an office of inspector general holding or being a candidate for elective office to only apply to elective office with the state, or any municipality, county, or other political subdivision of the state;
- Provides an inspector general’s access to specific buildings or facilities are limited to circumstances in which the inspector general deems such access necessary to carry out his or her duties;
- Authorizes an inspector general to request information or assistance that may be necessary from a state agency or from a federal, state, or local governmental entity;
- Removes the terms “licensee” and “applicant for certification of eligibility for a contract or program” from the provision creating a duty of certain entities to cooperate with an inspector general; and
- Requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by the requirement to cooperate with the inspector general. The CS clarifies this requirement is prospective.

**CS by Governmental Oversight and Accountability on March 23, 2015:**

The CS amends definitions of the terms “agency head” and “state agency” contained in s. 20.55(1)(a) and (d), F.S. This change requires the State Board of Administration and the Office of Early Learning to appoint an inspector general.

The initial term of appointment for an inspector general is three years, and subsequent three year terms may be renewed at discretion of agency head. An inspector general may be removed from office for cause by the agency head.

Provides that the inspector general is under the general supervision of the agency head for administrative purposes.

In regards to qualifications, the inspector general:

- Is subject to level 2 background screening;
- Shall have at least one other related professional certification;
- May substitute an advanced degree in law, accounting, public administration, or another relevant field for one year of required experience.

Experience as a local judge is added to the experience category of state and federal court judge.

For related certifications, the area of financial crimes investigator is added.

**B. Amendments:**

None.



803784

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment**

Delete line 31

and insert:

(b) Issue and serve subpoenas and subpoenas duces tecum,  
for agencies under the jurisdiction of the Governor, to





880540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment**

Delete lines 174 - 294

and insert:

(b) The inspector general shall report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency in which the office is established. For state agencies under the jurisdiction of the Governor, the inspector general shall be under the general supervision of the agency head for



880540

11 administrative purposes, shall report to the Chief Inspector  
12 General, and may hire and remove staff within the office of the  
13 inspector general in consultation with the Chief Inspector  
14 General but independently of the agency.

15 (c) For state agencies under the jurisdiction of the  
16 Cabinet or the Governor and Cabinet, the inspector general may  
17 be removed from office by the agency head. For state agencies  
18 under the jurisdiction of the Governor, the inspector general  
19 may only be removed from office by the Chief Inspector General  
20 for cause, including concerns regarding performance,  
21 malfeasance, misfeasance, misconduct, or failure to carry out  
22 his or her duties under this section. The Chief Inspector  
23 General shall notify the Governor in writing of his or her  
24 intention to remove the inspector general at least 21 days  
25 before the removal. For state agencies under the jurisdiction of  
26 the Governor and Cabinet, the agency head shall notify the  
27 Governor and Cabinet in writing of his or her intention to  
28 remove the inspector general at least 21 days before the  
29 removal. If the inspector general disagrees with the removal,  
30 the inspector general may present objections in writing to the  
31 Governor within the 21-day period.

32 (d) The Governor, the Governor and Cabinet, the agency  
33 head, or agency staff may not prevent or prohibit the inspector  
34 general from initiating, carrying out, or completing any audit  
35 or investigation.

36 (4) (a) To ensure that state agency audits are performed in  
37 accordance with applicable auditing standards, the inspector  
38 general or the director of auditing within the inspector  
39 general's office shall possess the following qualifications:



880540

40           ~~1.(a)~~ A bachelor's degree from an accredited college or  
41 university with a major in accounting, or with a major in  
42 business which includes five courses in accounting, and 5 years  
43 of experience as an internal auditor or independent postauditor,  
44 electronic data processing auditor, accountant, or any  
45 combination thereof. At a minimum, the experience must ~~shall at~~

46 ~~a minimum~~ consist of audits of units of government or private  
47 business enterprises, operating for profit or not for profit; ~~or~~

48           ~~2.(b)~~ A master's degree in accounting, business  
49 administration, or public administration from an accredited  
50 college or university and 4 years of the professional experience  
51 ~~as required under subparagraph 1. in paragraph (a);~~ or

52           ~~3.(c)~~ A certified public accountant license issued pursuant  
53 to chapter 473 or a certified internal audit certificate issued  
54 by the Institute of Internal Auditors or earned by examination,  
55 and 4 years of the professional experience ~~as required under~~  
56 subparagraph 1. in paragraph (a).

57           (b) For agencies under the jurisdiction of the Governor,  
58 the inspector general shall be selected on the basis of  
59 integrity, leadership capability, and experience in accounting,  
60 auditing, financial analysis, law, management analysis, program  
61 evaluation, public administration, investigation, criminal  
62 justice administration, or another closely related field. The  
63 inspector general is subject to level 2 background screening  
64 pursuant to chapter 435. The inspector general shall have a 4-  
65 year degree from an accredited institution of higher learning or  
66 at least 5 years of experience in at least one of the following  
67 areas:

68           1. Inspector general.



880540

69           2. Supervisory experience in an office of inspector general  
70 or an investigative public agency similar to an office of  
71 inspector general.

72           3. Local, state, or federal law enforcement officer.

73           4. Local, state, or federal court judge.

74           5. Senior-level auditor or comptroller.

75           6. The administration and management of complex audits and  
76 investigations.

77           7. Managing programs for prevention, examination,  
78 detection, elimination of fraud, waste, abuse, mismanagement,  
79 malfeasance, or misconduct in government or organizations.

80  
81 An advanced degree in law, accounting, public administration, or  
82 another relevant field may substitute for 1 year of required  
83 experience.

84           (c) The inspector general shall possess at appointment, or  
85 obtain within the first year after appointment, a certification  
86 from the Association of Inspectors General as a certified  
87 inspector general. The inspector general shall have at least one  
88 other related professional certification, such as certified  
89 inspector general investigator, certified inspector general  
90 auditor, certified public accountant, certified internal  
91 auditor, certified governmental financial manager, certified  
92 fraud examiner, or certified financial crimes investigator, or  
93 be a licensed attorney.

94           (d) The inspector general may not hold, or be a candidate  
95 for, an elective office with the state or any municipality,  
96 county, or other political subdivision of the state while  
97 inspector general, and a current officer or employee of an



880540

98 office of inspector general may not hold, or be a candidate for,  
99 an elective office with the state or any municipality, county,  
100 or other political subdivision of the state. The inspector  
101 general may not hold office in a political party or political  
102 committee. An employee of an office of inspector general may not  
103 hold office in a political party or political committee while  
104 employed in the office of inspector general.

105 (5) The inspector general and his or her staff shall have  
106 access to any records, data, and other information of the state  
107 agency which he or she deems necessary to carry out his or her  
108 duties. The inspector general, at all times, shall have access  
109 to a building or facility that is owned, operated, or leased by  
110 a department, agency, board, or commission, or a property held  
111 in trust to the state if the inspector general deems such access  
112 necessary to carry out his or her duties. The inspector general  
113 may also request such information or assistance as may be  
114 necessary from the state agency or from any federal, state, or  
115 local governmental entity.

116 (6) It is the duty of every state officer, employee,  
117 agency, special district, board, commission, contractor, and  
118 subcontractor to cooperate with the inspector general in any  
119 investigation, audit, inspection, review, or hearing pursuant to  
120 this section. Beginning July 1, 2015, each contract, bid,  
121 proposal, and application or solicitation for a contract must  
122 contain a statement that the corporation, partnership, or person  
123 understands and will comply with this subsection.

By the Committee on Governmental Oversight and Accountability;  
and Senator Latvala

585-02715-15

20151304c1

1 A bill to be entitled  
2 An act relating to inspectors general; amending s.  
3 14.32, F.S.; authorizing the Chief Inspector General  
4 or his or her designee to retain legal counsel and  
5 issue and enforce subpoenas under certain  
6 circumstances; amending s. 20.055, F.S.; revising the  
7 definitions of the terms "agency head" and "state  
8 agency" to include the State Board of Administration  
9 and the Office of Early Learning of the Department of  
10 Education; prescribing additional hiring requirements,  
11 employment qualifications, and terms of employment for  
12 inspectors general and staff of the office of  
13 inspector general; specifying that an inspector  
14 general is entitled to access to specified buildings  
15 or facilities; establishing the duty of specified  
16 persons and entities with respect to cooperation with  
17 an inspector general's official duties; requiring  
18 contracts and other specified documents to contain a  
19 statement regarding compliance with an inspector  
20 general's official duties; providing an effective  
21 date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Subsection (5) is added to section 14.32,  
26 Florida Statutes, to read:

27 14.32 Office of Chief Inspector General.—

28 (5) In exercising authority under this section, the Chief  
29 Inspector General or his or her designee may:

Page 1 of 14

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

585-02715-15

20151304c1

30 (a) Hire or retain legal counsel.

31 (b) Issue and serve subpoenas and subpoenas duces tecum to  
32 compel the attendance of witnesses and the production of  
33 documents, reports, answers, records, accounts, and other data  
34 in any medium.

35 (c) Require or allow a person to file a statement in  
36 writing, under oath or otherwise, as to all the facts and  
37 circumstances concerning the matter to be audited, examined, or  
38 investigated.

39  
40 In the event of noncompliance with a subpoena issued pursuant to  
41 this subsection, the Chief Inspector General may petition the  
42 circuit court of the county in which the person subpoenaed  
43 resides or has his or her principal place of business for an  
44 order requiring the person subpoenaed to appear and testify and  
45 to produce documents, reports, answers, records, accounts, or  
46 other data as specified in the subpoena.

47 Section 2. Present subsections (1) through (5) of section  
48 20.055, Florida Statutes, are amended, new subsections (5) and  
49 (6) are added to that section, and present subsections (6)  
50 through (9) are redesignated as subsections (8) through (11),  
51 respectively, to read:

52 20.055 Agency inspectors general.—

53 (1) As used in this section, the term:

54 (a) "Agency head" means the Governor, a Cabinet officer, or  
55 a secretary or executive director as those terms are defined in  
56 s. 20.03, the chair of the Public Service Commission, the  
57 Director of the Office of Insurance Regulation of the Financial  
58 Services Commission, the Director of the Office of Financial

Page 2 of 14

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

585-02715-15 20151304c1

59 Regulation of the Financial Services Commission, the board of  
60 directors of the Florida Housing Finance Corporation, the  
61 Executive Director of the State Board of Administration, the  
62 Executive Director of the Office of Early Learning, and the  
63 Chief Justice of the State Supreme Court.

64 (b) "Entities contracting with the state" means for-profit  
65 and not-for-profit organizations or businesses that have a legal  
66 existence, such as corporations or partnerships, as opposed to  
67 natural persons, which have entered into a relationship with a  
68 state agency to provide for consideration certain goods or  
69 services to the state agency or on behalf of the state agency.  
70 The relationship may be evidenced by payment by warrant or  
71 purchasing card, contract, purchase order, provider agreement,  
72 or other such mutually agreed upon relationship. The term does  
73 not apply to entities that are the subject of audits or  
74 investigations conducted pursuant to ss. 112.3187-112.31895 or  
75 s. 409.913 or which are otherwise confidential and exempt under  
76 s. 119.07.

77 (c) "Individuals substantially affected" means natural  
78 persons who have established a real and sufficiently immediate  
79 injury in fact due to the findings, conclusions, or  
80 recommendations of a final report of a state agency inspector  
81 general, who are the subject of the audit or investigation, and  
82 who do not have or are not currently afforded an existing right  
83 to an independent review process. The term does not apply to  
84 employees of the state, including career service, probationary,  
85 other personal service, Selected Exempt Service, and Senior  
86 Management Service employees; former employees of the state if  
87 the final report of the state agency inspector general relates

Page 3 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-02715-15 20151304c1

88 to matters arising during a former employee's term of state  
89 employment; or persons who are the subject of audits or  
90 investigations conducted pursuant to ss. 112.3187-112.31895 or  
91 s. 409.913 or which are otherwise confidential and exempt under  
92 s. 119.07.

93 (d) "State agency" means each department created pursuant  
94 to this chapter and the Executive Office of the Governor, the  
95 Department of Military Affairs, the Fish and Wildlife  
96 Conservation Commission, the Office of Insurance Regulation of  
97 the Financial Services Commission, the Office of Financial  
98 Regulation of the Financial Services Commission, the Public  
99 Service Commission, the Board of Governors of the State  
100 University System, the Florida Housing Finance Corporation, the  
101 Agency for State Technology, the State Board of Administration,  
102 the Office of Early Learning, and the state courts system.

103 (2) ~~An~~ The office of Inspector General is established in  
104 each state agency to provide a central point for coordination of  
105 and responsibility for activities that promote accountability,  
106 integrity, and efficiency in government. It is the duty and  
107 responsibility of each inspector general, with respect to the  
108 state agency in which the office is established, to:

109 (a) Advise in the development of performance measures,  
110 standards, and procedures for the evaluation of state agency  
111 programs.

112 (b) Assess the reliability and validity of the information  
113 provided by the state agency on performance measures and  
114 standards, and make recommendations for improvement, if  
115 necessary, before submission of such information pursuant to s.  
116 216.1827.

Page 4 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-02715-15

20151304c1

117 (c) Review the actions taken by the state agency to improve  
118 program performance and meet program standards and make  
119 recommendations for improvement, if necessary.

120 (d) Provide direction for, supervise, and coordinate  
121 audits, investigations, and management reviews relating to the  
122 programs and operations of the state agency, except that when  
123 the inspector general does not possess the qualifications  
124 specified in subsection (4), the director of auditing shall  
125 conduct such audits.

126 (e) Conduct, supervise, or coordinate other activities  
127 carried out or financed by that state agency for the purpose of  
128 promoting economy and efficiency in the administration of, or  
129 preventing and detecting fraud and abuse in, its programs and  
130 operations.

131 (f) Keep the agency head or, for state agencies under the  
132 jurisdiction of the Governor, the Chief Inspector General  
133 informed concerning fraud, abuses, and deficiencies relating to  
134 programs and operations administered or financed by the state  
135 agency, recommend corrective action concerning fraud, abuses,  
136 and deficiencies, and report on the progress made in  
137 implementing corrective action.

138 (g) Ensure effective coordination and cooperation between  
139 the Auditor General, federal auditors, and other governmental  
140 bodies with a view toward avoiding duplication.

141 (h) Review, as appropriate, rules relating to the programs  
142 and operations of such state agency and make recommendations  
143 concerning their impact.

144 (i) Ensure that an appropriate balance is maintained  
145 between audit, investigative, and other accountability

585-02715-15

20151304c1

146 activities.

147 (j) Comply with the General Principles and Standards for  
148 Offices of Inspector General as published and revised by the  
149 Association of Inspectors General.

150 (3) (a) 1. For state agencies under the jurisdiction of the  
151 Cabinet or the Governor and Cabinet, the inspector general shall  
152 be appointed by the agency head. For state agencies under the  
153 jurisdiction of the Governor, the inspector general shall be  
154 appointed by the Chief Inspector General. The agency head or  
155 Chief Inspector General shall notify the Governor in writing of  
156 his or her intention to hire the inspector general at least 7  
157 days before an offer of employment. The inspector general shall  
158 be appointed without regard to political affiliation.

159 2. Within 60 days after a vacancy or anticipated vacancy in  
160 the position of inspector general, the agency head or, for  
161 agencies under the jurisdiction of the Governor, the Chief  
162 Inspector General, shall initiate a national search for an  
163 inspector general and shall set the salary of the inspector  
164 general. In the event of a vacancy in the position of inspector  
165 general, the agency head or, for agencies under the jurisdiction  
166 of the Governor, the Chief Inspector General, may appoint other  
167 office of inspector general management personnel as interim  
168 inspector general until such time as a successor inspector  
169 general is appointed.

170 3. A former or current elected official may not be  
171 appointed inspector general within 5 years after the end of such  
172 individual's period of service. This restriction does not  
173 prohibit the reappointment of a current inspector general.

174 4. Upon appointment as inspector general, an individual's



585-02715-15

20151304c1

175 initial term shall be 3 years. Subsequent 3-year terms may be  
 176 renewed at the discretion of the agency head or, for agencies  
 177 under the jurisdiction of the Governor, the Chief Inspector  
 178 General. Notwithstanding this term of appointment, an inspector  
 179 general may be removed from office for cause by the agency head  
 180 or, for agencies under the jurisdiction of the Governor, the  
 181 Chief Inspector General, as provided in paragraph (c).

182 (b) The inspector general shall report to and be under the  
 183 general supervision of the agency head and is not subject to  
 184 supervision by any other employee of the state agency in which  
 185 the office is established. For state agencies under the  
 186 jurisdiction of the Governor, the inspector general shall be  
 187 under the general supervision of the agency head for  
 188 administrative purposes, shall report to the Chief Inspector  
 189 General, and may hire and remove staff within the office of the  
 190 inspector general in consultation with the Chief Inspector  
 191 General but independently of the agency.

192 (c) For state agencies under the jurisdiction of the  
 193 Cabinet or the Governor and Cabinet, the inspector general may  
 194 be removed from office by the agency head. For state agencies  
 195 under the jurisdiction of the Governor, the inspector general  
 196 may only be removed from office by the Chief Inspector General  
 197 for cause, including concerns regarding performance,  
 198 malfeasance, misfeasance, misconduct, or failure to carry out  
 199 his or her duties under this section. The Chief Inspector  
 200 General shall notify the Governor in writing of his or her  
 201 intention to remove the inspector general at least 21 days  
 202 before the removal. For state agencies under the jurisdiction of  
 203 the Governor and Cabinet, the agency head shall notify the

585-02715-15

20151304c1

204 Governor and Cabinet in writing of his or her intention to  
 205 remove the inspector general at least 21 days before the  
 206 removal. If the inspector general disagrees with the removal,  
 207 the inspector general may present objections in writing to the  
 208 Governor within the 21-day period.

209 (d) The Governor, the Governor and Cabinet, the agency  
 210 head, or agency staff may not prevent or prohibit the inspector  
 211 general from initiating, carrying out, or completing any audit  
 212 or investigation.

213 (4) (a) To ensure that state agency audits are performed in  
 214 accordance with applicable auditing standards, the inspector  
 215 general or the director of auditing within the inspector  
 216 general's office shall possess the following qualifications:

217 1. (a) A bachelor's degree from an accredited college or  
 218 university with a major in accounting, or with a major in  
 219 business which includes five courses in accounting, and 5 years  
 220 of experience as an internal auditor or independent postauditor,  
 221 electronic data processing auditor, accountant, or any  
 222 combination thereof. At a minimum, the experience must ~~shall at~~  
 223 ~~a minimum~~ consist of audits of units of government or private  
 224 business enterprises, operating for profit or not for profit; ~~or~~

225 2. (b) A master's degree in accounting, business  
 226 administration, or public administration from an accredited  
 227 college or university and 4 years of the professional experience  
 228 ~~as required under subparagraph 1. in paragraph (a); or~~

229 3. (c) A certified public accountant license issued pursuant  
 230 to chapter 473 or a certified internal audit certificate issued  
 231 by the Institute of Internal Auditors or earned by examination,  
 232 and 4 years of the professional experience ~~as required under~~

585-02715-15

20151304c1

233 ~~subparagraph 1. in paragraph (a).~~

234 (b) For agencies under the jurisdiction of the Governor,  
 235 the inspector general shall be selected on the basis of  
 236 integrity, leadership capability, and experience in accounting,  
 237 auditing, financial analysis, law, management analysis, program  
 238 evaluation, public administration, investigation, criminal  
 239 justice administration, or another closely related field. The  
 240 inspector general is subject to level 2 background screening.  
 241 The inspector general shall have a 4-year degree from an  
 242 accredited institution of higher learning or at least 5 years of  
 243 experience in at least one of the following areas:

244 1. Inspector general.

245 2. Supervisory experience in an office of inspector general  
 246 or an investigative public agency similar to an office of  
 247 inspector general.

248 3. Local, state, or federal law enforcement officer.

249 4. Local, state, or federal court judge.

250 5. Senior-level auditor or comptroller.

251 6. Experience in the administration and management of  
 252 complex audits and investigations.

253 7. Experience managing programs for prevention,  
 254 examination, detection, elimination of fraud, waste, abuse,  
 255 mismanagement, malfeasance, or misconduct in government or  
 256 organizations.

257 8. An advanced degree in law, accounting, public  
 258 administration, or another relevant field may substitute for one  
 259 year of required experience.

260 (c) The inspector general shall possess at appointment, or  
 261 obtain within the first year after appointment, certification

585-02715-15

20151304c1

262 from the Association of Inspectors General as a certified  
 263 inspector general. The inspector general shall have at least one  
 264 other related professional certification, such as certified  
 265 inspector general investigator, certified inspector general  
 266 auditor, certified public accountant, certified internal  
 267 auditor, certified governmental financial manager, certified  
 268 fraud examiner, or certified financial crimes investigator, or  
 269 be a licensed attorney.

270 (d) The inspector general may not hold, or be a candidate  
 271 for, an elective office while inspector general, and a current  
 272 officer or employee of an office of inspector general may not  
 273 hold, or be a candidate for, an elective office. The inspector  
 274 general may not hold office in a political party or political  
 275 committee. An employee of an office of inspector general may not  
 276 hold office in a political party or political committee while  
 277 employed in the office of inspector general.

278 (5) The inspector general and his or her staff shall have  
 279 access to any records, data, and other information of the state  
 280 agency which he or she deems necessary to carry out his or her  
 281 duties. At all times, the inspector general shall have access to  
 282 a building or facility that is owned, operated, or leased by a  
 283 department, agency, board, or commission, or a property held in  
 284 trust to the state.

285 (6) It is the duty of every state officer, employee,  
 286 agency, special district, board, commission, contractor,  
 287 subcontractor, licensee, and applicant for certification of  
 288 eligibility for a contract or program, to cooperate with the  
 289 inspector general in any investigation, audit, inspection,  
 290 review, or hearing conducted pursuant to this section. Each

585-02715-15 20151304c1

291 contract, bid, proposal, and application or solicitation for a  
 292 contract shall contain a statement that the corporation,  
 293 partnership, or person understands and will comply with this  
 294 subsection.

295 ~~(7)(5)~~ In carrying out the auditing duties and  
 296 responsibilities specified in ~~of this section~~ ~~and~~, each  
 297 inspector general shall review and evaluate internal controls  
 298 necessary to ensure the fiscal accountability of the state  
 299 agency. The inspector general shall conduct financial,  
 300 compliance, electronic data processing, and performance audits  
 301 of the agency and prepare audit reports of his or her findings.  
 302 The scope and assignment of the audits shall be determined by  
 303 the inspector general; however, the agency head may at any time  
 304 request the inspector general to perform an audit of a special  
 305 program, function, or organizational unit. The performance of  
 306 the audit shall be under the direction of the inspector general,  
 307 except that if the inspector general does not possess the  
 308 qualifications specified in subsection (4), the director of  
 309 auditing shall perform the functions listed in this subsection.

310 (a) Such audits shall be conducted in accordance with the  
 311 current International Standards for the Professional Practice of  
 312 Internal Auditing as published by the Institute of Internal  
 313 Auditors, Inc., or, where appropriate, in accordance with  
 314 generally accepted governmental auditing standards. All audit  
 315 reports issued by internal audit staff shall include a statement  
 316 that the audit was conducted pursuant to the appropriate  
 317 standards.

318 (b) Audit workpapers and reports shall be public records to  
 319 the extent that they do not include information which has been

585-02715-15 20151304c1

320 made confidential and exempt from the provisions of s. 119.07(1)  
 321 pursuant to law. However, when the inspector general or a member  
 322 of the staff receives from an individual a complaint or  
 323 information that falls within the definition provided in s.  
 324 112.3187(5), the name or identity of the individual may not be  
 325 disclosed to anyone else without the written consent of the  
 326 individual, unless the inspector general determines that such  
 327 disclosure is unavoidable during the course of the audit or  
 328 investigation.

329 ~~(c) The inspector general and the staff shall have access~~  
 330 ~~to any records, data, and other information of the state agency~~  
 331 ~~he or she deems necessary to carry out his or her duties. The~~  
 332 ~~inspector general may also request such information or~~  
 333 ~~assistance as may be necessary from the state agency or from any~~  
 334 ~~federal, state, or local government entity.~~

335 ~~(d)~~ At the conclusion of each audit, the inspector general  
 336 shall submit preliminary findings and recommendations to the  
 337 person responsible for supervision of the program function or  
 338 operational unit who shall respond to any adverse findings  
 339 within 20 working days after receipt of the preliminary  
 340 findings. Such response and the inspector general's rebuttal to  
 341 the response shall be included in the final audit report.

342 ~~(d)(e)~~ At the conclusion of an audit in which the subject  
 343 of the audit is a specific entity contracting with the state or  
 344 an individual substantially affected, if the audit is not  
 345 confidential or otherwise exempt from disclosure by law, the  
 346 inspector general shall, consistent with s. 119.07(1), submit  
 347 the findings to the entity contracting with the state or the  
 348 individual substantially affected, who shall be advised in

585-02715-15 20151304c1

349 writing that they may submit a written response within 20  
 350 working days after receipt of the findings. The response and the  
 351 inspector general's rebuttal to the response, if any, must be  
 352 included in the final audit report.

353 ~~(e)~~ (f) The inspector general shall submit the final report  
 354 to the agency head, the Auditor General, and, for state agencies  
 355 under the jurisdiction of the Governor, the Chief Inspector  
 356 General.

357 ~~(f)~~ (g) The Auditor General, in connection with the  
 358 independent postaudit of the same agency pursuant to s. 11.45,  
 359 shall give appropriate consideration to internal audit reports  
 360 and the resolution of findings therein. The Legislative Auditing  
 361 Committee may inquire into the reasons or justifications for  
 362 failure of the agency head to correct the deficiencies reported  
 363 in internal audits that are also reported by the Auditor General  
 364 and shall take appropriate action.

365 ~~(g)~~ (h) The inspector general shall monitor the  
 366 implementation of the state agency's response to any report on  
 367 the state agency issued by the Auditor General or by the Office  
 368 of Program Policy Analysis and Government Accountability. No  
 369 later than 6 months after the Auditor General or the Office of  
 370 Program Policy Analysis and Government Accountability publishes  
 371 a report on the state agency, the inspector general shall  
 372 provide a written response to the agency head or, for state  
 373 agencies under the jurisdiction of the Governor, the Chief  
 374 Inspector General on the status of corrective actions taken. The  
 375 inspector general shall file a copy of such response with the  
 376 Legislative Auditing Committee.

377 ~~(h)~~ (i) The inspector general shall develop long-term and

Page 13 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-02715-15 20151304c1

378 annual audit plans based on the findings of periodic risk  
 379 assessments. The plan, where appropriate, should include  
 380 postaudit samplings of payments and accounts. The plan shall  
 381 show the individual audits to be conducted during each year and  
 382 related resources to be devoted to the respective audits. The  
 383 Chief Financial Officer, to assist in fulfilling the  
 384 responsibilities for examining, auditing, and settling accounts,  
 385 claims, and demands pursuant to s. 17.03(1), and examining,  
 386 auditing, adjusting, and settling accounts pursuant to s. 17.04,  
 387 may use audits performed by the inspectors general and internal  
 388 auditors. For state agencies under the jurisdiction of the  
 389 Governor, the audit plans shall be submitted to the Chief  
 390 Inspector General. The plan shall be submitted to the agency  
 391 head for approval. A copy of the approved plan shall be  
 392 submitted to the Auditor General.

393 Section 3. This act shall take effect July 1, 2015.

Page 14 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**  
20th District

March 24, 2015

The Honorable Alan Hays, Chairman  
Senate Appropriations Subcommittee on General Government  
201 The Capitol  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request consideration of Senate Bill SB 1304/Inspectors General by the Senate Appropriations Subcommittee on General Government at your earliest convenience. The bill was favorably referred by the Governmental Oversight and Accountability Committee on March 23<sup>rd</sup>.

This bill will authorize the Chief Inspector General to issue and enforce subpoenas and provide additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general and staff;

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala  
State Senator  
District 20

Cc: Jamie DeLoach, Staff Director; Lisa Waddell, Administrative Assistant

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 25 AM 10:14  
STAT. CLERK  
STAFF DIR. STAFF

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

---

BILL: PCS/CS/SB 1444 (654302)

INTRODUCER: Appropriations Subcommittee on General Government; Commerce and Tourism Committee; and Senator Richter

SUBJECT: Consumer Licensing

DATE: April 6, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 1444 modifies several areas regulated by the Department of Agriculture and Consumer Services (DACS), including:

- Implementing license fee waivers for veterans, veterans' spouses, and veterans' businesses;
- Updating the criminal background check processes for applicants and licensees under ch. 493, F.S., relating to private investigation, private security, and repossession services;
- Transferring the enforcement of the Commercial Weight-Loss Practices Act to the Department of Health;
- Allowing amusement ride operators to provide their own inspection form, and exempting specific rides from inspection requirements;
- Implementing a live-fire requirement for concealed weapon licensure;
- Streamlining renewal of concealed weapons licenses;
- Allowing notice of service to firearm or concealed weapon license holders by mail or e-mail;
- Allowing qualified tax collectors to print and deliver renewal firearm or concealed weapons licenses;
- Reducing application fees for firearm and concealed weapon licenses; and
- Clarifies that "recovery agencies" exclude agencies that refer repossessions to licensed recovery agents or agencies, but do not directly perform repossessions.

The bill has a significant impact on state funds. See Section V.

The effective date of the bill is July, 1, 2015.

**II. Present Situation:**

The Department of Agriculture and Consumer Services (DACS) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, pawnshops, health studios, sellers of travel, and telemarketing.<sup>1</sup> The Division of Licensing within the DACS is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.<sup>2</sup>

Florida has more than 1.6 million veteran residents<sup>3</sup> and 176,727 veteran-owned businesses.<sup>4</sup> The Department of Management Services has issued 384 service disabled veteran-owned business certifications.<sup>5</sup> As of July 1, 2014, both the Department of Business and Professional Regulation and the Department of Health implemented initial licensing fee waivers for veterans and their spouses.<sup>6</sup>

**III. Effect of Proposed Changes:**

**Licensing Fee Waivers**

The bill waives first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has a majority ownership stake on the following classes of licenses:

License	Current Initial Licensing Fee
Land Surveyor & Mapper	\$180 - \$255
Health Studio	\$300
Commercial Telephone Seller	\$1,500
Telemarketing Salesperson	\$50
Movers & Moving Broker	\$300

<sup>1</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services>, last accessed March 11, 2015.

<sup>2</sup> See <http://www.freshfromflorida.com/Divisions-Offices/Licensing>, last accessed March 11, 2015.

<sup>3</sup> Florida Department of Veterans’ Affairs, *Fast Facts*, [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50) (last accessed March 12, 2015).

<sup>4</sup> Small Business Administration, *Office of Advocacy, Veteran-owned Businesses and their Owners—Data from the Census Bureau’s Survey of Business Owners*, (March 2012). Available at <https://www.sba.gov/sites/default/files/393tot.pdf> (last accessed March 12, 2015).

<sup>5</sup> As of March 12, 2015. Florida Department of Management Services, *Certified Vendor Directory*, available at [https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity\\_code%5D=&directory%5Bcommodity\\_descripti on%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor\\_n ame%5D=](https://osd.dms.myflorida.com/directories/results?directory%5Bcommodity_code%5D=&directory%5Bcommodity_descripti on%5D=&directory%5Bcounty%5D=&directory%5Bdesignation%5D=Service+Disabled+Veteran&directory%5Bvendor_n ame%5D=) (last accessed March 12, 2015).

<sup>6</sup> Florida Department of Business and Professional Regulation, *Military and Veteran Spouses*, available at <http://www.myfloridalicense.com/dbpr/MilitarySpouse.html> (last accessed March 12, 2015); see also, Florida Department of Health, *Veterans*, available at <http://www.floridahealth.gov/licensing-and-regulation/armed-forces/veterans/index.html> (last accessed March 12, 2015).

Liquefied Petroleum Gas Related License	\$100 - \$525
Pawnbroker	\$300
Motor Vehicle Repair Shop	\$50 - \$300
Sellers of Travel	\$300-\$2,500

In addition, to qualify for the fee waiver, the veteran, his or her spouse, or business must submit an application for licensure within 60 months after the date of the veteran's discharge from the United States Armed Forces and provide a copy of his or her discharge paperwork; a valid marriage license where applicable; and proof of ownership interest where applicable.

**Section 1** amends s. 472.015, F.S. (surveyors and mappers), **Section 9** amends s. 501.015, F.S. (health studios), **Sections 12 and 13** amend ss. 501.605 and 501.607, F.S. (telemarketing), **Section 14** amends s. 507.03, F.S. (intrastate movers), **Section 15** amends s. 527.02, F.S. (liquefied petroleum gasoline), **Section 16** amends s. 539.001, F.S. (pawnbrokers), **Section 17** amends s. 559.904, F.S. (motor vehicle repair), and **Section 18** amends s. 559.928, F.S. (sellers of travel). The above mentioned sections waive first-time licensing application fees for an honorably discharged veteran of the United States Armed Forces, his or her spouse, or a business entity in which he or she has majority ownership.

### **Fingerprint Retention and Processing**

Private investigators, private security officers, and repossession services officers are regulated by the DACS pursuant to ch. 493, F.S. The DACS has 156,266 currently valid licenses issued pursuant to ch. 493, F.S.<sup>7</sup> Currently, applicants for licensure under ch. 493, F.S., must submit a full set of fingerprints for a background check conducted by the Florida Department of Law Enforcement (FDLE).<sup>8</sup> Once the initial background check has been performed by the FDLE, the licensees' fingerprints are discarded. This makes the DACS' duty to conduct ongoing investigations into its licensees' criminal activity<sup>9</sup> more difficult. The agency must perform a name-based search of arrest records and then perform further checks to ensure accurate identification.<sup>10</sup>

**Section 5** updates the background check processes by requiring the DACS to enroll applicants' fingerprints in the FDLE's Applicant Fingerprint Retention and Notification Program (AFRNP),<sup>11</sup> and in the Federal Bureau of Investigation's (FBI) Next Generation Identification (NGI) project, when the program is fully active.<sup>12</sup> This enables the FDLE to conduct ongoing,

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

<sup>8</sup> Section 493.6105(3)(j), F.S.

<sup>9</sup> Section 493.6118(1), F.S.

<sup>10</sup> Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>11</sup> Section 943.05, F.S. See also Florida Department of Law Enforcement, *Criminal History Record Checks/ Background Checks Fact Sheet* (February 1, 2015). Available at <http://www.fdle.state.fl.us/Content/Criminal-History/FAQ.aspx> (last accessed March 11, 2015).

<sup>12</sup> The FBI's NGI project is in development, but has not yet been implemented. The program will allow applicant's fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the



fingerprint-based, state and national background checks on ch. 493, F.S., licensees. The bill also requires the FDLE to report any arrest record it discovers to the DACS. In turn, the DACS must notify the licensee's employing agency of the arrest record.

In accordance with the changes made by section 4, **Section 3** requires initial applicants for licensure under ch. 493, F.S., to submit:

- A full set of fingerprints;
- A one-time fingerprint processing fee;
- An annual fingerprint retention fee to cover the cost of the FDLE's AFRNP;<sup>13</sup> and
- A one-time enrollment fee for enrollment of the fingerprints in the FBI's NGI project.

In addition, applicants for renewal of ch. 493, F.S., license are required by **Section 6** of the bill to submit:

- A full set of fingerprints, if the applicant held a valid license issued under ch. 493, F.S., before January 1, 2016;
- A one-time fingerprint processing fee;
- A renewal fee; and
- An annual fingerprint retention fee to cover the cost of the FDLE'S AFRNP.

Participation at the statewide level requires payment of an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the national level requires payment of a \$13.00 fee at the time of initial application to cover costs of fingerprint retention for as long as the license is valid.

In 2012, the U.S. Department of Justice removed the requirement that a permanent legal resident alien prove his or her residence in the state for 90 days to be able to purchase or own a firearm.<sup>14</sup> **Section 4** conforms s. 493.6106, F.S., specific to applicants for licensure under ch. 493, F.S., to this change.

**Sections 7 and 8** correct statutory cross-references.

### **Commercial Weight-Loss Clinics**

Currently, the DACS enforces the "Commercial Weight-Loss Practices Act (act)."<sup>15</sup> This act requires weight-loss providers to give consumers a Weight Loss Consumer Bill of Rights, disclose information about the provider and program, and provide itemized statements. Currently, dietetics, nutrition practices, and other weight-loss professions are regulated by the Department of Health.<sup>16</sup>

---

AFRNP in Florida. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>13</sup> Under the bill, the DACS must set the retention and enrollment fees by rule. The DACS states the annual retention fee will be \$6.00, and that the FBI enrollment fee will be \$13.00. Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>14</sup> See U.S. Department of Justice, *Questions and Answers – Revised ATF F4473*, (April, 2012), available at <http://www.atf.gov/files/regulations-rulings/rulings/atf-rulings/atf-ruling-2010-6.pdf> (last accessed March 11, 2015).

<sup>15</sup> Sections 501.057 – 501.0583, F.S.

<sup>16</sup> See chapter 468, part X, F.S.

**Sections 10 and 11** transfer enforcement of the Commercial Weight-Loss Practices Act to the Department of Health. The DACS has no enforcement authority or positions associated with the Commercial Weight-Loss Act to transfer to the Department of Health.

### **Amusement Ride Safety Standards**

Florida has approximately 245 amusement parks and 190 traveling amusement companies that are subject to inspection by the DACS.<sup>17</sup> These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks.<sup>18</sup> A temporary amusement ride must be inspected by the DACS each time it is moved or set up in a new location. Permanent rides are inspected semi-annually.<sup>19</sup> Additionally, parks subject to the regulations of the DACS must show proof of sufficient employee training and insurance.

**Section 19** exempts the following venues from s. 616.242, F.S, for amusement rides permitting, inspection, and insurance requirements:

- A water-related amusement ride operated as an incidental amenity to the core business of a lodging and food service establishment or membership campground that does not offer a day rate.
- An amusement ride operated as an incidental amenity to the primary business of a membership-only facility that does not offer a day rate.
- A permanent facility that is not open to the general public, and that is operated by a nonprofit corporation registered under ch. 496, F.S.

These exemptions are targeted at generally smaller water attractions or rides at hotels or campsites, private country clubs or playgrounds, and facilities run by, e.g. the YMCA (two non-profit facilities currently qualify for this exemption).<sup>20</sup>

The bill also allows owners or managers of amusement rides to request to use alternate inspections and employee training forms than those prescribed by departmental rules. This is allowed if the alternate form includes at least the information required by the prescribed form.

### **Recovery Agents and Agencies**

The DACS has approximately 857 licensed recovery agents and agent interns, and 343 licensed recovery agencies.<sup>21</sup> A “recovery agent” is an individual or agency that advertises as providing or performing repossessions.<sup>22</sup> Recovery agents are subject to regulation under part III of ch. 493, F.S. Banks, bank holding companies, credit unions, or small loan companies that operate

---

<sup>17</sup> Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*. Available at <http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Fair-Rides> (last accessed March 12, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Conversation with staff of the Department of Agriculture and Consumer Services, on March 6, 2015.

<sup>21</sup> Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, (February 28, 2015). Available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last accessed March 12, 2015).

pursuant to ch. 516 and 520; any consumer credit reporting agency regulated by 15 USC 1681; or any collection agency not engaged in repossessions are specifically excluded from the regulations of ch. 493.<sup>23</sup>

**Section 2** clarifies this exclusion in the definition of “recovery agency.”

### **Concealed Weapon and Firearm Licensing**

Under current law, certain concealed weapons or firearms pre-licensing course instructors must maintain records certifying that they observed their student safely handle and discharge a firearm. **Section 20** of this bill clarifies s. 790.06, F.S., to require that the instructor maintain records certifying that *while he or she was physically present*, the instructor observed the student safely handle and *actually* discharge (“live fire”) a firearm *using a firearm and ammunition as defined in s. 790.001, F.S.* This ensures that the instruction occurs in person rather than by video conference.

Subject to this section, application fees for concealed weapon and firearm licensure will be reduced from \$70 to \$60 for initial applicants, and from \$60 to \$50 for renewal applicants.

The bill also provides for notice of the suspension or revocation of a concealed weapon or firearm license by either the first-class mailing to the licensee’s last known mailing address furnished to the DACS, or by e-mail. For purposes of this section, the notice is considered complete at the time the e-mail is sent, or after 20 days from the deposit of the letter providing notice through the mail.

Currently, s. 790.06(11), F.S., requires a licensee who seeks to renew his or her firearm or concealed weapon license to submit a *notarized* affidavit stating that the licensee remains qualified for the license. **Section 20** of the bill amends s. 790.06(11), F.S., to require an affidavit *submitted under oath and under penalty of perjury* instead.

As of July 1, 2014, tax collectors who entered into a memorandum of understanding with the DACS may collect initial and renewal applications for firearms and concealed weapons permits. **Section 21** expands the qualified tax collectors’ capabilities to include the printing and delivery of a concealed weapon or firearm license to an individual who renews his or her license at the tax collector’s office. Tax collectors may collect fees for such services.

**Section 12** requires the owner, operator, officer, director, partner, or manager of a telephone solicitor business (commercial telephone seller) to provide a physical location of its telephone solicitor business on its application for licensure with the DACS, where previously a mail drop address could be provided.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****Procedural Due Process and Notice Requirements, Generally**

The Due Process Clauses of the Fifth and Fourteenth Amendments contemplate fair process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”<sup>21</sup> Three factors must be weighed to determine the degree to which due process protections apply:

- The private interest that will be affected;
- The risk of erroneous deprivation of such interest through the procedures used; and
- The government’s interest, including fiscal and administrative burdens of additional process.<sup>22</sup>

The DACS seeks to preserve the public records exemption of personal identifying information of an individual who applied for or received a firearm or concealed weapon license by substituting direct mail or e-mail for the publication of such information in general circulation newspapers as a method of notice.<sup>23</sup> Courts have not ruled directly on whether replacing notice by publication with notice by first class mail without proof of knowledge of receipt is sufficient procedural due process.<sup>24</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

See Private Sector Impact section below.

**B. Private Sector Impact:**

Under PCS/CS/SB 1444, veterans, spouses of veterans, and majority-owned veteran businesses will qualify for initial specific license fee waivers. Specific businesses will be exempt from amusement ride inspections and the costs associated therewith.

<sup>21</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>22</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

<sup>23</sup> See s. 790.0601, F.S.; Florida Department of Agriculture and Consumer Services, *Legislative Bill Analysis for HB 997* (March 3, 2015).

<sup>24</sup> *Anderson v. State*, 87 So. 3d 774, 776 (Fla. 2012).

Private investigators, private security guards, and recovery agents will be subject to additional fees due to fingerprint retention submission requirements.

Individuals seeking a first-time concealed weapon or firearm license will be subject to a \$60 application fee, reduced from \$70; renewal license fees will be \$50, reduced from \$60.

C. Government Sector Impact:

**Military Veterans**

The DACS estimates a reduction in revenue in the General Inspection Trust Fund generated from fee waivers related to military veterans and spouses in the following amounts:

	FY 2015-16	FY 2016-17	FY 2017-18
Military Veteran Fee Waiver	(\$49,350)	(\$49,350)	(\$49,350)

**Amusement Rides**

The department estimates the following reduced revenue from fees that will no longer be collected from organizations made exempt from regulation under this bill.

	FY 2015-16	FY 2016-17	FY 2017-18
Amusement Ride Fee Exemptions	(\$2,280)	(\$2,280)	(\$2,280)

**Fingerprint Retention**

The department estimates the following revenue increases from new fees related to fingerprint retention programs for private investigators, private security guards and recovery agents:

	FY 2015-16	FY 2016-17	FY 2017-18
Federal Fingerprint Retention Fees	\$1,543,406	\$1,543,406	\$471,423
State Fingerprint Retention Fees	\$1,037,166	\$1,037,166	\$689,496
<b>Total</b>	<b>\$2,580,572</b>	<b>\$2,580,572</b>	<b>\$1,160,919</b>

The fingerprint retention program at the state level requires applicants to pay an annual fee of \$6.00 for each year the license is valid. Participation in the fingerprint retention program at the federal level requires applicants to pay a \$13.00 fee at the time of initial application. These fees will be collected by the DACS and deposited into Division of Licensing Trust Fund where they will be disbursed to the FBI and the FDLE for the administration of fingerprint retention programs.

**Concealed Weapon Licenses**

The DACS estimates the following revenue reduction in the Division of Licensing Trust Fund due to the reduction in concealed weapon license (CWL) fees by \$10 each. The Division of Licensing within the DACS indicates that the reduced fee revenue is sufficient to continue to fund the program.

	FY 2015-16	FY 2016-17	FY 2017-18
New CWL Fee Reduction	(\$1,280,000)	(\$1,280,000)	(\$1,280,000)
Renewal CWL Fee Reduction	(\$1,103,050)	(\$1,743,740)	(\$1,397,430)
<b>Total:</b>	<b>(\$2,383,050)</b>	<b>(\$3,023,740)</b>	<b>(\$2,677,430)</b>

**Concealed Weapons License Notice of Service of Process**

The department estimates the following reduced expenditures in the Division of Licensing Trust Fund relating to publishing costs associated with notification of revocation or suspension of concealed weapon licenses:

	FY 2015-16	FY 2016-17	FY 2017-18
CWL Notice of Service of Process	(\$158,948)	(\$158,948)	(\$158,948)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 472.015, 493.6101, 493.6105, 493.6106, 493.6108, 493.6113, 493.6115, 493.6118, 501.015, 501.0581, 501.0583, 501.605, 501.607, 507.03, 527.02, 539.001, 559.904, 559.928, 616.242, 790.06, and 790.0625.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:**

The committee substitute clarifies that individuals or agencies not directly performing repossessions, but who contract with a licensed recovery agency or agent for performance of repossessions, do not fall under the regulatory authority in ch. 493, F.S. Additionally, the committee substitute requires referral repossession services to state on any advertisement, that they do not directly perform any repossessions.

**CS by Commerce and Tourism on March 16, 2015:**

Reduces initial application fees for concealed weapon and firearm licenses from \$70 to \$60, and renewal fees from \$60 to \$50.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



776594

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 142 and 143

insert:

Section 2. Subsection (20) of section 493.6101, Florida  
Statutes, is amended to read:

493.6101 Definitions.—

(20) "Recovery agency" means any person who, for  
consideration, advertises as providing or is engaged in the  
business of performing repossessions. The term does not include





776594

11 a person who does not directly perform repossessions, and who,  
12 pursuant to a contract with a bank, bank holding company, credit  
13 union, or small loan company operating pursuant to chapters 516  
14 and 520, contracts with a licensed recovery agency or a licensed  
15 recovery agent for the performance of repossessions by such  
16 agency or agent, if such person includes a disclaimer in all  
17 advertisements appearing in this state which states that the  
18 person does not directly perform any repossessions, but  
19 contracts with licensed recovery agents or agencies.

20  
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 7

24 and insert:

25 by such a veteran or spouse; amending s. 493.6101,  
26 F.S.; revising the definition of the term "recovery  
27 agency"; amending s. 493.6105,



751524

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 579 and 580

insert:

Section 18. Section 570.695, Florida Statutes, is created  
to read:

570.695 Florida veteran identification card.—Beginning on  
January 1, 2016, the department may issue Florida veteran  
identification cards. Each card must bear a color photograph of  
the card holder for verification purposes.



751524

11           (1) The department shall issue a Florida veteran  
12 identification card to any applicant who is a veteran as defined  
13 in s. 1.01(14), resides in this state, submits a completed  
14 application provided by the department with accompanying  
15 documents, and pays the application fee.

16           (2) The application shall be limited to the following:

17           (a) Full name (first, middle or maiden, and last);

18           (b) Mailing address;

19           (c) Branch of service;

20           (d) Optional contact telephone number or e-mail address;

21 and

22           (e) Statement regarding Florida residency.

23           (3) The application must be signed and verified by an  
24 individual under oath as provided in s. 92.525(2).

25           (4) The applicant shall submit all of the following  
26 documents to the department:

27           (a) A completed application.

28           (b) A copy of the applicant's DD Form 214, DD Form 256, or  
29 WD AGO, issued by the United States Department of Defense, which  
30 displays the applicant's discharge status. Alternatively, an  
31 applicant may provide a copy of his or her valid Florida driver  
32 license bearing a "V" or "Veteran" designation.

33           (c) A full frontal color photograph of the applicant taken  
34 within the preceding 90 days in which the head, including hair,  
35 measures 7/8 of an inch wide and 1 1/8 inches high.

36           (5) An applicant must submit a fee of \$15 to cover the cost  
37 of issuing the license with any balance distributed to Friends  
38 of Florida State Forests, Inc., for the sole purpose of  
39 supporting the Operation Outdoor Freedom.



751524

40 (6) Upon receipt of the fee and the documents listed in  
41 subsection (4), the department shall:

42 (a) Issue the Florida veteran identification card; or

43 (b) Return the application as incomplete and allow the  
44 applicant to resubmit it. The application fee shall be refunded  
45 to an applicant who requests a refund based on inability to  
46 provide a completed application. The determination of the  
47 department that an application is incomplete is not subject to  
48 the requirements contained in chapter 120.

49 (7) A Florida veteran identification card does not expire.  
50 If the card is lost, a replacement card shall be issued provided  
51 the applicant meets the requirements of this section.

52 (8) All moneys required to be paid under this section shall  
53 be collected by the department and deposited into the Division  
54 of Licensing Trust Fund. Notwithstanding s. 493.6117, all moneys  
55 collected pursuant to this section shall not revert to the  
56 General Revenue Fund; however, this shall not abrogate the  
57 requirement for payment of the service charge imposed pursuant  
58 to chapter 215.

59 Section 19. For the 2015-2016 fiscal year, the sums of  
60 \$114,018 in recurring funds and \$140,282 in nonrecurring funds  
61 are appropriated from the Division of Licensing Trust Fund to  
62 the Department of Agriculture and Consumer Services, and one  
63 full-time equivalent position with associated salary rate of  
64 31,109 is authorized, for the purpose of implementing section 18  
65 of this act.

66  
67 ===== T I T L E A M E N D M E N T =====

68 And the title is amended as follows:



751524

69           Delete line 81  
70 and insert:  
71           by such a veteran or spouse; creating 570.695, F.S.;  
72           authorizing the department to issue Florida veteran  
73           identification cards; providing application  
74           requirements; specifying an application fee amount;  
75           providing an appropriation; amending s. 616.242,



854928

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2015	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 917 and 918

insert:

Section 21. Subsection (4) is added to section 790.15,  
Florida Statutes, to read:

790.15 Discharging firearm in public or on residential  
property.—

(4) Any person recreationally discharging a firearm  
outdoors, including target shooting or celebratory shooting, in



854928

11 an area that the person knows or reasonably should know is  
12 primarily residential in nature and that has a residential  
13 density of one or more dwelling units per acre, commits a  
14 misdemeanor of the first degree, punishable as provided in s.  
15 775.082 or s. 775.083. This subsection does not apply:

16 (a) To a person lawfully defending life or property or  
17 performing official duties requiring the discharge of a firearm;  
18 or

19 (b) If, under the circumstances, the discharge does not  
20 pose a reasonably foreseeable risk to life, safety, or property.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 108

25 and insert:

26 licenses; amending s. 790.15, F.S.; prohibiting the  
27 recreational discharge of a firearm in certain  
28 residential areas; providing criminal penalties;  
29 providing exceptions; providing an effective date.

By the Committee on Commerce and Tourism; and Senator Richter

577-02332-15

20151444c1

1 A bill to be entitled  
 2 An act relating to consumer licensing; amending s.  
 3 472.015, F.S.; waiving the initial land surveying and  
 4 mapping license fee for certain veterans of the United  
 5 States Armed Forces, the spouses of such veterans, or  
 6 a business entity that has a majority ownership held  
 7 by such a veteran or spouse; amending s. 493.6105,  
 8 F.S.; requiring that the initial license application  
 9 for private investigative, private security, and  
 10 repossession services include payment of fingerprint  
 11 processing and fingerprint retention fees; amending s.  
 12 493.6106, F.S.; deleting a requirement for additional  
 13 documentation establishing state residency for private  
 14 investigative, private security, and repossession  
 15 service licenses; amending s. 493.6108, F.S.;  
 16 directing the Department of Law Enforcement to retain  
 17 fingerprints submitted for private investigative,  
 18 private security, and repossession service licenses,  
 19 to enter such fingerprints into the statewide  
 20 automated biometric identification system and the  
 21 national retained print arrest notification program,  
 22 and to report any arrest record information to the  
 23 Department of Agriculture and Consumer Services;  
 24 directing the Department of Agriculture and Consumer  
 25 Services to provide information about an arrest within  
 26 the state to the agency that employs the licensee;  
 27 amending s. 493.6113, F.S.; requiring a person holding  
 28 a private investigative, private security, or  
 29 repossession service license issued before a certain

Page 1 of 32

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

30 date to submit upon first renewal of the license a  
 31 full set of fingerprints and a fingerprint processing  
 32 fee to cover the cost of entering the fingerprints in  
 33 the statewide automated biometric identification  
 34 system; amending ss. 493.6115 and 493.6118, F.S.;  
 35 conforming cross-references; amending s. 501.015,  
 36 F.S.; waiving the initial health studio registration  
 37 fee for certain veterans of the United States Armed  
 38 Forces, the spouses of such veterans, or a business  
 39 entity that has a majority ownership held by such a  
 40 veteran or spouse; amending s. 501.0581, F.S.;  
 41 transferring enforcement authority of the Florida  
 42 Commercial Weight-Loss Practices Act from the  
 43 Department of Agriculture and Consumer Services to the  
 44 Department of Health; amending s. 501.0583, F.S.;  
 45 transferring enforcement authority of penalties for  
 46 selling, delivering, bartering, furnishing, or giving  
 47 weight-loss pills to persons under the age of 18 from  
 48 the Department of Agriculture and Consumer Services to  
 49 the Department of Health; amending s. 501.605, F.S.;  
 50 prohibiting the use of a mail drop as a street address  
 51 for the principal location of a commercial telephone  
 52 seller; amending s. 501.607, F.S.; waiving the initial  
 53 salesperson license fees for certain veterans of the  
 54 United States Armed Forces, the spouses of such  
 55 veterans, or a business entity that has a majority  
 56 ownership held by such a veteran or spouse; amending  
 57 s. 507.03, F.S.; waiving the initial registration fee  
 58 for an intrastate movers license for certain veterans

Page 2 of 32

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



577-02332-15

20151444c1

59 of the United States Armed Forces, the spouses of such  
 60 veterans, or a business entity that has a majority  
 61 ownership held by such a veteran or spouse; amending  
 62 s. 527.02, F.S.; waiving the original liquefied  
 63 petroleum gas dealer license fee for certain veterans  
 64 of the United States Armed Forces, the spouses of such  
 65 veterans, or a business entity that has a majority  
 66 ownership held by such a veteran or spouse; amending  
 67 s. 539.001, F.S.; waiving the initial pawnbroker  
 68 license fee for certain veterans of the United States  
 69 Armed Forces, the spouses of such veterans, or a  
 70 business entity that has a majority ownership held by  
 71 such a veteran or spouse; amending s. 559.904, F.S.;  
 72 waiving the initial motor vehicle repair shop  
 73 registration fee for certain veterans of the United  
 74 States Armed Forces, the spouses of such veterans, or  
 75 a business entity that has a majority ownership held  
 76 by such a veteran or spouse; amending s. 559.928,  
 77 F.S.; waiving the initial seller of travel  
 78 registration fee for certain veterans of the United  
 79 States Armed Forces, the spouses of such veterans, or  
 80 a business entity that has a majority ownership held  
 81 by such a veteran or spouse; amending s. 616.242,  
 82 F.S.; deleting an obsolete provision allowing fair  
 83 owners to post a bond rather than carry a certificate  
 84 of insurance; exempting water-related amusement rides  
 85 operated by lodging and food service establishments  
 86 and membership campgrounds, amusement rides at  
 87 private, membership-only facilities, and nonprofit

Page 3 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

88 permanent facilities from certain safety standards;  
 89 authorizing owners or managers of amusement rides to  
 90 use alternate forms to record employee training and  
 91 ride inspections; amending s. 790.06, F.S.; requiring  
 92 firearm course instructors to maintain records  
 93 attesting to the use of live fire with specified  
 94 firearms and ammunition by students in his or her  
 95 physical presence; revising the initial and renewal  
 96 fees for a concealed weapon or firearm license;  
 97 requiring notice of the suspension or revocation of a  
 98 concealed weapon or firearm license or the suspension  
 99 of the processing of an application for such license  
 100 to be given by personal delivery, first-class mail, or  
 101 e-mail; requiring concealed weapon or firearm license  
 102 renewals to include an affidavit submitted under oath  
 103 and under penalty of perjury; amending s. 790.0625,  
 104 F.S.; authorizing certain tax collector offices, upon  
 105 approval and confirmation of license issuance by the  
 106 Department of Agriculture and Consumer Services, to  
 107 print and deliver concealed weapon or firearm  
 108 licenses; providing an effective date.

109  
 110 Be It Enacted by the Legislature of the State of Florida:

111  
 112 Section 1. Subsection (3) of section 472.015, Florida  
 113 Statutes, is amended to read:

114 472.015 Licensure.—

115 (3) (a) Before the issuance of any license, the department  
 116 may charge an initial license fee as determined by rule of the

Page 4 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

117 board. Upon receipt of the appropriate license fee, except as  
 118 provided in subsection (6), the department shall issue a license  
 119 to any person certified by the board, or its designee, as having  
 120 met the applicable requirements imposed by law or rule. However,  
 121 an applicant who is not otherwise qualified for licensure is not  
 122 entitled to licensure solely based on a passing score on a  
 123 required examination.

124 (b) The department shall waive the initial license fee for  
 125 an honorably discharged veteran of the United States Armed  
 126 Forces, the spouse of such a veteran, or a business entity that  
 127 has a majority ownership held by such a veteran or spouse if the  
 128 department receives an application, in a format prescribed by  
 129 the department, within 60 months after the date of the veteran's  
 130 discharge from any branch of the United States Armed Forces. To  
 131 qualify for the waiver, a veteran must provide to the department  
 132 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 133 veteran must provide to the department a copy of the veteran's  
 134 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 135 license or certificate verifying that he or she was lawfully  
 136 married to the veteran at the time of discharge; or a business  
 137 entity must provide to the department proof that a veteran or  
 138 the spouse of a veteran holds a majority ownership in the  
 139 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 140 and, if applicable, a copy of a valid marriage license or  
 141 certificate verifying that the spouse of the veteran was  
 142 lawfully married to the veteran at the time of discharge.

143 Section 2. Paragraph (j) of subsection (3) of section  
 144 493.6105, Florida Statutes, is amended to read:  
 145 493.6105 Initial application for license.-

Page 5 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

146 (3) The application must contain the following information  
 147 concerning the individual signing the application:

148 (j) A full set of fingerprints, a fingerprint processing  
 149 fee, and a fingerprint retention fee to cover the cost of  
 150 retaining the fingerprints in the statewide automated biometric  
 151 identification system pursuant to s. 493.6108(2) (a) and the cost  
 152 of enrolling the fingerprints in the national retained print  
 153 arrest notification program when the program is operational and  
 154 the Department of Law Enforcement begins participation. The  
 155 fingerprint processing and retention fees shall ~~to~~ be  
 156 established by rule of the department based upon costs  
 157 determined by state and federal agency charges and department  
 158 processing costs. An applicant who has, within the immediately  
 159 preceding 6 months, submitted such fingerprints and ~~fees~~ fees for  
 160 licensing purposes under this chapter and who still holds a  
 161 valid license is not required to submit another set of  
 162 fingerprints or another fingerprint processing fee. An applicant  
 163 who holds multiple licenses issued under this chapter is  
 164 required to pay only a single fingerprint retention fee.

165 Section 3. Paragraph (f) of subsection (1) of section  
 166 493.6106, Florida Statutes, is amended to read:

167 493.6106 License requirements; posting.-

168 (1) Each individual licensed by the department must:

169 (f) Be a citizen or permanent legal resident alien of the  
 170 United States or have appropriate authorization issued by the  
 171 United States Citizenship and Immigration Services of the United  
 172 States Department of Homeland Security.

173 1. An applicant for a Class "C," Class "CC," Class "D,"  
 174 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class

Page 6 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

175 "MB," Class "MR," or Class "RI" license who is not a United  
 176 States citizen must submit proof of current employment  
 177 authorization issued by the United States Citizenship and  
 178 Immigration Services or proof that she or he is deemed a  
 179 permanent legal resident alien by the United States Citizenship  
 180 and Immigration Services.

181 2. An applicant for a Class "G" or Class "K" license who is  
 182 not a United States citizen must submit proof that she or he is  
 183 deemed a permanent legal resident alien by the United States  
 184 Citizenship and Immigration Services, ~~together with additional~~  
 185 ~~documentation establishing that she or he has resided in the~~  
 186 ~~state of residence shown on the application for at least 90~~  
 187 ~~consecutive days before the date that the application is~~  
 188 ~~submitted.~~

189 3. An applicant for an agency or school license who is not  
 190 a United States citizen or permanent legal resident alien must  
 191 submit documentation issued by the United States Citizenship and  
 192 Immigration Services stating that she or he is lawfully in the  
 193 United States and is authorized to own and operate the type of  
 194 agency or school for which she or he is applying. An employment  
 195 authorization card issued by the United States Citizenship and  
 196 Immigration Services is not sufficient documentation.

197 Section 4. Subsections (2) and (3) of section 493.6108,  
 198 Florida Statutes, are renumbered as subsections (3) and (4),  
 199 respectively, and a new subsection (2) is added to that section,  
 200 to read:

201 493.6108 Investigation of applicants by Department of  
 202 Agriculture and Consumer Services.—

203 (2) (a) The Department of Law Enforcement shall retain and

577-02332-15

20151444c1

204 enter into the statewide automated biometric identification  
 205 system authorized under s. 943.05 all fingerprints submitted to  
 206 the department pursuant to this chapter. The Department of Law  
 207 Enforcement shall enroll such fingerprints in the national  
 208 retained print arrest notification program when the program is  
 209 operational and the Department of Law Enforcement begins  
 210 participation. Thereafter, the fingerprints shall be available  
 211 for arrest notifications required by paragraph (b) and all  
 212 purposes and uses authorized for arrest fingerprints entered  
 213 into the statewide automated biometric identification system.

214 (b) The Department of Law Enforcement shall search all  
 215 arrest fingerprints against fingerprints retained pursuant to  
 216 paragraph (a) and report any arrest record identified by the  
 217 Department of Law Enforcement or the Federal Bureau of  
 218 Investigation to the department. If the department receives  
 219 information about an arrest within the state of a person who  
 220 holds a valid license issued under this chapter for a crime that  
 221 could potentially disqualify the person from holding such a  
 222 license, the department shall provide the arrest information to  
 223 the agency that employs the licensee.

224 Section 5. Subsection (3) of section 493.6113, Florida  
 225 Statutes, is amended to read:

226 493.6113 Renewal application for licensure.—

227 (3) (a) Each licensee is responsible for renewing his or her  
 228 license on or before its expiration by filing with the  
 229 department an application for renewal accompanied by payment of  
 230 the renewal fee and the fingerprint retention fee to cover the  
 231 cost of ongoing retention in the statewide automated biometric  
 232 identification system ~~prescribed license fee.~~

577-02332-15

20151444c1

233 (b) In addition to the fees specified in paragraph (a), a  
 234 person holding a valid license issued under this chapter before  
 235 January 1, 2016, must submit upon first renewal of the license a  
 236 full set of fingerprints and a fingerprint processing fee to  
 237 cover the cost of entering the fingerprints into the statewide  
 238 automated biometric identification system pursuant to s.  
 239 493.6108(2)(a). Subsequent renewals may be completed without  
 240 submission of a set of fingerprints.

241 ~~(c)(a)~~ Each Class "B" licensee shall additionally submit on  
 242 a form prescribed by the department a certification of insurance  
 243 that evidences that the licensee maintains coverage as required  
 244 under s. 493.6110.

245 ~~(d)(b)~~ Each Class "G" licensee shall additionally submit  
 246 proof that he or she has received during each year of the  
 247 license period a minimum of 4 hours of firearms recertification  
 248 training taught by a Class "K" licensee and has complied with  
 249 such other health and training requirements that the department  
 250 shall adopt by rule. Proof of completion of firearms  
 251 recertification training shall be submitted to the department  
 252 upon completion of the training. If the licensee fails to  
 253 complete the required 4 hours of annual training during the  
 254 first year of the 2-year term of the license, the license shall  
 255 be automatically suspended. The licensee must complete the  
 256 minimum number of hours of range and classroom training required  
 257 at the time of initial licensure and submit proof of completion  
 258 of such training to the department before the license may be  
 259 reinstated. If the licensee fails to complete the required 4  
 260 hours of annual training during the second year of the 2-year  
 261 term of the license, the licensee must complete the minimum

Page 9 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

262 number of hours of range and classroom training required at the  
 263 time of initial licensure and submit proof of completion of such  
 264 training to the department before the license may be renewed.  
 265 The department may waive the firearms training requirement if:

266 1. The applicant provides proof that he or she is currently  
 267 certified as a law enforcement officer or correctional officer  
 268 under the Criminal Justice Standards and Training Commission and  
 269 has completed law enforcement firearms requalification training  
 270 annually during the previous 2 years of the licensure period;

271 2. The applicant provides proof that he or she is currently  
 272 certified as a federal law enforcement officer and has received  
 273 law enforcement firearms training administered by a federal law  
 274 enforcement agency annually during the previous 2 years of the  
 275 licensure period; or

276 3. The applicant submits a valid firearm certificate among  
 277 those specified in s. 493.6105(6)(a) and provides proof of  
 278 having completed requalification training during the previous 2  
 279 years of the licensure period.

280 ~~(e)(e)~~ Each Class "DS" or Class "RS" licensee shall  
 281 additionally submit the current curriculum, examination, and  
 282 list of instructors.

283 ~~(f)(d)~~ Each Class "K" licensee shall additionally submit  
 284 one of the certificates specified under s. 493.6105(6) as proof  
 285 that he or she remains certified to provide firearms  
 286 instruction.

287 Section 6. Subsection (6) of section 493.6115, Florida  
 288 Statutes, is amended to read:

289 493.6115 Weapons and firearms.—

290 (6) In addition to any other firearm approved by the

Page 10 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15 20151444c1

291 department, a licensee who has been issued a Class "G" license  
 292 may carry a .38 caliber revolver; or a .380 caliber or 9  
 293 millimeter semiautomatic pistol; or a .357 caliber revolver with  
 294 .38 caliber ammunition only; or a .40 caliber handgun; or a .45  
 295 ACP handgun while performing duties authorized under this  
 296 chapter. A licensee may not carry more than two firearms upon  
 297 her or his person when performing her or his duties. A licensee  
 298 may only carry a firearm of the specific type and caliber with  
 299 which she or he is qualified pursuant to the firearms training  
 300 referenced in subsection (8) or s. 493.6113(3)(d)  
 301 ~~493.6113(3)(b)~~.

302 Section 7. Paragraph (u) of subsection (1) of section  
 303 493.6118, Florida Statutes, is amended to read:

304 493.6118 Grounds for disciplinary action.—

305 (1) The following constitute grounds for which disciplinary  
 306 action specified in subsection (2) may be taken by the  
 307 department against any licensee, agency, or applicant regulated  
 308 by this chapter, or any unlicensed person engaged in activities  
 309 regulated under this chapter.

310 (u) For a Class "G" licensee, failing to timely complete  
 311 recertification training as required in s. 493.6113(3)(d)  
 312 ~~493.6113(3)(b)~~.

313 Section 8. Subsection (2) of section 501.015, Florida  
 314 Statutes, is amended to read:

315 501.015 Health studios; registration requirements and  
 316 fees.—Each health studio shall:

317 (2) Remit an annual registration fee of \$300 to the  
 318 department at the time of registration for each of the health  
 319 studio's business locations. The department shall waive the

577-02332-15 20151444c1

320 initial registration fee for an honorably discharged veteran of  
 321 the United States Armed Forces, the spouse of such a veteran, or  
 322 a business entity that has a majority ownership held by such a  
 323 veteran or spouse if the department receives an application, in  
 324 a format prescribed by the department, within 60 months after  
 325 the date of the veteran's discharge from any branch of the  
 326 United States Armed Forces. To qualify for the waiver, a veteran  
 327 must provide to the department a copy of his or her DD Form 214  
 328 or NGB Form 22; the spouse of a veteran must provide to the  
 329 department a copy of the veteran's DD Form 214 or NGB Form 22  
 330 and a copy of a valid marriage license or certificate verifying  
 331 that he or she was lawfully married to the veteran at the time  
 332 of discharge; or a business entity must provide to the  
 333 department proof that a veteran or the spouse of a veteran holds  
 334 a majority ownership in the business, a copy of the veteran's DD  
 335 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
 336 marriage license or certificate verifying that the spouse of the  
 337 veteran was lawfully married to the veteran at the time of  
 338 discharge.

339 Section 9. Subsections (1) and (2) of section 501.0581,  
 340 Florida Statutes, are amended to read:

341 501.0581 Commercial Weight-Loss Practices Act; civil  
 342 remedies.—

343 (1) The Department of ~~Health Agriculture and Consumer~~  
 344 ~~Services~~ may bring a civil action in circuit court for temporary  
 345 or permanent injunctive relief to enforce ~~the provisions of this~~  
 346 act and may seek other appropriate civil relief, including a  
 347 civil penalty not to exceed \$5,000 for each violation, for  
 348 restitution and damages for injured customers, court costs, and

577-02332-15

20151444c1

349 reasonable ~~attorney attorney's~~ fees.

350 (2) The Department of ~~Health Agriculture and Consumer~~  
 351 ~~Services~~ may terminate any investigation or action upon  
 352 agreement by the offender to pay a stipulated civil penalty,  
 353 make restitution or pay damages to customers, or satisfy any  
 354 other relief authorized herein and requested by the department.

355 Section 10. Subsection (3) of section 501.0583, Florida  
 356 Statutes, is amended to read:

357 501.0583 Selling, delivering, bartering, furnishing, or  
 358 giving weight-loss pills to persons under age 18; penalties;  
 359 defense.—

360 (3) A first violation of subsection (2) or this subsection  
 361 is punishable by a fine of \$100. A second violation of  
 362 subsection (2) or this subsection is punishable by a fine of  
 363 \$250. A third violation of subsection (2) or this subsection is  
 364 punishable by a fine of \$500. A fourth or subsequent violation  
 365 of subsection (2) or this subsection is punishable by a fine as  
 366 determined by the Department of ~~Health Agriculture and Consumer~~  
 367 ~~Services~~, not to exceed \$1,000.

368 Section 11. Paragraph (j) of subsection (2) and paragraph  
 369 (b) of subsection (5) of section 501.605, Florida Statutes, are  
 370 amended to read:

371 501.605 Licensure of commercial telephone sellers.—

372 (2) An applicant for a license as a commercial telephone  
 373 seller must submit to the department, in such form as it  
 374 prescribes, a written application for the license. The  
 375 application must set forth the following information:

376 (j) The complete street address of each location,  
 377 designating the principal location, from which the applicant

577-02332-15

20151444c1

378 will be doing business. The street address may not be ~~if any~~  
 379 ~~location is a mail drop, this shall be disclosed as such.~~

380  
 381 The application shall be accompanied by a copy of any: Script,  
 382 outline, or presentation the applicant will require or suggest a  
 383 salesperson to use when soliciting, or, if no such document is  
 384 used, a statement to that effect; sales information or  
 385 literature to be provided by the applicant to a salesperson; and  
 386 sales information or literature to be provided by the applicant  
 387 to a purchaser in connection with any solicitation.

388 (5) An application filed pursuant to this part must be  
 389 verified and accompanied by:

390 (b) A fee for licensing in the amount of \$1,500. The fee  
 391 shall be deposited into the General Inspection Trust Fund. The  
 392 department shall waive the initial licensing fee for an  
 393 honorably discharged veteran of the United States Armed Forces,  
 394 the spouse of such a veteran, or a business entity that has a  
 395 majority ownership held by such a veteran or spouse if the  
 396 department receives an application, in a format prescribed by  
 397 the department, within 60 months after the date of the veteran's  
 398 discharge from any branch of the United States Armed Forces. To  
 399 qualify for the waiver, a veteran must provide to the department  
 400 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 401 veteran must provide to the department a copy of the veteran's  
 402 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 403 license or certificate verifying that he or she was lawfully  
 404 married to the veteran at the time of discharge; or a business  
 405 entity must provide to the department proof that a veteran or  
 406 the spouse of a veteran holds a majority ownership in the

577-02332-15

20151444c1

407 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 408 and, if applicable, a copy of a valid marriage license or  
 409 certificate verifying that the spouse of the veteran was  
 410 lawfully married to the veteran at the time of discharge.

411 Section 12. Paragraph (b) of subsection (2) of section  
 412 501.607, Florida Statutes, is amended to read:

413 501.607 Licensure of salespersons.—

414 (2) An application filed pursuant to this section must be  
 415 verified and be accompanied by:

416 (b) A fee for licensing in the amount of \$50 per  
 417 salesperson. The fee shall be deposited into the General  
 418 Inspection Trust Fund. The fee for licensing may be paid after  
 419 the application is filed, but must be paid within 14 days after  
 420 the applicant begins work as a salesperson. The department shall  
 421 waive the initial licensing fee for an honorably discharged  
 422 veteran of the United States Armed Forces, the spouse of such a  
 423 veteran, or a business entity that has a majority ownership held  
 424 by such a veteran or spouse if the department receives an  
 425 application, in a format prescribed by the department, within 60  
 426 months after the date of the veteran's discharge from any branch  
 427 of the United States Armed Forces. To qualify for the waiver, a  
 428 veteran must provide to the department a copy of his or her DD  
 429 Form 214 or NGB Form 22; the spouse of a veteran must provide to  
 430 the department a copy of the veteran's DD Form 214 or NGB Form  
 431 22 and a copy of a valid marriage license or certificate  
 432 verifying that he or she was lawfully married to the veteran at  
 433 the time of discharge; or a business entity must provide to the  
 434 department proof that a veteran or the spouse of a veteran holds  
 435 a majority ownership in the business, a copy of the veteran's DD

Page 15 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

436 Form 214 or NGB Form 22, and, if applicable, a copy of a valid  
 437 marriage license or certificate verifying that the spouse of the  
 438 veteran was lawfully married to the veteran at the time of  
 439 discharge.

440 Section 13. Subsection (3) of section 507.03, Florida  
 441 Statutes, is amended to read:

442 507.03 Registration.—

443 (3) (a) Registration fees shall be calculated at the rate of  
 444 \$300 per year per mover or moving broker. All amounts collected  
 445 shall be deposited by the Chief Financial Officer to the credit  
 446 of the General Inspection Trust Fund of the department for the  
 447 sole purpose of administration of this chapter.

448 (b) The department shall waive the initial registration fee  
 449 for an honorably discharged veteran of the United States Armed  
 450 Forces, the spouse of such a veteran, or a business entity that  
 451 has a majority ownership held by such a veteran or spouse if the  
 452 department receives an application, in a format prescribed by  
 453 the department, within 60 months after the date of the veteran's  
 454 discharge from any branch of the United States Armed Forces. To  
 455 qualify for the waiver, a veteran must provide to the department  
 456 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 457 veteran must provide to the department a copy of the veteran's  
 458 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 459 license or certificate verifying that he or she was lawfully  
 460 married to the veteran at the time of discharge; or a business  
 461 entity must provide to the department proof that a veteran or  
 462 the spouse of a veteran holds a majority ownership in the  
 463 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 464 and, if applicable, a copy of a valid marriage license or

Page 16 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

465 certificate verifying that the spouse of the veteran was  
 466 lawfully married to the veteran at the time of discharge.

467 Section 14. Subsection (3) of section 527.02, Florida  
 468 Statutes, is amended to read:

469 527.02 License; penalty; fees.—

470 (3) (a) An ~~Any~~ applicant for an original license who submits  
 471 an ~~whose~~ application ~~is submitted~~ during the last 6 months of  
 472 the license year may have the original license fee reduced by  
 473 one-half for the 6-month period. This provision applies ~~shall~~  
 474 ~~apply~~ only to those companies applying for an original license  
 475 and may ~~shall~~ not be applied to licensees who held a license  
 476 during the previous license year and failed to renew the  
 477 license. The department may refuse to issue an initial license  
 478 to an ~~any~~ applicant who is under investigation in any  
 479 jurisdiction for an action that would constitute a violation of  
 480 this chapter until such time as the investigation is complete.

481 (b) The department shall waive the original license fee for  
 482 an honorably discharged veteran of the United States Armed  
 483 Forces, the spouse of such a veteran, or a business entity that  
 484 has a majority ownership held by such a veteran or spouse if the  
 485 department receives an application, in a format prescribed by  
 486 the department, within 60 months after the date of the veteran's  
 487 discharge from any branch of the United States Armed Forces. To  
 488 qualify for the waiver, a veteran must provide to the department  
 489 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 490 veteran must provide to the department a copy of the veteran's  
 491 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 492 license or certificate verifying that he or she was lawfully  
 493 married to the veteran at the time of discharge; or a business

577-02332-15

20151444c1

494 entity must provide to the department proof that a veteran or  
 495 the spouse of a veteran holds a majority ownership in the  
 496 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 497 and, if applicable, a copy of a valid marriage license or  
 498 certificate verifying that the spouse of the veteran was  
 499 lawfully married to the veteran at the time of discharge.

500 Section 15. Paragraph (c) of subsection (3) of section  
 501 539.001, Florida Statutes, is amended to read:

502 539.001 The Florida Pawnbroking Act.—

503 (3) LICENSE REQUIRED.—

504 (c) Each license is valid for a period of 1 year unless it  
 505 is earlier relinquished, suspended, or revoked. Each license  
 506 shall be renewed annually, and each licensee shall, initially  
 507 and annually thereafter, pay to the agency a license fee of \$300  
 508 for each license held. The agency shall waive the initial  
 509 license fee for an honorably discharged veteran of the United  
 510 States Armed Forces, the spouse of such a veteran, or a business  
 511 entity that has a majority ownership held by such a veteran or  
 512 spouse if the agency receives an application, in a format  
 513 prescribed by the agency, within 60 months after the date of the  
 514 veteran's discharge from any branch of the United States Armed  
 515 Forces. To qualify for the waiver, a veteran must provide to the  
 516 department a copy of his or her DD Form 214 or NGB Form 22; the  
 517 spouse of a veteran must provide to the agency a copy of the  
 518 veteran's DD Form 214 or NGB Form 22 and a copy of a valid  
 519 marriage license or certificate verifying that he or she was  
 520 lawfully married to the veteran at the time of discharge; or a  
 521 business entity must provide to the agency proof that a veteran  
 522 or the spouse of a veteran holds a majority ownership in the



577-02332-15

20151444c1

523 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 524 and, if applicable, a copy of a valid marriage license or  
 525 certificate verifying that the spouse of the veteran was  
 526 lawfully married to the veteran at the time of discharge.

527 Section 16. Subsection (3) of section 559.904, Florida  
 528 Statutes, is amended to read:

529 559.904 Motor vehicle repair shop registration;  
 530 application; exemption.—

531 (3) (a) Each application for registration must be  
 532 accompanied by a registration fee calculated on a per-year basis  
 533 as follows:

- 534 1. ~~(a)~~ If the place of business has 1 to 5 employees: \$50.  
 535 2. ~~(b)~~ If the place of business has 6 to 10 employees: \$150.  
 536 3. ~~(c)~~ If the place of business has 11 or more employees:  
 537 \$300.

538 (b) The department shall waive the initial registration fee  
 539 for an honorably discharged veteran of the United States Armed  
 540 Forces, the spouse of such a veteran, or a business entity that  
 541 has a majority ownership held by such a veteran or spouse if the  
 542 department receives an application, in a format prescribed by  
 543 the department, within 60 months after the date of the veteran's  
 544 discharge from any branch of the United States Armed Forces. To  
 545 qualify for the waiver, a veteran must provide to the department  
 546 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 547 veteran must provide to the department a copy of the veteran's  
 548 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 549 license or certificate verifying that he or she was lawfully  
 550 married to the veteran at the time of discharge; or a business  
 551 entity must provide to the department proof that a veteran or

577-02332-15

20151444c1

552 the spouse of a veteran holds a majority ownership in the  
 553 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 554 and, if applicable, a copy of a valid marriage license or  
 555 certificate verifying that the spouse of the veteran was  
 556 lawfully married to the veteran at the time of discharge.

557 Section 17. Paragraph (c) is added to subsection (2) of  
 558 section 559.928, Florida Statutes, to read:

559 559.928 Registration.—  
 560 (2)

561 (c) The department shall waive the initial registration fee  
 562 for an honorably discharged veteran of the United States Armed  
 563 Forces, the spouse of such a veteran, or a business entity that  
 564 has a majority ownership held by such a veteran or spouse if the  
 565 department receives an application, in a format prescribed by  
 566 the department, within 60 months after the date of the veteran's  
 567 discharge from any branch of the United States Armed Forces. To  
 568 qualify for the waiver, a veteran must provide to the department  
 569 a copy of his or her DD Form 214 or NGB Form 22; the spouse of a  
 570 veteran must provide to the department a copy of the veteran's  
 571 DD Form 214 or NGB Form 22 and a copy of a valid marriage  
 572 license or certificate verifying that he or she was lawfully  
 573 married to the veteran at the time of discharge; or the business  
 574 entity must provide to the department proof that a veteran or  
 575 the spouse of a veteran holds a majority ownership in the  
 576 business, a copy of the veteran's DD Form 214 or NGB Form 22,  
 577 and, if applicable, a copy of a valid marriage license or  
 578 certificate verifying that the spouse of the veteran was  
 579 lawfully married to the veteran at the time of discharge.

580 Section 18. Paragraph (b) of subsection (5), paragraph (a)

577-02332-15

20151444c1

581 of subsection (10), and subsections (15) and (16) of section  
 582 616.242, Florida Statutes, are amended to read:  
 583 616.242 Safety standards for amusement rides.—  
 584 (5) ANNUAL PERMIT.—  
 585 (b) To apply for an annual permit, an owner must submit to  
 586 the department a written application on a form prescribed by  
 587 rule of the department, which must include the following:  
 588 1. The legal name, address, and primary place of business  
 589 of the owner.  
 590 2. A description, manufacturer's name, serial number, model  
 591 number and, if previously assigned, the United States Amusement  
 592 Identification Number of the amusement ride.  
 593 3. A valid certificate of insurance ~~or bond~~ for each  
 594 amusement ride.  
 595 4. An affidavit of compliance that the amusement ride was  
 596 inspected in person by the affiant and that the amusement ride  
 597 is in general conformance with the requirements of this section  
 598 and all applicable rules adopted by the department. The  
 599 affidavit must be executed by a professional engineer or a  
 600 qualified inspector at least no earlier than 60 days before, but  
 601 not later than, the date ~~of the filing of~~ the application is  
 602 filed with the department. The owner shall request inspection  
 603 and permitting of the amusement ride within 60 days ~~after~~ of the  
 604 date ~~of filing~~ the application is filed with the department. The  
 605 department shall inspect and permit the amusement ride within 60  
 606 days after the date filing the application is filed with the  
 607 department.  
 608 5. If required by subsection (6), an affidavit of  
 609 nondestructive testing dated and executed at least no earlier

Page 21 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

610 ~~than 60 days before prior to~~, but not later than, the date ~~of~~  
 611 ~~the filing of~~ the application is filed with the department. The  
 612 owner shall request inspection and permitting of the amusement  
 613 ride within 60 days ~~after~~ of the date ~~of filing~~ the application  
 614 is filed with the department. The department shall inspect and  
 615 permit the amusement ride within 60 days after the date filing  
 616 the application is filed with the department.  
 617 6. A request for inspection.  
 618 7. Upon request, the owner shall, at no cost to the  
 619 department, provide the department a copy of the manufacturer's  
 620 current recommended operating instructions in the possession of  
 621 the owner, the owner's operating fact sheet, and any written  
 622 bulletins in the possession of the owner concerning the safety,  
 623 operation, or maintenance of the amusement ride.  
 624 (10) EXEMPTIONS.—  
 625 (a) This section does not apply to:  
 626 1. Permanent facilities that employ at least 1,000 full-  
 627 time employees and that maintain full-time, in-house safety  
 628 inspectors. Furthermore, the permanent facilities must file an  
 629 affidavit of the annual inspection with the department, on a  
 630 form prescribed by rule of the department. Additionally, the  
 631 Department of Agriculture and Consumer Services may consult  
 632 annually with the permanent facilities regarding industry safety  
 633 programs.  
 634 2. Any playground operated by a school, local government,  
 635 or business licensed under chapter 509, if the playground is an  
 636 incidental amenity and the operating entity is not primarily  
 637 engaged in providing amusement, pleasure, thrills, or  
 638 excitement.

Page 22 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

639 3. Museums or other institutions principally devoted to the  
640 exhibition of products of agriculture, industry, education,  
641 science, religion, or the arts.

642 4. Conventions or trade shows for the sale or exhibit of  
643 amusement rides if there are a minimum of 15 amusement rides on  
644 display or exhibition, and if any operation of such amusement  
645 rides is limited to the registered attendees of the convention  
646 or trade show.

647 5. Skating rinks, arcades, ~~laser lazer~~ or paint ball war  
648 games, bowling alleys, miniature golf courses, mechanical bulls,  
649 inflatable rides, trampolines, ball crawls, exercise equipment,  
650 jet skis, paddle boats, airboats, helicopters, airplanes,  
651 parasails, hot air or helium balloons whether tethered or  
652 untethered, theatres, batting cages, stationary spring-mounted  
653 fixtures, rider-propelled merry-go-rounds, games, side shows,  
654 live animal rides, or live animal shows.

655 6. Go-karts operated in competitive sporting events if  
656 participation is not open to the public.

657 7. Nonmotorized playground equipment that is not required  
658 to have a manager.

659 8. Coin-actuated amusement rides designed to be operated by  
660 depositing coins, tokens, credit cards, debit cards, bills, or  
661 other cash money and which are not required to have a manager,  
662 and which have a capacity of six persons or less.

663 9. Facilities described in s. 549.09(1)(a) when such  
664 facilities are operating cars, trucks, or motorcycles only.

665 10. Battery-powered cars or other vehicles that are  
666 designed to be operated by children 7 years of age or under and  
667 that cannot exceed a speed of 4 miles per hour.

577-02332-15

20151444c1

668 11. Mechanically driven vehicles that pull train cars,  
669 carts, wagons, or other similar vehicles, that are not confined  
670 to a metal track or confined to an area but are steered by an  
671 operator and do not exceed a speed of 4 miles per hour.

672 12. A water-related amusement ride operated by a business  
673 licensed under chapter 509 if the water-related amusement ride  
674 is an incidental amenity and the operating business is not  
675 primarily engaged in providing amusement, pleasure, thrills, or  
676 excitement and does not offer day rates.

677 13. An amusement ride at a private, membership-only  
678 facility if the amusement ride is an incidental amenity and the  
679 facility is not open to the general public, is not primarily  
680 engaged in providing amusement, pleasure, thrills, or  
681 excitement, and does not offer day rates.

682 14. A nonprofit permanent facility registered under chapter  
683 496 which is not open to the general public.

684 (15) INSPECTION BY OWNER OR MANAGER. ~~Before~~ Prior to  
685 opening on each day of operation and ~~before~~ prior to any  
686 inspection by the department, the owner or manager of an  
687 amusement ride must inspect and test the amusement ride to  
688 ensure compliance with all requirements of this section. Each  
689 inspection must be recorded on a form prescribed by rule of the  
690 department and signed by the person who conducted the  
691 inspection. In lieu of the form prescribed by rule of the  
692 department, the owner or manager may request approval of an  
693 alternate form if the alternate form includes, at a minimum, the  
694 information required on the form prescribed by rule of the  
695 department. Inspection records of the last 14 daily inspections  
696 must be kept on site by the owner or manager and made

577-02332-15

20151444c1

697 immediately available to the department upon request.

698 (16) TRAINING OF EMPLOYEES.—The owner or manager of ~~an any~~  
699 amusement ride shall maintain a record of employee training for  
700 each employee authorized to operate, assemble, disassemble,  
701 transport, or conduct maintenance on an amusement ride~~7~~ on a  
702 form prescribed by rule of the department. In lieu of the form  
703 prescribed by rule of the department, the owner or manager may  
704 request approval of an alternate form if the alternate form  
705 includes, at a minimum, the information required on the form  
706 prescribed by rule of the department. The training record must  
707 be kept on site by the owner or manager and made immediately  
708 available to the department upon request. Training may not be  
709 conducted when an amusement ride is open to the public unless  
710 the training is conducted under the supervision of an employee  
711 who is trained in the operation of that ride. The owner or  
712 manager shall certify that each employee is trained, as required  
713 by this section and any rules adopted thereunder, on the  
714 amusement ride for which the employee is responsible.

715 Section 19. Subsection (2), paragraph (b) of subsection  
716 (5), subsection (10), and paragraph (a) of subsection (11) of  
717 section 790.06, Florida Statutes, are amended to read:

718 790.06 License to carry concealed weapon or firearm.—

719 (2) The Department of Agriculture and Consumer Services  
720 shall issue a license if the applicant:

721 (a) Is a resident of the United States and a citizen of the  
722 United States or a permanent resident alien of the United  
723 States, as determined by the United States Bureau of Citizenship  
724 and Immigration Services, or is a consular security official of  
725 a foreign government that maintains diplomatic relations and

577-02332-15

20151444c1

726 treaties of commerce, friendship, and navigation with the United  
727 States and is certified as such by the foreign government and by  
728 the appropriate embassy in this country;

729 (b) Is 21 years of age or older;

730 (c) Does not suffer from a physical infirmity which  
731 prevents the safe handling of a weapon or firearm;

732 (d) Is not ineligible to possess a firearm pursuant to s.  
733 790.23 by virtue of having been convicted of a felony;

734 (e) Has not been committed for the abuse of a controlled  
735 substance or been found guilty of a crime under the provisions  
736 of chapter 893 or similar laws of any other state relating to  
737 controlled substances within a 3-year period immediately  
738 preceding the date on which the application is submitted;

739 (f) Does not chronically and habitually use alcoholic  
740 beverages or other substances to the extent that his or her  
741 normal faculties are impaired. It shall be presumed that an  
742 applicant chronically and habitually uses alcoholic beverages or  
743 other substances to the extent that his or her normal faculties  
744 are impaired if the applicant has been committed under chapter  
745 397 or under the provisions of former chapter 396 or has been  
746 convicted under s. 790.151 or has been deemed a habitual  
747 offender under s. 856.011(3), or has had two or more convictions  
748 under s. 316.193 or similar laws of any other state, within the  
749 3-year period immediately preceding the date on which the  
750 application is submitted;

751 (g) Desires a legal means to carry a concealed weapon or  
752 firearm for lawful self-defense;

753 (h) Demonstrates competence with a firearm by any one of  
754 the following:

577-02332-15

20151444c1

755 1. Completion of any hunter education or hunter safety  
 756 course approved by the Fish and Wildlife Conservation Commission  
 757 or a similar agency of another state;

758 2. Completion of any National Rifle Association firearms  
 759 safety or training course;

760 3. Completion of any firearms safety or training course or  
 761 class available to the general public offered by a law  
 762 enforcement, junior college, college, or private or public  
 763 institution or organization or firearms training school,  
 764 utilizing instructors certified by the National Rifle  
 765 Association, Criminal Justice Standards and Training Commission,  
 766 or the Department of Agriculture and Consumer Services;

767 4. Completion of any law enforcement firearms safety or  
 768 training course or class offered for security guards,  
 769 investigators, special deputies, or any division or subdivision  
 770 of law enforcement or security enforcement;

771 5. Presents evidence of equivalent experience with a  
 772 firearm through participation in organized shooting competition  
 773 or military service;

774 6. Is licensed or has been licensed to carry a firearm in  
 775 this state or a county or municipality of this state, unless  
 776 such license has been revoked for cause; or

777 7. Completion of any firearms training or safety course or  
 778 class conducted by a state-certified or National Rifle  
 779 Association certified firearms instructor;

780  
 781 A photocopy of a certificate of completion of any of the courses  
 782 or classes; ~~or~~ an affidavit from the instructor, school, club,  
 783 organization, or group that conducted or taught such said course

Page 27 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

784 or class attesting to the completion of the course or class by  
 785 the applicant; or a copy of any document ~~that which~~ shows  
 786 completion of the course or class or evidences participation in  
 787 firearms competition shall constitute evidence of qualification  
 788 under this paragraph. ~~At any~~ person who conducts a course  
 789 pursuant to subparagraph 2., subparagraph 3., or subparagraph  
 790 7., or who, as an instructor, attests to the completion of such  
 791 courses, must maintain records certifying that he or she  
 792 observed the student safely handle and discharge the firearm in  
 793 his or her physical presence and that the discharge of the  
 794 firearm included live fire using a firearm and ammunition as  
 795 defined in s. 790.001;

796 (i) Has not been adjudicated an incapacitated person under  
 797 s. 744.331, or similar laws of any other state, unless 5 years  
 798 have elapsed since the applicant's restoration to capacity by  
 799 court order;

800 (j) Has not been committed to a mental institution under  
 801 chapter 394, or similar laws of any other state, unless the  
 802 applicant produces a certificate from a licensed psychiatrist  
 803 that he or she has not suffered from disability for at least 5  
 804 years prior to the date of submission of the application;

805 (k) Has not had adjudication of guilt withheld or  
 806 imposition of sentence suspended on any felony or misdemeanor  
 807 crime of domestic violence unless 3 years have elapsed since  
 808 probation or any other conditions set by the court have been  
 809 fulfilled, or the record has been sealed or expunged;

810 (l) Has not been issued an injunction that is currently in  
 811 force and effect and that restrains the applicant from  
 812 committing acts of domestic violence or acts of repeat violence;

Page 28 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

813 and

814 (m) Is not prohibited from purchasing or possessing a  
815 firearm by any other provision of Florida or federal law.

816 (5) The applicant shall submit to the Department of  
817 Agriculture and Consumer Services or an approved tax collector  
818 pursuant to s. 790.0625:

819 (b) A nonrefundable license fee of up to ~~\$60~~ \$70 if he or  
820 she has not previously been issued a statewide license or of up  
821 to \$50 ~~\$60~~ for renewal of a statewide license. The cost of  
822 processing fingerprints as required in paragraph (c) shall be  
823 borne by the applicant. However, an individual holding an active  
824 certification from the Criminal Justice Standards and Training  
825 Commission as a law enforcement officer, correctional officer,  
826 or correctional probation officer as defined in s. 943.10(1),  
827 (2), (3), (6), (7), (8), or (9) is exempt from the licensing  
828 requirements of this section. If such individual wishes to  
829 receive a concealed ~~weapon~~ weapons or ~~firearm~~ firearms license,  
830 he or she is exempt from the background investigation and all  
831 background investigation fees, but must pay the current license  
832 fees regularly required to be paid by nonexempt applicants.  
833 Further, a law enforcement officer, a correctional officer, or a  
834 correctional probation officer as defined in s. 943.10(1), (2),  
835 or (3) is exempt from the required fees and background  
836 investigation for ~~a period of~~ 1 year after his or her  
837 retirement.

838 (10) A license issued under this section shall be suspended  
839 or revoked pursuant to chapter 120 if the licensee:

840 (a) Is found to be ineligible under the criteria set forth  
841 in subsection (2);

577-02332-15

20151444c1

842 (b) Develops or sustains a physical infirmity which  
843 prevents the safe handling of a weapon or firearm;

844 (c) Is convicted of a felony which would make the licensee  
845 ineligible to possess a firearm pursuant to s. 790.23;

846 (d) Is found guilty of a crime under the provisions of  
847 chapter 893, or similar laws of any other state, relating to  
848 controlled substances;

849 (e) Is committed as a substance abuser under chapter 397,  
850 or is deemed a habitual offender under s. 856.011(3), or similar  
851 laws of any other state;

852 (f) Is convicted of a second violation of s. 316.193, or a  
853 similar law of another state, within 3 years after ~~of~~ a first  
854 ~~previous~~ conviction of such section, or similar law of another  
855 state, even though the first violation may have occurred before  
856 ~~prior to~~ the date on which the application was submitted;

857 (g) Is adjudicated an incapacitated person under s.  
858 744.331, or similar laws of any other state; or

859 (h) Is committed to a mental institution under chapter 394,  
860 or similar laws of any other state.

861

862 Notwithstanding s. 120.60(5), notice of the suspension or  
863 revocation of a concealed weapon or firearm license or the  
864 suspension of the processing of an application for such license  
865 shall be given by personal delivery to the licensee, by first-  
866 class mail in an envelope, postage prepaid, addressed to the  
867 licensee at his or her last known mailing address furnished to  
868 the department, or by e-mail if the licensee has provided an e-  
869 mail address to the department. Such mailing or sending of e-  
870 mail by the department constitutes notification, and any failure

577-02332-15

20151444c1

871 by the person to receive the mailed or e-mailed notice does not  
 872 stay the effective date or term of the suspension or revocation.  
 873 The giving of notice by mail is complete upon expiration of 20  
 874 days after deposit in the United States mail. Proof of the  
 875 giving of notice shall be made by entry in the records of the  
 876 department that such notice was given. The entry is admissible  
 877 in the courts of this state and constitutes sufficient proof  
 878 that such notice was given.

879 (11) (a) At least ~~No less than~~ 90 days before the expiration  
 880 date of the license, the Department of Agriculture and Consumer  
 881 Services shall mail to each licensee a written notice of the  
 882 expiration and a renewal form prescribed by the Department of  
 883 Agriculture and Consumer Services. The licensee must renew his  
 884 or her license on or before the expiration date by filing with  
 885 the Department of Agriculture and Consumer Services the renewal  
 886 form containing an a-notarized ~~a notarized~~ affidavit submitted under oath  
 887 and under penalty of perjury stating that the licensee remains  
 888 qualified pursuant to the criteria specified in subsections (2)  
 889 and (3), a color photograph as specified in paragraph (5) (e),  
 890 and the required renewal fee. Out-of-state residents must also  
 891 submit a complete set of fingerprints and fingerprint processing  
 892 fee. The license shall be renewed upon receipt of the completed  
 893 renewal form, color photograph, appropriate payment of fees,  
 894 and, if applicable, fingerprints. Additionally, a licensee who  
 895 fails to file a renewal application on or before its expiration  
 896 date must renew his or her license by paying a late fee of \$15.  
 897 A license may not be renewed 180 days or more after its  
 898 expiration date, and such a license is deemed to be permanently  
 899 expired. A person whose license has been permanently expired may

Page 31 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

577-02332-15

20151444c1

900 reapply for licensure; however, an application for licensure and  
 901 fees under subsection (5) must be submitted, and a background  
 902 investigation shall be conducted pursuant to this section. A  
 903 person who knowingly files false information under this  
 904 subsection is subject to criminal prosecution under s. 837.06.

905 Section 20. Subsection (8) is added to section 790.0625,  
 906 Florida Statutes, to read:

907 790.0625 Appointment of tax collectors to accept  
 908 applications for a concealed weapon or firearm license; fees;  
 909 penalties.—

910 (8) Upon receipt of a completed renewal application, a new  
 911 color photograph, and appropriate payment of fees, a tax  
 912 collector authorized to accept renewal applications for  
 913 concealed weapon or firearm licenses under this section may,  
 914 upon approval and confirmation of license issuance by the  
 915 department, print and deliver a concealed weapon or firearm  
 916 license to a licensee renewing his or her license at the tax  
 917 collector's office.

918 Section 21. This act shall take effect July 1, 2015.

Page 32 of 32

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
SB 14

SB1444

Meeting Date

Bill Number (if applicable)

Topic Refute a Repossession

Amendment Barcode (if applicable)

Name Jim Clark

Job Title Director

Address Po Box 2707

Phone 615-880-8983

Street

Manassas

City

VA

State

20108

Zip

Email jclark@rsj.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-2-15

Meeting Date

SB 1424

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Michael S English

Job Title Recovery Agent / Lawyer

Address 4131 NW CR ST

Phone 352-745-1884

Street? Gainesville FL 32609  
City State Zip

Email MST.Towing@valco.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

SB 1448  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name LARRY DAVIS

Job Title RECOVERY AGENT

Address PO BOX 60206

Phone 352-258-8967

Street

JACKSONVILLE

FL

32236

City

State

Zip

Email fcdalany@hotmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing 

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

1444  
Bill Number (if applicable)

Topic Recovery

Amendment Barcode (if applicable)

Name William Alvarez

Job Title State of Florida PIRSA Council + SWR

Address 3061 Cardiff  
Street

Phone 941 204-9788

Punta Gorda FL 33983  
City State Zip

Email Billa2289@aol.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Recovery Industry

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

SB 1444  
Bill Number (if applicable)

Topic Consumer Licensing

Amendment Barcode (if applicable)

Name Jonathon Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S Monroe St.  
Street

Phone (850) 617-7700

Tallahassee FL 32399  
City State Zip

Email Jonathon.Rees@freshforflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1444  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic RECOVERY

Amendment Barcode (if applicable) \_\_\_\_\_

Name MARK LACEK

Job Title REPOSSESSOR

Address CLERMONT FLORIDA  
Street

Phone 407-948-7087

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email MARK LACEK  
@YMAIL.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing REPOSSESSION INDUSTRY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

4/2/15

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1444

Bill Number (if applicable)

776594

Amendment Barcode (if applicable)

Topic Amendment

Name Anthony Didarow

Job Title ESP of Govt. Affairs

Address 1001 Thomsville Rd

Street

Phone 224-2245

Tallahassee

City

FL

State

32303

Zip

Email adidarow@flba.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

1444  
Bill Number (if applicable)  
776594  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Fred Baggett

Job Title Managing Shareholder - Greenberg Trarvig

Address 101 E. College Av.

Phone 222-6891

Tallahassee FL 32301  
City State Zip

Email ~~fred~~ baggett@gtlaw.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing PAR North America

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

1444  
Bill Number (if applicable)

776594  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Fred Thaggett

Job Title \_\_\_\_\_

Address 101 E College Ave  
Street

Phone 475-9912

Tallahassee FL  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing PAR North America -

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/02/15  
Meeting Date

1444  
Bill Number (if applicable)

Topic Amendment lines 142-143

Amendment Barcode (if applicable)

Name Eduardo Wolmers

Job Title Recovery Agent

Address 9370 DOMINICAN DR

Phone 786 444-3033

Street  
CUTLER BAY FL 33189  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing JTDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15  
Meeting Date

SB1444  
Bill Number (if applicable)

Topic Against Amendment added

Amendment Barcode (if applicable)

Name JAMIE BLACKBURN

Job Title RECOVERY AGENT

Address 138 PALM COAST PENINSULA

Phone 386-313-2525

PALM COAST FL 32137  
Street City State Zip

Email ADVANCEDFLORIDA@AOL.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

1444

Bill Number (if applicable)

854928

Amendment Barcode (if applicable)

Topic CONSUMER LICENSING

Name Amy Mercer

Job Title Executive Director

Address P.O. Box 14038

Phone 8502193631

Street

Tallahassee

City

Fl 32317

State

Zip

Email amercer@fpa.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/2/15

Meeting Date

SB1444

~~SB1444~~

Bill Number (if applicable)

Topic DACS Legislation

Amendment Barcode (if applicable)

Name Tim Qualls

Job Title Executive Director

Address 216 S. Monroe St

Phone 850-222-7206

Street

Tallahassee, FL

City

State

32301

Zip

Email TQualls@yulav.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida Tax Collectors Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR TOM LEE**  
24th District

April 2, 2015

The Honorable Alan Hays  
Senate Appropriations Subcommittee on General Government, Chair  
320 Senate Office Building  
404 South Monroe St.  
Tallahassee, FL 32399

Dear Chairman Hays,

I respectfully request to be excused from the Senate Appropriations Subcommittee on General Government on April 2, 2014 due to a previous commitment.

Thank you for your consideration.

Sincerely,

Tom Lee  
Senator, District 24

Cc: Jaime DeLoach, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
15 APR -2 PM 1:41  
ALAN HAYS, CHAIRMAN  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

**REPLY TO:**

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Senate Appropriations Subcommittee on General Government

Judge:

Started: 4/2/2015 9:01:13 AM

Ends: 4/2/2015 10:22:24 AM

Length: 01:21:12

9:01:16 AM Sen. Braynon (Chair)  
9:02:02 AM S 1148  
9:02:10 AM Sen. Stargel  
9:03:17 AM Sen. Braynon  
9:03:22 AM Am. 941126  
9:03:33 AM Sen. Stargel  
9:04:03 AM Sen. Braynon  
9:04:10 AM Sen. Dean  
9:04:27 AM Sen. Stargel  
9:04:51 AM Sen. Braynon  
9:04:59 AM Adam Basford, Legal Affairs Director, Florida Farm Bureau  
9:06:16 AM Sen. Braynon  
9:06:28 AM S 1148 (con't.)  
9:06:42 AM John Rees, Deputy Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services  
9:06:46 AM Joh Pasqualone, Executive Director, Florida Fire Marshals and Inspectors Association (waives in support)  
9:06:53 AM Jim Spaff, Florida Nursery, Growers, and Landscape Association (waives in support)  
9:07:08 AM Sen. Stargel  
9:07:15 AM Sen. Braynon  
9:07:43 AM S 1136  
9:07:48 AM Sen. Hukill  
9:08:43 AM Sen. Braynon  
9:08:50 AM Alexandra Overhoff, Executive Director, Florida Land Title Association (waives in support)  
9:08:59 AM Beth Vecchioli, Senior Policy Advisor, Stewart Title Guaranty Company (waives in support)  
9:09:15 AM Sen. Braynon  
9:09:17 AM Sen. Hukill  
9:09:20 AM Sen. Braynon  
9:09:52 AM S 338  
9:09:57 AM Sen. Altman  
9:10:45 AM Sen. Braynon  
9:10:58 AM Thomas Tom Grown, Chief Structure Engineer, Florida Structure Engineer Association (waives in support)  
9:11:16 AM Douglas Barkles, President of Barkles Consulting Engineers, Florida Institute of Consulting Engineers and Florida Engineer Society (waives in support)  
9:11:39 AM Sen. Altman  
9:11:40 AM Sen. Braynon  
9:12:08 AM S 1134  
9:12:25 AM Sen. Hays  
9:14:01 AM Sen. Braynon  
9:14:05 AM Am. 296964  
9:14:11 AM Sen. Hays  
9:14:22 AM Sen. Braynon  
9:14:35 AM S 1134 (con't)  
9:14:44 AM Sen. Braynon  
9:15:20 AM Sen. Hays (Chair)  
9:15:24 AM S 612  
9:15:31 AM Trent Phillips, Sen. Brandes aide  
9:16:00 AM Sen. Hays  
9:16:16 AM John Ray, Seychelles Organics and Florida Cosmetic Manufacturers Coalition (waives in support)  
9:16:28 AM Alan Suskey, Consultant, Dermazone Solutions (waives in support)  
9:16:41 AM Sen. Hays  
9:17:10 AM S 680

9:17:18 AM Sen. Dean  
9:18:06 AM Sen. Hays  
9:18:12 AM Am. 648972  
9:18:16 AM Sen. Dean  
9:18:28 AM Sen. Hays  
9:18:32 AM Brandy Elliot, Deputy Director of Legislative Affairs, Fish and Wildlife Conservation Commission (waives in support)  
9:18:46 AM Sen. Hays  
9:18:51 AM S 680 (con't)  
9:18:56 AM Sen. Altman  
9:19:11 AM Sen. Dean  
9:19:23 AM B. Elliot  
9:19:25 AM Sen. Altman  
9:19:31 AM B. Elliot  
9:19:53 AM Sen. Hays  
9:19:56 AM Jerry Sansom, Executive Director, Organized Fishermen of Florida (waives in support)  
9:20:05 AM Sen. Hays  
9:20:40 AM S 836  
9:20:52 AM Brenda Johnson, Sen. Latvala's aide  
9:22:32 AM Sen. Hays  
9:22:38 AM Don Brown, Lobbyist, Security First (waives in support)  
9:23:10 AM Sen. Hays  
9:23:19 AM S 726  
9:23:31 AM John Piskadlo, Sen. Ring aide  
9:25:15 AM Sen. Hays  
9:25:18 AM J. Piskadlo  
9:25:25 AM Sen. Hays  
9:26:02 AM Sen. Simpson  
9:26:18 AM Sen. Hays  
9:26:27 AM S 1222  
9:26:42 AM Micheal Nachef, Sen. Richter's aide  
9:27:03 AM Sen. Hays  
9:27:05 AM Am. 491438  
9:27:36 AM Leslie Dughi, Florida Surplus Lines Office (waives in support)  
9:27:43 AM Sen. Hays  
9:27:51 AM Am. 350260  
9:27:58 AM M. Nachef  
9:28:14 AM Sen. Hays  
9:28:29 AM S 1222 (con't)  
9:28:36 AM Sen. Hays  
9:28:41 AM Laura Pearce, General Counsel, Florida Association of Insurance Agents (waives in support)  
9:28:51 AM BG Murphy, Deputy Legislative affairs Director of DFS, CFO Atwater (waives in support)  
9:28:59 AM Corey Matthews, CEO, Professional Insurance Agents of Florida (waives in support)  
9:29:12 AM Tim Meenan, National Association Insurance and Financial Advisors (waives in support)  
9:29:26 AM Sen. Hays  
9:29:58 AM S 1444  
9:30:05 AM M. Nachef  
9:30:38 AM Sen. Hays  
9:30:43 AM Am. 776594  
9:30:49 AM Micheal\*  
9:31:14 AM Sen. Hays  
9:31:19 AM Anthony DiMaro, FNP of Government Affairs, Florida Bankers Association (waives in support)  
9:31:25 AM Fred Baggett, PAR North America (waives in support)  
9:31:32 AM Sen. Hays  
9:32:39 AM Eduardo Wolmers, Recovery Agent, JTDA  
9:37:47 AM Sen. Hays  
9:37:51 AM Sen. Dean  
9:38:19 AM E. Wolmers  
9:38:34 AM Sen. Dean  
9:38:38 AM Sen. Hays  
9:39:10 AM E. Wolmers  
9:40:35 AM Sen. Hays

9:40:46 AM Mark Lacek, Repossessor, Repossession Industry  
9:45:56 AM Sen. Hays  
9:46:05 AM M. Lacek  
9:46:30 AM Sen. Hays  
9:46:44 AM Jonathan Rees, Deputy Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services  
9:46:50 AM Sen. Hays  
9:47:06 AM Sen. Margolis  
9:47:20 AM J. Rees  
9:48:14 AM Sen. Hays  
9:48:24 AM Sen. Dean  
9:48:49 AM J. Rees  
9:49:53 AM Sen. Dean  
9:50:01 AM J. Rees  
9:50:06 AM Sen. Braynon  
9:50:37 AM J. Rees  
9:51:12 AM Sen. Hays  
9:51:24 AM J. Rees  
9:51:26 AM Sen. Hays  
9:51:52 AM J. Rees  
9:52:20 AM Sen. Hays  
9:52:28 AM J. Rees  
9:52:31 AM Sen. Hays  
9:52:43 AM William Alvarez, State of Florida Pirsac Council and SWR, Recovery Industry  
9:58:24 AM Sen. Hays  
9:58:30 AM Fred Baggett, PAR North America  
10:02:20 AM Sen. Hays  
10:02:30 AM Jamie Blackburn, Recovery Agent  
10:07:16 AM Sen. Hays  
10:07:28 AM J. Blackburn  
10:08:34 AM Sen. Hays  
10:08:46 AM Larry Davis, Recovery Agent (waives in opposition)  
10:08:59 AM Micheal S. English, Recovery Agent and Owner (waives in opposition)  
10:09:07 AM Jim Clarke, Director (waives in opposition)  
10:09:19 AM  
10:09:35 AM Sen. Hays  
10:09:55 AM Sen. Richter  
10:10:53 AM Sen. Hays  
10:11:06 AM Am. 751524  
10:11:21 AM Am. 854928  
10:11:31 AM S 1444 (con't)  
10:11:41 AM Tim Qualls, Executive Director, Florida Tax Collector Association (waives in support)  
10:11:53 AM Sen. Hays  
10:12:57 AM S 1304  
10:13:08 AM Tracy Caddell  
10:14:19 AM Sen. Hays  
10:14:23 AM Sen. Braynon  
10:14:32 AM T. Caddell  
10:14:37 AM Sen. Hays  
10:14:52 AM Am. 803784  
10:15:00 AM T. Caddell  
10:15:13 AM Sen. Hays  
10:15:29 AM Am. 880540  
10:15:38 AM T. Caddell  
10:16:10 AM Sen. Hays  
10:16:22 AM S 1304 (con't)  
10:16:32 AM Sen. Hays  
10:17:02 AM S 876  
10:17:08 AM Sen. Hays  
10:17:24 AM Sen. Dean  
10:17:49 AM Sen. Hays  
10:17:55 AM Am. 916652



10:18:05 AM Sen. Hays  
10:18:27 AM Sen. Dean  
10:18:33 AM Sen. Hays  
10:18:37 AM S 876 (con't)  
10:19:12 AM S 618  
10:19:19 AM Ann Bell, Sen. Grimsley aide  
10:20:22 AM Sen. Hays  
10:20:37 AM Am. 305438  
10:20:46 AM Sen. Hays  
10:20:54 AM S 618 (con't)  
10:21:03 AM Matthe Beebe, Secretary, Florida Law Enforcement: Property Recovery Unit (waives in support)  
10:21:22 AM Jim Spratt, Allied Scrap (waives in support)  
10:21:29 AM Jim Magill, Florida Recyclers Association (waives in support)  
10:21:38 AM Sen. Hays