

**SB 1666 by Latvala; (Compare to H 0087) Mortgage Foreclosures**

465466	A	S	RS	BI, Richter	Delete L.124 - 144.	03/20 06:58 PM
194066	A	S	WD	BI, Margolis	Delete L.145 - 247.	03/20 06:58 PM
451606	A	S	WD	BI, Montford	Delete L.145 - 247.	03/20 06:58 PM
945378	A	S	RCS	BI, Richter	Delete L.322 - 330:	03/20 06:58 PM
164702	A	S	RCS	BI, Richter	Delete L.573:	03/20 06:58 PM
366976	A	S	RCS	BI, Richter	Delete L.657 - 662:	03/20 06:58 PM
645336	A	S	WD	BI, Margolis	Delete L.757 - 787.	03/20 06:58 PM
135684	A	S	WD	BI, Montford	Delete L.757 - 787.	03/20 06:58 PM
453924	A	S	RCS	BI, Richter	Delete L.1193 - 1219:	03/20 06:58 PM

**SB 464 by Flores; (Identical to H 0263) Disposition of Unclaimed Property****CS/SB 492 by JU, Hukill; (Similar to CS/CS/H 0583) Estates**

141568	A	S	RCS	BI, Lee	In the directory clause	03/20 06:58 PM
595722	A	S	RCS	BI, Benacquisto	Delete L.90:	03/20 06:58 PM

**SB 468 by Hukill; (Similar to CS/CS/H 0335) Commercial Insurance Rates and Forms**

620194	D	S	RCS	BI, Richter	Delete everything after	03/20 06:58 PM
387680	T	S	WD	BI, Benacquisto	In title, delete L.2 -	03/20 06:58 PM

**SB 648 by Hukill; (Similar to CS/H 0675) Health Insurance Marketing Materials**

942304	A	S	RCS	BI, Lee	Delete L.76 - 93:	03/20 06:58 PM
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**SB 242 by Hukill; (Similar to CS/H 0383) Interstate Insurance Product Regulation Compact**

263352	D	S		BI, Benacquisto	Delete everything after	03/18 12:09 PM
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**SB 866 by Abruzzo; (Similar to H 0495) Certified Audit Program**

617086	A	S	RCS	BI, Clemens	Delete L.35 - 39:	03/20 06:58 PM
752860	A	S	RCS	BI, Clemens	Delete L.71 - 78:	03/20 06:58 PM

**SB 356 by Abruzzo; (Identical to H 0509) Financial Guaranty Insurance Corporations****SB 324 by Brandes; (Similar to CS/H 0211) Florida Insurance Guaranty Association**

484256	D	S		BI, Hays	Delete everything after	03/19 02:17 PM
693492	AA	S		BI, Hays	Delete L.120:	03/20 01:51 PM

**SB 1046 by Brandes; (Compare to H 0157) Insurance**

457546	D	S		BI, Hays	Delete everything after	03/19 01:48 PM
517280	AA	S		BI, Diaz de la Portilla	Delete L.5 - 131.	03/20 10:04 AM
267252	AA	S		BI, Montford	Before L.214:	03/20 10:03 AM
863774	AA	S		BI, Hays	btw L.674 - 675:	03/20 10:04 AM
917700	AA	S		BI, Hays	Delete L.1020:	03/20 11:11 AM
650820	AA	S		BI, Negron	Delete L.1038 - 1055.	03/20 12:16 PM
560612	AA	S		BI, Montford	Delete L.1045 - 1048:	03/20 11:26 AM
939674	AA	S		BI, Hays	Before L.1289:	03/20 10:04 AM
149498	AA	S		BI, Hays	Delete L.1366 - 1390:	03/20 10:05 AM
540248	AA	S		BI, Simmons	Delete L.709 - 710:	03/20 03:13 PM

**SB 644 by Richter;** (Similar to CS/H 0665) Licensure by the Office of Financial Regulation

690434	A	S	RCS	BI, Richter	Delete L.211 - 216:	03/20 06:58 PM
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**SB 566 by Detert;** (Similar to H 0493) Security of Protected Consumer Information

**SB 662 by Hays;** (Identical to H 0605) Workers' Compensation

**SB 1622 by Richter;** (Similar to H 7093) Establishment of a Clearinghouse Diversion Program Within the Citizens Property Insurance Corporation

874164	A	S		BI, Richter	Delete L.28 - 176:	03/20 11:54 AM
285242	A	S		BI, Richter	btw L.176 - 177:	03/20 12:17 PM

**SB 1606 by Richter;** (Similar to H 7095) Public Records/Citizens Property Insurance Corporation

**SB 1262 by Hays;** (Compare to H 1055) Florida Hurricane Catastrophe Fund

548468	D	S		BI, Ring	Delete everything after	03/12 01:55 PM
588276	SA	S		BI, Hays	Delete L.28 - 1017:	03/13 03:48 PM
398790	ASA	S		BI, Ring	Delete L.5 - 165:	03/20 03:18 PM
303624	D	S		BI, Hays	Delete everything after	03/13 02:28 PM

**SB 282 by Richter;** (Identical to H 0425) Consumer Finance Charges

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Simmons, Chair**  
**Senator Clemens, Vice Chair**

**MEETING DATE:** Wednesday, March 20, 2013  
**TIME:** 3:00 —5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negron, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1666</b> Latvala (Compare H 87, S 1380)	Mortgage Foreclosures; Providing that a retired justice or retired judge may consent to temporary duty assigned by the Chief Justice to assist with the backlog of foreclosure cases; providing that the second publication of the notice of sale may be published on a publicly accessible website of the clerk of the court in lieu of publication in any other form of media; requiring a court to treat a collateral attack on a final judgment of foreclosure on a mortgage as a claim for monetary damages under certain circumstances, etc.  BI      03/20/2013 Fav/CS JU AP RC	Fav/CS Yeas 7 Nays 3
2	<b>SB 464</b> Flores (Identical H 263)	Disposition of Unclaimed Property; Authorizing the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to submit a claim to the department electronically; providing for applicability with respect to specified property reported and remitted to the Chief Financial Officer, etc.  BI      03/20/2013 Favorable GO	Favorable Yeas 12 Nays 0
3	<b>CS/SB 492</b> Judiciary / Hukill (Similar CS/CS/H 583, Compare H 7105)	Estates; Deleting a provision that provides that certain information relating to a state death tax credit or a generation-skipping transfer credit is not applicable to estates of decedents dying after a specific date; providing an exception to property held by agents and fiduciaries; providing that property held by fiduciaries under trust instruments is presumed unclaimed under certain circumstances; specifying that a certain subsection does not require a caveator to be served with formal notice of its own petition for administration; providing provisions relating to gifts to lawyers and other disqualified persons, etc.  JU      02/19/2013 Fav/CS BI      03/20/2013 Fav/CS	Fav/CS Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Wednesday, March 20, 2013, 3:00 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 468</b> Hukill (Similar CS/CS/H 335, Compare S 1770)	Commercial Insurance Rates and Forms; Exempting medical malpractice insurance that covers certain providers and practitioners from specified rate filing requirements; providing for an informational filing of certain forms that are exempt from the Office of Insurance Regulation's approval process; requiring an informational filing to include a notarized certification from the insurer and providing a statement that must be included in the certification, etc.  BI 03/20/2013 Fav/CS HP JU	Fav/CS Yeas 10 Nays 2
5	<b>SB 648</b> Hukill (Similar CS/H 675)	Health Insurance Marketing Materials; Deleting requirements that a health insurer submit proposed marketing communications or advertising material to the Office of Insurance Regulation for review and approval, etc.  BI 03/20/2013 Fav/CS HP	Fav/CS Yeas 12 Nays 0
6	<b>SB 242</b> Hukill (Similar CS/H 383)	Interstate Insurance Product Regulation Compact; Providing for establishment of an Interstate Insurance Product Regulation Commission; specifying the commission as an instrumentality of the compacting states; designating the Commissioner of Insurance Regulation as the representative of this state on the commission; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; specifying that certain records, data, or information of the commission in possession of the Office of Insurance Regulation is subject to ch. 119, F.S., etc.  BI 03/20/2013 Not Considered GO AGG AP	Not Considered
7	<b>SB 866</b> Abruzzo (Similar H 495)	Certified Audit Program; Revising the amounts of interest liability that the Department of Revenue may abate for taxpayers participating in the certified audit program; authorizing a taxpayer to participate in the certified audit program after the department has issued notice of intent to conduct an audit of the taxpayer; authorizing the department to adopt rules prohibiting a qualified practitioner from representing a taxpayer in informal conference procedures under certain circumstances, etc.  BI 03/20/2013 Fav/CS AFT AP	Fav/CS Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Wednesday, March 20, 2013, 3:00 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 356</b> Abruzzo (Identical H 509, Compare CS/H 635, S 1046)	Financial Guaranty Insurance Corporations; Providing that Financial Guaranty Insurance Corporations include licensed mutual insurers as well as licensed stock insurers, etc.  BI      03/20/2013 Favorable CM	Favorable Yeas 12 Nays 0
9	<b>SB 324</b> Brandes (Similar CS/H 211)	Florida Insurance Guaranty Association; Revising the list of kinds of insurance exempted from the guarantee of payments; revising the duties of the association; authorizing the association to collect regular assessments directly from policyholders; authorizing the association to collect emergency assessments from insurers under certain circumstances, etc.  BI      03/20/2013 Temporarily Postponed CM AFT AP	Temporarily Postponed
10	<b>SB 1046</b> Brandes (Compare H 157, H 509, CS/H 635, H 1107, S 262, S 356, CS/S 1458)	Insurance; Deleting the future repeal of an exemption of medical malpractice insurance premiums from emergency assessments imposed to fund certain obligations, costs, and expenses of the Florida Hurricane Catastrophe Fund and the Florida Hurricane Catastrophe Fund Finance Corporation; authorizing insurers to furnish uniform proof-of- purchase cards in an electronic format for use by insureds to prove the purchase of required insurance coverage when registering a motor vehicle; deleting provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies, etc.  BI      03/20/2013 Not Considered AGG AP	Not Considered
11	<b>SB 644</b> Richter (Similar CS/H 665)	Licensure by the Office of Financial Regulation; Authorizing, rather than requiring, the Office of Financial Regulation to deny a mortgage broker license application if the applicant had a mortgage broker license revoked previously; revising the procedures and requirements for submitting fingerprints as part of an application to sell, or offer to sell, securities; requiring the Office of Financial Regulation to pay an annual fee to the Department of Law Enforcement, etc.  BI      03/20/2013 Fav/CS CJ ACJ AP	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>SB 566</b> Detert (Similar H 493)	Security of Protected Consumer Information; Authorizing the representative of a protected consumer to place a security freeze on the protected consumer's consumer record; requiring a consumer reporting agency to provide written confirmation of a security freeze within a specified period; prohibiting a consumer reporting agency from stating or implying that a security freeze reflects a negative credit history or rating; requiring a consumer reporting agency to remove a security freeze under specified conditions, etc.  BI 03/20/2013 Favorable CM JU	Favorable Yeas 12 Nays 0
13	<b>SB 662</b> Hays (Identical H 605, Compare H 483, S 1662)	Workers' Compensation; Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication, etc.  BI 03/20/2013 Favorable HP AP	Favorable Yeas 10 Nays 1
14	<b>SB 1622</b> Richter (Similar H 7093, Compare H 1099, H 7095, S 724, S 1770, Link S 1606)	Establishment of a Clearinghouse Diversion Program Within the Citizens Property Insurance Corporation; Authorizing the creation of a clearinghouse diversion program within the corporation for identifying and diverting insurance coverage to private insurers; providing requirements and duties of the corporation, insurers, and agents; providing for an alternative to submitting risks to the corporation, etc.  BI 03/20/2013 Not Considered CA	Not Considered
15	<b>SB 1606</b> Richter (Similar H 7095, Compare H 7093, S 1770, Link S 1622)	Public Records/Citizens Property Insurance Corporation; Providing an exemption from public records requirements for all underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the corporation's policyholder eligibility clearinghouse program which are used to identify and select risks from the program; providing for future review and repeal of the exemption under the Open Government Sunset Review Act, etc.  BI 03/20/2013 Not Considered GO RC	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	<b>SB 1262</b> Hays (Compare H 1055, H 1107, S 1770)	Florida Hurricane Catastrophe Fund; Revising the definitions for "corporation," "covered policy," and "retention"; providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation to the State Board of Administration Finance Corporation, etc.  BI 03/14/2013 Temporarily Postponed BI 03/20/2013 Temporarily Postponed AP	Temporarily Postponed
17	<b>SB 282</b> Richter (Identical H 425)	Consumer Finance Charges; Increasing the proportionate loan amounts that are subject to descending maximum rates of interest; increasing the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time; providing penalties, etc.  BI 03/20/2013 Favorable CM	Favorable Yeas 11 Nays 0

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Other Related Meeting Documents

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**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 Committee on Banking and Insurance

**BILL:** CS/SB 1666

**INTRODUCER:** Banking and Insurance Committee and Senator Latvala

**SUBJECT:** Mortgage Foreclosures

**DATE:** March 20, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson/Johnson	Burgess	BI	<b>Fav/CS</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 1666 is designed to revise Florida’s mortgage foreclosure statute and related statutory provisions to expedite mortgage foreclosure actions and associated proceedings before the courts while providing additional rights for homeowners. The bill provides the following changes:

Expedites foreclosure proceedings by:

- Requiring the Plaintiff to establish possession of a valid promissory note or authority to enforce the note in the foreclosure Complaint;
- Requiring financial institutions to post a bond or other financial means of providing adequate protection when alleging to be the holder of a note or entitled to enforce a lost, stolen, or destroyed note;
- Allowing any lienholder, instead of just the mortgagee, to use the expedited foreclosure process;
- Allowing the defendant to file other documents in defense of the foreclosure;
- Creating a higher standard for the defendant to show cause why a final judgment of foreclosure should not be entered.
- Exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter an order to make



payments during the pendency of the foreclosure proceedings or an order to vacate the premises;

The bill also:

- Prevents a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final;
- Limits the amount of deficiency decrees;
- Reduces the statute of limitations from 5 years to 1 year for deficiency judgments related to mortgages on residential property that is a one-family to four-family dwelling unit;
- Authorizes publication of a notice of sale on a publically accessible website; and
- Creates a program to use retired justices and senior judges to assist with foreclosure proceedings.

The bill is effective upon becoming a law.

This bill amends the following sections of the Florida Statutes: 45.031, 50.011, 95.11, 121.021, 121.091, 121.591, 702.035, 702.06, and 702.10. The bill creates the following sections of the Florida Statutes: 50.015, 702.015, 702.036, and 702.11.

## II. Present Situation:

### Background

Approximately 16.75 percent of all mortgage loans in Florida were 90 days or more delinquent or in the process of foreclosure, as of third quarter 2012.<sup>1</sup> In contrast, the national average delinquency rate was 7.03 percent. In addition, the foreclosure start rate in Florida was 1.50 percent, which was significantly higher than the national average of 1.08 percent.<sup>2</sup>

The Office of the State Court Administrator provided the following information concerning the number of mortgage foreclosure filings, dispositions, and estimated pending cases for calendar years 2011 and 2012.<sup>3</sup>

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<sup>1</sup> Mortgage Bankers Association, *State Mortgage Market Profile of Florida, Third Quarter 2012*.

<sup>2</sup> *Ibid.*

<sup>3</sup> Office of the State Court Administrator, *Real Property/Mortgage Foreclosures*. On file with Banking and Insurance Committee staff.

<b>Real Property/Mortgage Foreclosures All Circuits</b>			
	Number of Filings	Number of Dispositions	Estimated Pending Cases, As of December
Calendar Year 2011	139,015	200,107	363,660
Calendar Year 2012	202,768	195,309	371,119

In 2012, the attorneys general of 49 states and the District of Columbia, the federal government, and five banks and mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase and Wells Fargo) reached agreement on a mortgage settlement that will create new servicing standards, provide loan modification relief to distressed homeowners and provide funding for state and federal governments.<sup>4</sup> The settlement was made formal and binding on April 5, when the U.S. District Court in Washington, D.C. entered the consent judgments containing the settlement terms. The settlement provides as much as \$25 billion in relief to distressed borrowers and direct payments to states and the federal government. The agreement settles state and federal investigations regarding the mortgage loan and foreclosure abuses. The settlement requires new servicing standards that will prevent “robo-signing,”<sup>5</sup> improper documentation, and lost paperwork. The new standards also provide for stricter oversight of foreclosure processing, including third-party vendors.

### **Foreclosure Procedure**

Statutory process and the Florida Rules of Civil Procedure govern the foreclosure procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint<sup>6</sup>, which must allege that the plaintiff is the present owner and holder of the note and mortgage<sup>7</sup>, contain a copy of the note and mortgage<sup>8</sup>, and allege a statement of default<sup>9</sup>,

<sup>4</sup> Information concerning the national settlement can be found at <http://www.nationalmortgagesettlement.com/>.

The court documents are available at [http://www.justice.gov/opa/opa\\_mortgage-service.htm](http://www.justice.gov/opa/opa_mortgage-service.htm) (last viewed March 15, 2013.)

<sup>5</sup> This is a practice of an employee signing thousands of documents and affidavits without verifying the information in the document or affidavit that he or she is signing.

<sup>6</sup> Rule 1.944, Fla. R. Civ. P.

<sup>7</sup> *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

<sup>8</sup> Rule 1.130(a), Fla. R. Civ. P.

<sup>9</sup> *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

along with a filing fee<sup>10</sup> and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.<sup>11</sup>

- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.<sup>12</sup>
- If a defendant has not filed an answer or another paper indicating intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.<sup>13</sup>
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.<sup>14</sup>
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.<sup>15</sup>
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.<sup>16</sup>
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.<sup>17</sup>
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale.<sup>18</sup>
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.<sup>19</sup>
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.<sup>20</sup>
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure<sup>21</sup>, and the court may, in its discretion, enter a deficiency decree for market value of the security received and the amount of the debt.<sup>22</sup>

### Alternative Foreclosure Procedure

Section 702.10, F.S., provides an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The following is a brief outline of this alternative foreclosure process:

<sup>10</sup> The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(d), F.S.

<sup>11</sup> Section 48.23, F.S.

<sup>12</sup> Rule 1.070(j), Fla. R. Civ. P. *See also* chs. 48 and 49, F.S.

<sup>13</sup> Rule 1.040(a)(1), Fla. R. Civ. P.

<sup>14</sup> Rule 1.1510(a), Fla. R. Civ. P.

<sup>15</sup> Section 45.031, F.S.

<sup>16</sup> Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

<sup>17</sup> Section 45.031(1)(a), F.S.

<sup>18</sup> Section 45.031, F.S.

<sup>19</sup> Section 45.031(8), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 45.031, F.S.

<sup>22</sup> Section 702.06, F.S.

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.<sup>23</sup>
- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.<sup>24</sup>
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.<sup>25</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>26</sup>
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3 percent of the principal owed on the note at the time of filing.<sup>27</sup>
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause why a final judgment should not be entered.<sup>28</sup>

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.<sup>29</sup>

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.<sup>30</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>31</sup>
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.<sup>32</sup>
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.<sup>33</sup>

The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.<sup>34</sup>

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<sup>23</sup> Section 702.10(1), F.S.

<sup>24</sup> *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.

<sup>25</sup> Section 702.10(1)(a), F.S.

<sup>26</sup> Section 702.10(1)(b), F.S.

<sup>27</sup> Section 702.10(1)(c), F.S.

<sup>28</sup> Section 702.10(1)(d), F.S.

<sup>29</sup> Section 702.10(2), F.S.

<sup>30</sup> Section 702.10(2)(a), F.S.

<sup>31</sup> Section 702.10(2)(b), F.S.

<sup>32</sup> Section 702.10(2)(c), F.S.

<sup>33</sup> Section 702.10(2)(d), F.S.

<sup>34</sup> *Id.*

### III. Effect of Proposed Changes:

#### **The Foreclosure Complaint: Requiring the Plaintiff to Establish Possession of a Valid Promissory Note or Authority to Enforce the Note**

**Section 9** creates s. 702.015, F.S., to require the plaintiff (i.e., the lender) to certify physical possession of the original promissory note or to provide sworn evidence to support a lost note. This new burden on the lender is intended to expedite the foreclosure process and avoid a repeat of some of the “robosigning,” fraud and other problems of the past. A court may sanction the plaintiff for failure to comply with the requirements of this section. The section does not apply a foreclosure proceeding involving timeshare interests under part III of ch. 721, F.S.

The requirements that must be met under this section to bring a complaint to foreclose a mortgage or other lien on residential real property designed principally for occupation by 1 to 4 families (including condominiums and cooperatives) which secures a promissory note are:

#### ***Facts Regarding Plaintiff Holding Note or Entitlement to Enforce Note [702.015(2) and (3), F.S.]***

The complaint must establish that the plaintiff holds the original note or is entitled to enforce a promissory note by:

- Containing affirmative allegations made by the Plaintiff at the time the proceeding is commenced that the Plaintiff holds the original note secured by the notice; or
- Alleging with specificity the factual basis by which the plaintiff is a “person entitled to enforce” the promissory note under s. 673.3011, F.S.
  - Under s. 673.3011, a “person entitled to enforce” an instrument is the holder of the instrument, a nonholder in possession of the instrument with the rights of a holder, or is not in possession of the instrument who may enforce it under s. 673.3091, F.S., (enforcement of a lost, destroyed or stolen instrument) or s. 673.4181(4), F.S., (mistaken payment or acceptance).

An “original note” or original promissory note” is defined as the signed or executed promissory note. It includes any renewal, replacement, consolidation, or amended and restated note or instrument that renews, replaces, or substitutes for a previous promissory note. The term also includes a transferrable record per s. 668.50(16), F.S. The term does not include a copy of any of the foregoing.

#### ***Facts Regarding Delegation of Authority to Plaintiff to Institute a Foreclosure Action [s. 702.015(3), F.S.]***

If a plaintiff has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint must describe with specificity:

- The authority of the plaintiff, and
- The document that grants such authority to the plaintiff.

These requirements are not intended to modify laws regarding standing or real parties in interest.

***Plaintiff's Possession of Original Promissory Note [s. 702.015(4), F.S.]***

A plaintiff in possession of the original promissory note must file with the court, under penalty of perjury, a certification that the plaintiff possesses the original promissory note. The filing must be made contemporaneously with the foreclosure complaint. The certification must set forth:

- The location of the note;
- The name and title of the individual giving the certification;
- The name of the person who personally verified such possession; and
- The time and date on which possession was certified.

The certification must also have attached to it correct copies of the note and all allonges. The original note and allonges must be filed with the court before the entry of any judgment of foreclosure or judgment on the note.

***Affidavit Required to Enforce a Lost, Destroyed, or Stolen Instrument [s. 702.015(5)]***

A plaintiff seeking to enforce a lost, destroyed or stolen instrument must attach to the complaint an affidavit executed under penalty of perjury. The affidavit must:

- Detail a clear chain of all endorsements, transfers, or assignments of the promissory note;
- Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument. Adequate protection as required under s. 673.3091(2) must be provided before final judgment.
  - Adequate protection refers to adequately protecting the party required to pay the instrument against loss that might occur caused by a claim by another person to enforce the instrument.
- Include as exhibits to the affidavit evidence of the acquisition, ownership, and possession of the note as may be available to the plaintiff. Such evidence includes, but is not limited to, copies of the note, copies of allonges, and audit reports showing receipt of the original note.

**Section 14** creates s. 702.11, F.S., to allow a court to find that the following constitute reasonable means for providing adequate protection under s. 673.3091, F.S.:

- A written indemnification agreement by a person reasonably believed sufficiently solvent to honor the obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Other security the court deems appropriate under the circumstances.

The security must be on terms and in amounts set by the court. The security must run through the statute of limitations for the underlying note and indemnify and hold harmless the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note.

A person who wrongly claims to hold a note or to be entitled to enforce a lost, stolen, or destroyed note who causes the mortgage to be foreclosed is liable to the actual holder, without limitation to any adequate protections given, for actual damages plus attorney fees and costs. The

actual holder may also pursue recovery directly against any adequate protections given. This section does not limit the ability of the actual holder of the note to pursue other claims or remedies it may have against the maker of the note, the person who wrongly claimed to be the holder, or any person who facilitated or participated in the claim to the note or enforcement.

### **The “Show Cause” Foreclosure Procedure: Creating an Expedited Process**

**Section 13** amends s. 702.10, F.S. to establish a “show cause” process that streamlines and expedites foreclosures. The “show case” process preserves all appropriate due process rights protecting borrowers; it eliminates unnecessary court hearings; and it permits community associations standing to participate when there are delinquent assessments due.

The streamlined show cause process is as follows:

After filing a complaint, the plaintiff may request an order to show cause for the entry of final judgment. The court must immediately review the request and the court file in chambers without a hearing. The court must promptly issue an order to show cause why a final judgment of foreclosure should not be entered to the other parties named in the action if the complaint is verified, complies with the requirements in s. 702.015, F.S. (created by Section 10 of the bill), and alleges a cause of action to foreclose on real property.

The court must set a hearing, the date and time of which must not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. If service is by publication, the hearing date cannot be set sooner than 30 days after the first publication. The hearing is no longer required to be held within 60 days of the date of service.

The bill makes responses easier for homeowners once the foreclosure is filed by permitting the homeowner to file other documents in defense of the foreclosure. The bill specifies that the filing of defenses by motion, responsive pleading, affidavits, or other papers before the hearing may constitute cause for the court not to enter final judgment. Under current law, filing of defenses by motion or by a verified or sworn answer prior to the show cause hearing are needed to show cause for the court not to enter final judgment. Current law, however, states that such filings establish cause, while under the bill the expanded types of filings only “may” show cause.

If the defendant files defenses by motion, an answer, affidavits, other papers, and other evidence and argument or if the defendant or defendant’s attorney appears at the hearing, the hearing time will be used to consider whether a genuine issue of material fact exists that precludes the entry of summary judgment or that constitutes a legal defense to foreclosure. The order to show cause must notify the defendant that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

The bill creates a higher standard for the defendant to show cause. Under the bill, the defendant shows cause (why the court should not grant final judgment of foreclosure) if the defendant raises a genuine issue of material fact which precludes entry of summary judgment or is a legal defense to foreclosure in a motion, a verified answer, affidavits, or other papers or in evidence presented at or before the hearing. Current law states that the defendant shows cause merely by filing defenses by a motion or by a verified or sworn answer at or before the hearing.

The court may enter a final judgment of foreclosure if the court finds that all defendants have waived the right to be heard, the court shall promptly enter a final judgment of foreclosure without the need for further hearing if the plaintiff shows entitlement to final judgment and files the original note, establishes a lost note, or shows the court the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that any defendant has not waived the right to be heard on the order to show cause, the court must determine whether there is cause to enter a final judgment of foreclosure. If the hearing time is insufficient, the court may announce a continued hearing on the order to show cause. The court may enter a final judgment of foreclosure if the defendant does not show cause why a final judgment should not be entered.

The Legislature intends that alternative procedure may run simultaneously with other court procedures.

The bill also exempts foreclosures of owner-occupied residences from provisions authorizing the plaintiff to request the court to enter an order to show cause why it should not enter:

- An order to make payments during the pendency of the foreclosure proceedings, or
- An order to vacate the premises.

### **Finality of Mortgage Foreclosure Judgment**

**Section 11** creates s. 702.036, F.S., to prevent a good faith purchaser of property from being dispossessed in a later challenge after the foreclosure is final. The section provides that the former owner may continue to pursue money damages against the lender even after the trial and appeals have concluded, but the claims cannot impact the marketability of the property in the new owner.

An action to set aside, invalidate, or challenge the validity of a final judgment of mortgage foreclosure, or to establish or re-establish a lien or encumbrance of property in abrogation of a mortgage foreclosure final judgment is limited to monetary damages to monetary damages if the following apply:

- The party seeking relief from the final judgment of mortgage foreclosure was properly served in the foreclosure lawsuit.
- The final judgment of mortgage foreclosure was entered as to the property.
- All applicable appeals periods have run as to the final judgment with no appeals having been taken or any appeals having been finally resolved.
- The property has been acquired for value by a person not affiliated with the foreclosing lender or the foreclosed owner, at a time in which no lis pendens regarding the suit to set aside, invalidate, or challenge the foreclosure appears in the official records of the county where the property was located.
  - Affiliates of the foreclosing lender include the foreclosing lender, any loan servicer for the loan being foreclosed, and any past or present owner or holder of the loan being foreclosed. It also includes:



- (a) A parent entity, subsidiary, or other person who directly or indirectly controls, is controlled by, or under common control of such entities
- (b) A maintenance company, holding company, foreclosure services company or law firm under contract with such entities.

Once foreclosure of a mortgage occurs based upon enforcement of a lost, destroyed, or stolen note, a person who was not a party to the foreclosure action but claims entitlement to enforce the promissory note secured by the mortgage has no claim against the foreclosed property once it is conveyed to a person not affiliated with the foreclosing lender or the foreclosed owner. That person may still pursue recovery from any adequate protection given pursuant to s. 673.3091, F.S., or from the party who wrongfully claimed entitlement to enforce the promissory note, from the maker of the note, or any other person against whom a claim may be made.

### **Deficiency Judgments: Limiting the Amount of a Deficiency Decree**

**Section 12** amends s. 702.06, F.S., to limit the amount of a deficiency judgment on owner-occupied residential property to the difference between the judgment amount and the “fair market value” on the date of the foreclosure sale. Similarly, the deficiency for a short sale may not exceed the difference between the outstanding debt and the fair market value of the property on the date of the sale.

### **Actions to Enforce Deficiency Judgments: Reducing the Statute of Limitations on Certain Actions**

**Section 4** amends s. 95.11, F.S., to reduce the statute of limitations period for a lender to enforce a deficiency judgment following the foreclosure of an owner-occupied, one-family to four-family dwelling unit years from 5 years to 1 year.

**Section 5** creates an undesignated section of law that applies the amendments to s. 95.11, F.S. The amendments to s. 95.11, F.S., reduce the statute of limitations to bring an action to enforce a deficiency judgment related to the foreclosure of an owner-occupied, one-family to four-family dwelling unit from 5 years to 1 year. This section applies the 1-year statute of limitations to any such deficiency action that commences on or after July 1, 2013, regardless of when the cause of action accrued. An exception is created for causes of action that accrue before the effective date of the bill and have not expired under the current 5-year statute of limitations. Such actions must be commenced within the 5-year statute of limitations or by July 1, 2014, whichever comes first. Pursuant to Section 19 of the bill, this section will not take effect unless the Legislature appropriates \$1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

### **Publication of Notice of Sale on a Publically Accessible Website**

**Section 1** amends s. 45.031, F.S., to provide an option for publishing the “notice of sale” on a publically accessible website maintained by the clerk of the court. Currently, the notice of sale is required to be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the sale is to held.

**Section 2** amends s. 50.011, F.S., to provide a conforming change to permit publication of a notice of sale on a website maintained by the clerk of the court.

**Section 3** creates s. 50.015, F.S, to provide a conforming change to permit publication on a website maintained by the clerk of the court. This section establishes standards for establishing an accessible Internet website for the publication of a notice of foreclosure.

**Section 10** amends s. 702.035, F.S., to provide a conforming change to permit publication on a website maintained by the clerk of the court.

### **Use of Retired Justices or Senior Judges to Assist with Foreclosure Proceedings**

**Sections 6-8** amend ss. 121.021, 121.091, and 121.591, F.S, to allow courts to employ retired justices and judges to assist with the foreclosure backlog. These sections provide that, effective July 1, 2013, through June 30, 2016, the act of termination for a justice or judge who has reached the later of his or her normal retirement age or the age when vested and subsequently returns to temporary employment as a judge in any court, occurs when the justice or judge has terminated all employment under the Florida Retirement System (FRS) for at least 1 calendar month prior to reemployment as a senior judge. Retired justices and judges who return to such temporary employment are exempt from the limitations on reemployment for purposes of the FRS in s. 121.091(2), F.S., and may continue receiving distributions from his or her FRS account under s. 121.591(1)(a)4., F.S.

**Section 16** adjusts specified employer contributions rates for retired justices and senior judges who are reemployed to assist with foreclosure proceedings as authorized by the bill. The employer contribution changes are needed to fund the benefit changes required to allow retired justices and senior judges to participate in the program.

**Section 17** provides a legislative finding that the act fulfills an important state interest and that a proper and legitimate state purpose is served if employees and retirees of the state and its political subdivisions, and their dependents, survivors and beneficiaries are extended basic protections afforded by governmental retirement systems. The Legislature further finds that the assignment of former justices and judges to temporary employment would assist the State Courts System in managing caseloads and providing individuals and businesses with access to courts. In particular, these assignments are critically important in assisting with the disposition of the current backlog in foreclosure cases. The section also provides a legislative finding that this act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary employment as a judge in a timely manner.

## Application and Implementation of Bill

**Section 15** creates an undesignated section that provides that changes in the process are remedial and not substantive in nature. The act applies to all mortgages encumbering real property and all promissory notes secured by a mortgage, regardless of when executed. The following sections are exempted from this general rule of application:

- Section 702.015, F.S., only applies to cases filed on or after July 1, 2013.
- The amendments to s. 702.10, F.S., and the entirety of s. 702.11, F.S., apply to causes of action pending on the act's effective date.

**Section 18** requests the Supreme Court to amend the Rules of Civil Procedure to implement the expedited foreclosure process.

**Section 19** provides that sections 6, 7, 8, 16, and 17 of this act would take effect only if the Legislature appropriates funding during the 2013 Session the sum of \$1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits authorized in this bill and if the Governor does not veto the appropriation.

**Section 20** provides the act will be take effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 18 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Section 19 of the bill provides that provisions relating to the reemployment of retired justices and the increased employer contributions associated with the costs of the retirement benefits authorized in the bill would not be implemented unless the Legislature appropriates funds and the Governor does not veto the appropriation.

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:

To the extent that the bill streamlines the foreclosure litigation process, it may reduce costs and delays associated with bringing a foreclosure suit.

The expedited foreclosure of abandoned real property would allow such properties to be rehabilitated and sold on the marketplace in a timelier manner, thereby generating additional capital and employment in the local communities and increasing the appreciation of the fair market value of properties in a community.

C. Government Sector Impact:

**Impact on State Courts<sup>35</sup>**

***State Courts Revenue:*** The fiscal impact of this legislation on revenues to the State Courts' trust funds from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from a spike in filings due to a shortened statute of limitations for bringing actions established in the bill.

***Expenditures:*** The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

***Judicial or Court Workload:*** The courts expect to experience a short-term increase in court workload in consequence of provisions permitting additional lienholders to seek show cause orders under modified procedures expediting the foreclosure process. A related longer-term increase in judicial time may be expected under show cause provisions requiring judges immediately review court files to ensure compliance with numerous additional criteria. A near-term increase in court workload may also be anticipated in light of a shortened statute of limitations for bringing actions to enforce claims of deficiency.

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<sup>35</sup> Office of the State Courts Administrator 2013 Judicial Impact Statement, SB 1666, January 18, 2013. Copy available Banking and Insurance Committee Staff.

***Court Rules/Jury Instructions:*** Newly created s. 702.10(3), F.S., requests the Supreme Court amend the Florida Rules of Civil Procedure to provide for expedited foreclosure proceedings and development of related forms. The bill's effective date, upon becoming law, will afford the Court little time to act upon the requested rule making.

***Judiciary:*** Provisions potentially expediting the foreclosure process and reducing related court workload over a period of years will require a corresponding near-term expenditure of court resources. Additional revenue may be anticipated, however, in consequence of an increase in near-term filings by lienholders initiating expedited foreclosure proceedings.

### **Impact on the Florida Retirement System (FRS)**

The Department of Management Services provided an analysis<sup>36</sup> of the provision relating to the FRS Pension Plan, a defined benefit plan and the FRS Investment Plan, which is a defined contribution plan. The department administers the FRS Pension Plan and the State Board of Administration administers the FRS Investment Plan.

The costs in the bill are based on a 2012 actuarial special study conducted by Milliman, Inc.,<sup>37 38</sup> that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

CS/SB 1666 would increase the required employer contribution rates established in s. 121.71(4), F.S., as follows:

- The Elected Officers' Class – Justices, Judges, is increased by 0.45 percentage points.
- The Deferred Retirement Option Program is increased by 0.01 percentage points.

CS/SB 1666 would also increase the required employer contribution rate for the unfunded actuarial liability established in s. 121.71(5), Florida Statutes, for the Elected Officers' Class – Justices, Judges, by 0.91 percentage points.

The provisions of this act relating to senior justices or judges would take effect only if the Legislature appropriates the sum of at least \$1.6 million from the General Revenue Fund on a recurring basis to the judicial branch in order to fund the increased employer contributions associated with the costs of the retirement benefits granted in this act and the appropriations are not vetoed by the Governor. The changes in this bill relating to retired justices and judges shall stand repealed effective July 1, 2016.

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<sup>36</sup> Department of Management Services Bill Analysis 2013, March 14, 2013. On file with the Senate Banking and Insurance Committee Staff.

<sup>37</sup> Milliman, *Study Reflecting the Impact to the Blended Rates of the Florida Retirement System of Exempting Retired Judges from Termination and Reemployment Limitations*, February 9, 2012. On file with Senate Banking and Insurance Committee Staff.

<sup>38</sup> Milliman, *Study Reflecting the Impact to the Florida Retirement System Defined Benefit Plan of Exempting Retired Judges from Termination and Reemployment Limitations*, February 9, 2012. On file with Senate Banking and Insurance Committee Staff.

***Fiscal Impact on State Agencies***

The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study.

- A. Revenues: Not applicable.
- B. Expenditures, Recurring:

<b>7/2013-6/2014</b>	<b>7/2014-6/2015</b>	<b>7/2015-6/2016</b>
\$1,598,000	\$1,662,000	\$1,729,000

***Fiscal Impact on Local Governments***

The costs in the bill are based on a 2012 actuarial special study performed by Milliman, Inc., that did not assume a termination period. The termination period included in this bill is not expected to have a material impact on the choices of senior judges to accept temporary duties or the costs determined in the 2012 special study. The Division of Retirement of the Department of Management Services provided the following information concerning the impact on local governments, as depicted in the table. There are no associated revenues.

<b><i>Recurring Expenditures for Local Governments</i></b>		
<b>7/2013 - 6/2014</b>	<b>7/2014 - 6/2015</b>	<b>7/2015 - 6/2016</b>
\$196,000	\$204,000	\$212,000

**VI. Technical Deficiencies:**

In lines 759-783 of the bill, it is unclear whether recovery in an action or proceeding to set aside, invalidate, or challenge the validity of a mortgage foreclosure final judgment is limited to monetary damages when all the factual scenarios contained in lines 799-812 are applicable or when any one of those factual scenarios is applicable.

**VII. Related Issues:**

None.

**VIII. 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 20, 2013:**

CS/SB 1666 provides technical, conforming changes relating to the temporary reemployment of retired justices and judges. CS/SB 1666 also provides a legislative finding that the act fulfills an important state interest by facilitating the ability of justices and judges who retire under the Florida Retirement System to return to temporary

employment as judges to assist with the disposition of the current backlog in foreclosure cases.

**B. Amendments:**

None.

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-2013

Meeting Date

Topic \_\_\_\_\_

Bill Number 1666  
*(if applicable)*

Name Pete Dunbar

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 215 S. Monroe St

Phone 222-3533

Street

Tallahassee

City

State

Zip

E-mail pete@pennington.com

Speaking:  For  Against  Information

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)

Meeting Date \_\_\_\_\_

Topic Public Notice Bill Number 1666  
(if applicable)

Name JEFF KOTTkamp Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address \_\_\_\_\_ Phone \_\_\_\_\_  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing KEEP THE PUBLIC NOTICE 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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13

Meeting Date

Topic \_\_\_\_\_

Bill Number 16066  
(if applicable)

Name Leslie Dughj

Amendment Barcode Montford Amend  
(if applicable)

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing

Associated Industries

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.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic Public Notice

Bill Number 1666  
(if applicable)

Name JEFF KOTTKAMP

Amendment Barcode Montford  
AMENDMENT  
(if applicable)

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

Address 4511 RANDAG DR.

Phone 239-297-9741

Street

N. Ft. Myers

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing KEEP THE PUBLIC NOTICE 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.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20

Meeting Date

Topic \_\_\_\_\_

Bill Number 11666  
*(if applicable)*

Name Leslie Dughi

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address \_\_\_\_\_  
*Street*

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Associated Industries

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.*

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

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

3/20/2013

Meeting Date

Topic FORECLOSURE

Bill Number SB 1666  
*(if applicable)*

Name WOODY S. RYAN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 1675 FORTUNA STREET

Phone (941) 762-9397

City

State

Zip

E-mail PATRICKHENRY63@COMCAST.NET

Speaking:  For  Against  Information

Representing WOODY S. RYAN + MORTGAGE JUSTICE GROUP

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.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

03/20/13

Meeting Date

Topic FORECLOSURE

Bill Number S/B 1666  
*(if applicable)*

Name RICHARD FRARY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 3649 ASTER DR.  
*Street*

Phone 941-400-7530

SARASOTA  
*City State Zip*

E-mail RICARDOSUAVE@AOL.COM

Speaking:  For  Against  Information

Representing MORTGAGE JUSTICE GROUP

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

Topic MORTGAGE FORECLOSURE - SB 1666

Bill Number SB 1666  
*(if applicable)*

Name Robert Sublett

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 2319 Oak Terrace

Phone 941-921-0802

*Street*  
Sarasota, FL 34231  
*City State Zip*

E-mail bobs@robentsublett.com

Speaking:  For  Against  Information

Representing Mortgage Justice Group

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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic SB 1666

Bill Number 1666  
*(if applicable)*

Name Dean Cammarata

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Self

Address 4431 Emerald Ridge Dr

Phone 941-284-1303

Street

Sarasota FL 34233

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Mutage Justice Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13

*Meeting Date*

Topic Mortgage Foreclosures

Bill Number SB 1666  
*(if applicable)*

Name Carolyn Johnson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1235

*Street*

Tallahassee FL 32301

E-mail cjohnson@flchamber.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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3/20/13  
Meeting Date

Topic MORTGAGE FORCLOSURE

Bill Number 1666  
(if applicable)

Name JIM TRIDER

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 2610 BEE RIDGE RD  
Street

Phone 941-320-0002

SARASOTA FL 34239  
City State Zip

E-mail MORTGAGEJUSTICE1@YAHOO  
.COM

Speaking:  For  Against  Information

Representing MORTGAGE JUSTICE GROUP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

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3/20/13

Meeting Date

Topic Mortgage ForeClosures

Bill Number 1666  
(if applicable)

Name Ronald Gillis

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title -

Address PO Box 380842

Phone 941-613-9895

Street

Murdock

FL

33938

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Self & Constituents of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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3/20/13

Meeting Date

Topic Mortgage Foreclosures

Bill Number 1666  
*(if applicable)*

Name Deborah Lilley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address PO Box 380842

Phone 941-613-9895

Street

Murdock

FL

33138

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic Foreclosure

Bill Number SB 1666  
*(if applicable)*

Name Joseph Stephens

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Fraud Examiner

Address 3817 Robbins

Phone 407-393-7831

Street

Orlando

City

FL

State

32808

Zip

E-mail J.Stephens38@comcast.net

Speaking:  For  Against  Information

Representing ~~FL Dist 31~~ & Foreclosure Fraud Investigators Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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03-20-2013

Meeting Date

Topic Foreclosure

Bill Number 1666  
*(if applicable)*

Name Eddie J. Walker

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Pastor

Address 4815 Cherokee Rose Dr.  
Street

Phone 321-594-3907

City

State

Zip

E-mail EWalker101@CFR.RL.COM

Speaking:  For  Against  Information

Representing PICO FL. & FOCUS Orlando

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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3/20/13  
Meeting Date

Topic Fore closure Bill

Bill Number 1666  
*(if applicable)*

Name ERROL Thompson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Pastor

Address 3239 Old Winter Garden Rd

Phone (407) 826-1635

Orlando FL 32805  
City State Zip

E-mail NewLifeFellowship@cfl.fl.com

Speaking:  For  Against  Information

Representing P.I.C.O United Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/10/2013  
Meeting Date

Topic FORECLOSURE Bill Bill Number #1666  
Name BOOKER T. PERRY Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title COMMUNITY ORGANIZER  
Address RETIRED FL FIREFIGHTER Phone \_\_\_\_\_  
EXEMPTION E-mail \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information

Representing FICO Florida, Orlando 407 924-8906

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13  
Meeting Date

Topic Mortgage Foreclosure

Bill Number 1666  
*(if applicable)*

Name Gregory Clark

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney - TITLE INSURANCE AGENT

Address 1201 S. HighCAND AVE

Phone 727-446-1200

Street

CLEARWATER FL 33756

City

State

Zip

E-mail gclark560@aol.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/19/13  
Meeting Date

Topic SB 1666 Bill Number SB/666  
(if applicable)  
Name Judge Kim Bonner Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_  
Address \_\_\_\_\_ Phone 222 8900  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Conference of County Court Judges

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1644  
*(if applicable)*

Name Diana Ferguson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-461-1768

Street

TALL

City

FL

State

32301

Zip

E-mail D.Ferguson@reynolds.com

Speaking:  For  Against  Information

Representing Community Advocacy Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13

Meeting Date

Topic FORECLOSURES - SENIOR JUDGES Bill Number SB 1666  
(if applicable)

Name JUDGE RON FICARROTTA Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title CIRCUIT JUDGE

Address 401 W JEFFERSON ST Phone 813-272-6797  
Street

TAMPA FL 33602 E-mail FICARRON@FLJUD13.ORG  
City State Zip

Speaking:  For  Against  Information

Representing STATE COURT SYSTEM

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3.20.13

Meeting Date

Topic Mortgage Foreclosure

Bill Number 1666  
*(if applicable)*

Name Trey Goldman

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Counsel

Address 200 S. Monroe

Phone 850/224-1400

*Street*  
Tallahassee FL 32301  
*City* *State* *Zip*

E-mail treygo@floridarealtors.org

Speaking:  For  Against  Information

Representing Florida Realtors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

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**APPEARANCE RECORD**

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3/20/13

Meeting Date

Topic FORECLOSURE (NOTICE) Bill Number 1666  
Name DEAN RIDINGS Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title PRESIDENT (if applicable)  
Address 336 E. COLLEGE AVE Phone 850 521-1162  
Street  
City TALLAHASSEE State FL Zip 32301 E-mail deanr@flpress.com

Speaking:  For  Against  Information

Representing FLORIDA PRESS ASSOCIATION

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Today  
Meeting Date

Topic SB 1666

Bill Number 1666  
*(if applicable)*

Name Chris Mobley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Publisher

Address 1 SE Third Ave. Suite 900  
Street

Phone (305) 347-6612

Miami FL 33131  
City State Zip

E-mail cmobley@alm.com

Speaking:  For  Against  Information

Representing Daily Business Review

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13  
Meeting Date

Topic Mortgage Foreclosure

Bill Number 1666  
*(if applicable)*

Name Danielle Kelley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 2525 Ulysses Rd

Phone (850) 459-6399

Tallahassee FL 32312

City State Zip

E-mail danielle@gwattney  
law.com

Speaking:  For  Against  Information

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
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3/20/13  
Meeting Date

Topic Mortgage Foreclosure Bill Number 1666  
Name Dorene Barker Amendment Barcode \_\_\_\_\_  
Job Title Legislative Director (if applicable)  
Address 2425 Loneya Dr. Phone 850-509-3631  
Street \_\_\_\_\_  
City Jal State FL Zip 32303 E-mail dorene@floridalegal.org

Speaking:  For  Against  Information Waive in opposition

Representing Florida Legal Services, Inc

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
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3/

Meeting Date

Topic Foreclosure rules - public notice Bill Number 1666 (if applicable)

Name MATT WALSH Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title CEO, Observer Media Group

Address 1970 Main St Phone 941 284 4848

Street

City

State

Zip

Sarasota FL 34236

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Press Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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~~Filed~~ 3/20/13  
Meeting Date

Topic Foreclosure Bill Bill Number 1666  
Name Anthony DiMarco Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title EVP (if applicable)  
Address 1001 Thomasville Rd Phone (850) 224-2265  
Tallahassee FL 32303 E-mail adiMarco@floridabankers.com  
City State Zip

Speaking:  For  Against  Information

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.

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3/20/13  
Meeting Date

Topic Mortgage Foreclosure Bill Number 1666  
Name Alice Vickers Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title A Horney (if applicable)  
Address 623 Beard St. Phone 850 556-3121  
*Street*  
Tallahassee, FL 32303 E-mail alice@fcan.org  
*City State Zip*

Speaking:  For  Against  Information

Representing Pico United Florida

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

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3/20/13

Meeting Date

ye-lee-nee

Topic Mortgage Foreclosures

Bill Number SB 1666  
*(if applicable)*

Name Yeline Goin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address 204 S. Monroe St. Suite 203  
*Street*

Phone 850-284-2460

Tallahassee FL 32301  
*City State Zip*

E-mail ygoin@becker-pollakoff.com

Speaking:  For  Against  Information

Representing Community Association Leadership Lobby (CALL)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 464

INTRODUCER: Senator Flores

SUBJECT: Disposition of Unclaimed Property

DATE: March 16, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Favorable</b>
2.			GO	
3.				
4.				
5.				
6.				

**I. Summary:**

SB 464 authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department. The bill also applies the procedures of Ch. 717 F.S. to property reported or remitted by the Chief Financial Officer pursuant to: ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S.

This bill substantially amends the following section of the Florida Statutes: 717.124, F.S.

**II. Present Situation:**

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the chapter.<sup>1</sup> The time period for utility<sup>2</sup> deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or

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<sup>1</sup> s. 717.02(1), F.S.

<sup>2</sup> s. 717.101 (23), F.S., defines the term "utility" to mean a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

advance payment was made is presumed unclaimed.<sup>3</sup> Certain types of unclaimed property, including security deposits having a value of less than \$10, are not to be presumed unclaimed.<sup>4</sup>

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable.<sup>5</sup> At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.<sup>6</sup>

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.<sup>8</sup>

Generally, after the receipt of unclaimed property the department sells all non-cash property to the highest bidder at a public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists.<sup>9</sup> The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund.<sup>10</sup> The department is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the State School Fund.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. Any person claiming an interest in any property delivered to

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<sup>3</sup> s. 717.08, F.S.

<sup>4</sup> s. 717.117(1)(h), F.S.

<sup>5</sup> s. 717.117, F.S.

<sup>6</sup> s. 717.119, F.S.

<sup>7</sup> s. 717.1201, F.S.

<sup>8</sup> s. 717.118, F.S.

<sup>9</sup> s. 717.122, F.S.

<sup>10</sup> s. 717.123, F.S.

the department may file a claim for the property.<sup>11</sup> The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

### III. Effect of Proposed Changes:

The bill authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department. The department has indicated this will allow for greater efficiency,<sup>12</sup> which should help speed up the return of unclaimed property to owners.

The bill also applies the procedures of ch. 717, F.S., to property reported or remitted by the Chief Financial Officer pursuant to:

- Section 43.19, F.S., Money Paid into Court; unclaimed funds: Provides that unclaimed funds held in the court registry for 5 years shall be deposited with the Chief Financial Officer to the credit of the State School Fund. Accounts/funds held in perpetuity.
- Section 45.032, F.S., Disbursement of Surplus Funds after Judiciary Sale: Provides that unclaimed funds as a result of a property foreclosure are to be deposited with the Chief Financial Officer. Accounts/funds held in perpetuity.
- Section 732.107, F.S., Escheat: Property held by an Estate without Heirs ‘escheats’ to the state. Accounts/funds can be claimed for 10 years, after which the funds ‘permanently escheat’.
- Section 733.816, F.S., Disposition of Unclaimed Property Held by Personal Representatives: Property held by a Personal Representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer. Accounts/funds can be claimed for 10 years, after which the funds ‘permanently escheat’.
- Section 744.534, F.S., Disposition of Unclaimed Funds Held by Guardian: Property held by a Legal Guardian that cannot be distributed to a ward or ward’s estate is deposited into the court registry and then is deposited with the Chief Financial Officer. Accounts/funds can be claimed for 5 years, after which the funds ‘permanently escheat’.

The bill takes effect July 1, 2013.

### IV. Constitutional Issues:

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

None.

<sup>11</sup> s. 717.124, F.S.

<sup>12</sup> DFS bill analysis dated January 30, 2013 (On file with the Banking and Insurance committee.)



**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:**

Allowing for the electronic submission of claims should help speed up the return of unclaimed property to owners.

**C. Government Sector Impact:**

The bill should help DFS staff to analyze and process claims sooner.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

None.

**B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13  
Meeting Date

Topic SB 464

Bill Number 464  
*(if applicable)*

Name Logan McFaddin

Amendment Barcode —  
*(if applicable)*

Job Title Legislative Affairs Director

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Speaking:  For  Against  Information

Representing Department of Financial 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.**

S-001 (10/20/11)

**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 Committee Banking and Insurance

BILL: CS/CS/SB 492

INTRODUCER: Banking and Insurance Committee, Judiciary Committee and Senator Hukill

SUBJECT: Estates

DATE: March 21, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Fav/CS
2.	Matiyow	Burgess	BI	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 492 makes a number of changes to the Florida Probate Code, which the Real Property, Probate, and Trust Law Section of The Florida Bar have recommended. These changes include:

- Retroactively eliminating a requirement that an estate file a tax return for an estate tax when no tax is due.
- Reducing from 5 years to 2 years the time period in which intangible property held in a trust is presumed to be unclaimed property and payable to the Department of Financial Services.
- Providing that a caveator is not required to serve notice on his or herself when he or she submits a petition for administration of an estate.
- Making void, with certain exceptions, any gift received by a lawyer, or a relative of the lawyer, from a written instrument that the lawyer prepared.
- Requiring that a clerk of court, upon receipt of a will, keep the will in its original form for 20 years.
- Expanding the long-arm jurisdiction of Florida Courts to adjudicate trust disputes.
- Removing conflicts between the Florida Statutes and the Florida Rules of Civil Procedure pertaining to *forum non conveniens*.

- Requiring that a trustee provide a trust accounting to beneficiaries at least once a year.

This bill substantially amends the following sections of the Florida Statutes: 198.13, 717.101, 717.112, 731.110, 732.703, 732.901, 736.0103, 736.0202, 736.0813, 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104.

This bill creates the following sections of the Florida Statutes: 717.1125, 732.806, and 736.02025.

This bill repeals the following sections of the Florida Statutes: 736.0205 and 736.0807(4).

## II. Present Situation:

### Estate Taxes

Under the American Taxpayer Relief Act of 2012, the Internal Revenue Code does not provide a federal tax credit for the amount an individual pays in state death taxes or state generation-skipping taxes.<sup>1</sup> Under the Florida Constitution, the state may not tax estates in excess of the amount of federal credit provided by the Internal Revenue Code.<sup>2</sup> Because federal law does not authorize federal credits for state death taxes or state generation-skipping taxes, no taxes for either are owed under s. 198.02, F.S., or 198.021, F.S.<sup>3</sup> However, even though the Florida Constitution effectively prohibits a Florida estate tax, s. 198.13, F.S., requires any estate of a decedent dying after December 31, 2012, to file a tax return with the Florida Department of Revenue.<sup>4</sup>

### Unclaimed Property

Chapter 717, F.S., details how to determine whether property held by a fiduciary is unclaimed and how to dispose of it. This includes trustees of trust administered pursuant to chapter 736, F.S., of the Florida Statutes. Currently, any intangible property or income held in a fiduciary capacity for the benefit of another is presumed unclaimed if within 5 years after the property becomes distributable the owner has not interacted with the property. Interaction includes increasing or decreasing the principal, accepting payment of the principal or income, communicating with fiduciary about the property, or otherwise indicating interest as evidenced by a record on file with the fiduciary.<sup>5</sup>

Once the 5-year period elapses, the trustee may file a petition with the Department of Financial Services and request that the department accept custody of the property.<sup>6</sup> Upon delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. As long as the person who delivers the property to the department has done so in good faith, he or she is relieved of any liability to manage the property.<sup>7</sup>

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<sup>1</sup> American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

<sup>2</sup> FLA. CONST. art VII, s. 5.

<sup>3</sup> Sections 198.02, F.S. and 198.021, F.S.

<sup>4</sup> Section 198.13, F.S.

<sup>5</sup> Section 717.112(1), F.S.

<sup>6</sup> Section 717.117(5), F.S.

<sup>7</sup> Section 717.1201(5), F.S.

### **Caveat Notice Requirements**

Section 731.110, F.S., allows an interested party to file a caveat with the circuit court preventing an estate from being administered or a will from being submitted to probate without formal notice being served on the caveator.<sup>8</sup> Based on the wording of the statute, if the caveator files for administration of the estate some courts have required the caveator to file notice on him or herself.<sup>9</sup>

### **Gifts to Lawyers**

Under the Rules Regulating the Florida Bar, a lawyer “shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to client.”<sup>10</sup> However, Florida courts have found that, with no prohibition in statute, a violation of Rule 4-1.8(c), R. Regulating Fla. Bar, does not render a gift to the lawyer void.<sup>11</sup> Instead, an interested party must show fraud, undue influence, or duress in the creation of the will to have the gift voided.<sup>12</sup>

### **Retention of Original Wills and Codicils**

Under s. 732.901, F.S., all original wills must be deposited by the will’s custodian with the clerk of court having venue over the estate, within 10 days of learning of the decedent’s death.<sup>13</sup> The clerk must retain the original will for safekeeping for 20 years.<sup>14</sup> However, the Florida Supreme Court is currently considering changes to the Rules of Judicial Administration which, once a probate proceeding is initiated, may allow for the clerk to create an electronic copy of the will and destroy the original.<sup>15</sup>

### **Jurisdiction over Trustees and Trust Beneficiaries**

Current Florida law does not contain a comprehensive long-arm statute for litigation relating to a trust. The Florida Supreme Court, following decisions by the United States Supreme Court, has ruled that if there is a statute authorizing jurisdiction and if the defendant has sufficient minimum contacts with Florida such that maintaining the suit does not offend traditional notions of fair play and substantial justice, a Florida court may exercise jurisdiction over the defendant.<sup>16</sup> The

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<sup>8</sup> Sections 731.110(1) and 731.110(3), F.S.

<sup>9</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White paper: Proposed Amendment to s. 731.110(3)*, Fla. Stat. (2013) (on file with the Senate Committee on Judiciary).

<sup>10</sup> R. Regulating Fla. Bar 4-1.8(c).

<sup>11</sup> *Agee v. Brown*, 73 So. 3d 882, 886 (Fla. 4th DCA 2011).

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

<sup>13</sup> Section 732.901(1), F.S.

<sup>14</sup> Florida Dep’t of State, *General Records Schedule GS11 for Clerks of Court* (January 1, 2010), available at <http://dhis.dos.state.fl.us/barm/genschedules/GS11-2010.pdf>.

<sup>15</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White paper: Proposed Amendment to s. 732.901*, Fla. Stat. (2013) (on file with the Senate Committee on Judiciary).

<sup>16</sup> *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500-501 (Fla. 1989).

minimum contacts test is a factual analysis insuring that a defendant's constitutional right to due process is not violated.<sup>17</sup> The statute authorizing the jurisdiction is called a long-arm statute. The Real Property, Probate, and Trust Law Section of The Florida Bar is concerned that the long-arm statute in s. 48.193(1), F.S., is too generic to authorize jurisdiction over all necessary parties in a trust dispute, including nonresidents.<sup>18</sup> Section 736.0202(1), F.S., allows Florida courts to acquire personal jurisdiction over nonresidents if he or she accept a trusteeship of a trust having its principal place of administration in Florida, or he or she moves the principal place of administration of a trust to Florida. However, this leaves a number of scenarios in which Florida courts do not have express authority for jurisdiction over all necessary parties. Examples of necessary parties unaccounted for by s. 736.0202(1), F.S., include a beneficiary who accepts compensation from a trust or a person who performs a service for a trust, if the trust has its principle place of business in Florida.

While on its face, s. 736.0205, F.S., appears to be a statute establishing jurisdiction, courts have interpreted it to be a *forum non conveniens* statute that requires a court to determine the "most appropriate forum" in which a case should proceed.<sup>19</sup> Courts have suggested that the statute shifts to the plaintiff the burden of proving that the choice of venue is appropriate.<sup>20</sup> However, this conflicts with Florida Rule of Civil Procedure 1.061 which provides that the defendant has the burden of pleading and proving the facts necessary to obtain a change of venue. Thus, the relationship between the statute and the rule of civil procedure creates confusion as to the correct placement of burden of proof for *forum non conveniens* issues.

### **Trust Accounting**

Under current Florida law, a trustee of an irrevocable trust must provide an annual accounting of the trust to every beneficiary. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.<sup>21</sup>

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

### **Estate Tax (Section 1)**

The bill amends s. 198.13, F.S., eliminating the requirement that an estate with a decedent dying after December 31, 2012, file a tax return with the Florida Department of Revenue. The elimination of the requirement is retroactively applied beginning January 1, 2013.

### **Unclaimed property held in Trust (Sections 3 and 4)**

The bill creates s. 717.1125, F.S., which reduces to 2 years from 5 years the time period after which all intangible property and any income held in a trust is presumed to be unclaimed property and payable to the Department of Financial Services. However, the bill amends

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<sup>17</sup> *Id* at 500.

<sup>18</sup> Real Property, Probate and Trust Law Section of The Florida Bar, *White paper: Proposed Statutes on Acquiring Jurisdiction over Trustees and Trust Beneficiaries and Repealing s. 736.0205* (2013) (on file with the Senate Committee on Judiciary).

<sup>19</sup> *In Re: Estate of McMillian*, 603 So. 2d 685, 688 (Fla. 1st DCA 1992).

<sup>20</sup> *Id.*

<sup>21</sup> Sections 736.0813 and 736.01835, F.S.

s. 717.112(1), F.S., to preserve existing procedures for a personal representative of an estate to deposit unclaimed funds into the registry of the court.

#### **Caveat Notice Requirements (Section 5)**

The bill amends s. 731.110, F.S., to clarify that a caveator is not required to serve formal notice of his or her own petition for administration of an estate on his or herself.

#### **Gifts to Lawyers (Section 7)**

The bill creates s. 732.806, F.S., which voids, with certain exceptions, any part of a written instrument that a lawyer prepared or supervised which makes a gift to a lawyer or a person related to the lawyer. However, the restriction on gifts does not affect:

- Gifts to a lawyer or other person if the lawyer or other person is related to the person making the gift.
- A written instrument appointing a lawyer, or other person related to the lawyer, as a fiduciary.
- Title to property acquired for value from a person who receives the property in violation of the restrictions on gifts.

The bill makes any provision of the instrument which attempts to waive s. 732.806, F.S., unenforceable. The bill also expressly provides that it does not preempt any other rights or remedies of interested parties which may be available in equity.

#### **Retention of Original Wills and Codicils (Section 8)**

The bill amends s. 732.901, F.S., in anticipation of changes to the Rules of Judicial Administration, clarifying that a clerk of court, upon receipt of a will, must keep the will in its original form for 20 years. Transferring and storing the will in an electronic format does not negate the requirement that the will be preserved in its original form. The bill also requires that a custodian supply only the last 4 digits of the testator's social security number to the clerk of court upon deposit of the will, instead of the entire number.

#### **Jurisdiction Over Trustees and Trust Beneficiaries (Sections 10, 11, and 12)**

The bill amends s. 736.0202(1), F.S., making it a standalone provision governing *in rem* jurisdiction over beneficiaries' interests in a trust. Additionally, the bill amends s. 736.0202(2), F.S., to create a comprehensive long-arm statute for litigation of trusts. It specifies acts or conduct that allows Florida courts to acquire personal jurisdiction over a nonresident trustee, trust beneficiary, or other person, as long as the constitutional due process requirement of minimum contacts with the state is met. These acts include:

- A trustee who accepts a trust if the principle place of business of the trust is in Florida.
- A trustee who moves a trust to Florida.
- A trustee who commits a breach of a trust in this state.

- A beneficiary or person who accepts distribution or compensation from a trust if the principle place of business of the trust is in Florida.
- A person who performs a service for a trust when the principle place of business of the trust is in Florida.

The bill also includes a catch-all provision that allows a court to exercise jurisdiction to the maximum extent permitted by the State Constitution or the Federal Constitution.

The bill creates s. 736.02025, F.S., which provides for service of process for the litigation of trust as laid out in chapter 48, F.S., the general statute on service of process.<sup>22</sup> Section 736.02025, F.S., also provides for service of process by mail or commercial delivery service if the case involves an interest in trust property but does not seek a personal jurisdiction. Finally, it allows for service by first-class mail in certain limited circumstances.

The bill repeals s. 736.0205, F.S., which eliminates any potential conflicts between the statute and Rule 1.061 Fla. R. Civ. P. over *forum non conveniens*.

#### **Trust Accounting (Section 14)**

The bill amends s. 736.0813 F.S., to require that the trustee provide a trust accounting at least once a year from the date of the last accounting or, if there has been no previous accounting, the date that trustee became accountable.

#### **Definitions (Sections 2 and 9)**

The bill defines:

“Trust instrument” to mean a trust instrument as defined in s. 736.0103.

“Distributee” means a beneficiary who is currently entitled to receive a distribution.

“Permissible distributee” means a beneficiary who is currently eligible to receive a distribution.

#### **Technical Changes (Sections 6, 15, 16, 17, 18, 19 and 20)**

The bill amends ss. 607.0802, 731.201, 732.703, 733.212, 736.0802, 736.08125, and 738.104, F.S., to conform cross-references to changes made by the bill.

The bill repeals subsection (4) of section 736.0807, F.S., Delegation by trustee. — **(Section 13)**  
*(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.*

The bill takes effect on October 1, 2013.

## **IV. Constitutional Issues:**

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

None.

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<sup>22</sup> See Chapter. 48, F.S.



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 bill will prevent financial benefits from passing to a lawyer in favor of other beneficiaries.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Banking and Insurance on March 20, 2013:**

The committee substitute retroactively applies, beginning January 1, 2013, the elimination of the requirement in s. 198.13, F.S., that an estate file a tax return with the Florida Department of Revenue even though no state estate tax is due.

The committee substitute also clarifies only unclaimed intangible property and any unclaimed income is payable to the Division of Unclaimed Property at the Department of Financial Services.

**CS by Judiciary on February 19, 2013:**

The committee substitute deletes a requirement in s. 198.13, F.S., that an estate file a tax return with the Florida Department of Revenue even though no state estate tax is due.

B. Amendments:

None.

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

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**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 Committee on Banking and Insurance

**BILL:** CS/SB 468

**INTRODUCER:** Banking and Insurance Committee and Senator Hukill

**SUBJECT:** Property and Casualty Insurance Rates and Forms

**DATE:** March 20, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/CS
2.			HP	
3.			JU	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 468 expands the number of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S, to include:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician.

The rate filing requirements that these types of medical malpractice insurance are exempt from are:

- The requirement to file with the Office of Insurance Regulation (OIR) rates, rating schedules, or rating manuals via the “file and use” method (at least 90 days prior to the proposed effective date) or the “use and file” method (within 30 days after the effective date of the filing).

- The authority of the OIR to require an insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also creates an alternative mechanism to the form filing and approval process required by s. 627.410, F.S., for all lines of property and casualty insurance, except workers' compensation. Insurers may elect to self-certify that their forms comply with Florida law instead of having to file forms and obtain OIR approval under s. 627.410, F.S., if:

- The form is electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state.
- The informational filing includes a certification of compliance.
- If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S.
- For a renewal policy that contains a change, a Notice of Change in Policy Terms form must be included as a part of the informational filing.

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.410.

The bill creates the following section of the Florida Statutes: 627.4102.

## **II. Present Situation:**

### **Ratemaking Regulation for Property, Casualty, and Surety Insurance**

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., which is entitled the "Rating Law," and applies to all property, casualty, and surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which part I applies "shall not be excessive, inadequate, or unfairly discriminatory."

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the "file and use" method or the "use and file" method. Under "file and use," the insurer submits to the OIR their proposed rate at least 90 days before the rate's effective date and shall not implement the rate until it is approved. Under "use and file," the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate's effective date. If a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.

- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Section 627.062(2)(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer's expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

### **Types of Insurance Exempt from Filing and Review Requirements**

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire-extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices and management liability.
- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- General liability.
- Nonresidential property, except for collateral protection insurance as defined in s. 624.6085, F.S.
- Nonresidential multiperil.
- Excess property.
- Burglary and theft.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following:

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information.

### **OIR Approval of Forms**

Each basic insurance policy form,<sup>1</sup> unless otherwise exempted,<sup>2</sup> must be approved by the OIR before the form can be used by an insurance company.<sup>3</sup> Each form must be filed at least 30 days prior to its use in policies delivered or issued for delivery in this state. The OIR must approve or disapprove the form within 30 days or it is deemed approved.<sup>4</sup> The OIR, however, under s. 627.410(4), F.S., has the authority to exempt by order an insurance form or type of form from the approval process for as long as it deems proper<sup>5</sup> if the filing and approval process cannot be practicably applied or is not desirable or necessary for the protection of the public.<sup>6</sup>

In 2012, the OIR issued three orders exempting certain insurance forms from being filed and approved prior to use. The first order, issued on April 9, 2012, exempted specified commercial insurance lines<sup>7</sup> from the prior approval requirement of s. 627.410, F.S., for one year.<sup>8</sup> Instead,

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<sup>1</sup> Statutorily required forms requiring OIR approval prior to use are basic insurance policies, annuity contracts, application forms where a written application is required and is part of the policy or contract, group certificates issued under a master contract delivered in Florida, and printed riders, endorsement forms, or forms of renewal certificates.

<sup>2</sup> Statutorily exempted forms are surety bonds or policies, riders, endorsements, or forms of unique character that are designed and used with relation to insurance upon a particular subject (other than health insurance)

<sup>3</sup> s. 627.410(1), F.S.

<sup>4</sup> The Office may extend the form review process 15 days.

<sup>5</sup> s. 627.410(4), F.S.

<sup>6</sup> Id.

<sup>7</sup> The commercial lines exempted by the order from the form review process were those that are exempted from prior rate review by s. 627.062(3)(d), F.S. The categories of commercial risks exempted from prior rate review are (a) Excess or umbrella, (b) surety and fidelity, (3) boiler and machinery and leakage and fire extinguishing equipment, (d) errors and omissions, (e) directors and officers, employment practices, fiduciary liability, and management liability, (f) intellectual property and patent infringement liability, (g) advertising injury and Internet liability insurance, (h) property risks rated under a highly protected risks rating plan, (i) general liability, (j) nonresidential property, except for collateral protection insurance, (k) nonresidential multiperil, (l) excess property, (m) burglary and theft, and (n) any other commercial lines that the OIR determines should not be subject to prior rate review because a competitive market for such existence exists, such insurance is similar to other types of exempt insurance, or if the exemption will improve the general operational efficiency of the office.

such commercial insurers were permitted to make an informational form filing 30 days prior to using the forms, accompanied by a notarized certification that the submitted form filing complies with Florida law and acknowledging that if the forms are not in compliance, the company is subject to appropriate regulatory action. The OIR premised its order on the rate review exemption granted these types of commercial insurance policies, that the consumers of commercial insurance products are sophisticated parties with experience in insurance transactions, and the office's high volume of commercial form filings which had taxed its review resources and resulted in a lengthier review period for many commercial forms.

The second order, issued on June 25, 2012, exempted all property and casualty insurance forms, except workers' compensation, from the prior approval requirements for one year.<sup>9</sup> Insurers were permitted to make an informational filing accompanied with a notarized certification 30 days prior to using the forms. This order was predicated on findings that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, and that requiring the OIR to review and approve forms before they could be used in the market was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The third OIR order issued on December 2, 2012, provided a clarification relating to the insurer's certification of compliance, but otherwise did not change the order of June 25, 2012. To date, approximately 20 percent of form filings eligible for self-certification under the order have utilized the exemption.

Representatives from the OIR indicate that, historically, over 90 percent of all property and casualty insurance form filings contain a violation of Florida law that must be addressed prior to the filing being approved. The lines of business that historically have the highest indices of non-compliant forms are the automobile and property lines of business (both personal and commercial), which OIR representatives opined likely stem from the high number of regulations that apply to these lines, the frequency of regulatory changes, and perhaps a high incidence of litigation.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 627.062, F.S., to amend the insurance "Rating Law," to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S. The bill adds the following types of insurance to be exempt:

- Medical malpractice for a facility that is not a licensed hospital, nursing home, or assisted living facility. Examples of such facilities: laboratories, imaging facilities, dialysis centers, drug and alcohol rehabilitation facilities and hospice facilities.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician. Examples of such health care practitioners to whom the exemption would apply include: occupational and

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<sup>8</sup> Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (April 9, 2012).

<sup>9</sup> Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (June 25, 2012).

physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians.

The rate filing requirements that these lines of insurance are exempt from are:

- Section 627.062(2)(a), F.S.: The requirement to file with the OIR rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return. Such filings must be made via the “file and use” method (at least 90 days prior to the proposed effective date) or the “use and file” method (within 30 days after the effective date of the filing).
- Section 627.062(2)(f), F.S.: Authorizes the OIR to require an insurer to provide, at the insurer’s expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also reduces to 2 years the requirement that insurers retain actuarial data and documents for rates on coverage that is exempt from the rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S. The bill also specifies that the OIR may require an insurer to incur the costs of an examination of the actuarial data.

**Section 2.** Amends s. 627.410, F.S., making technical changes to conform with the creation of s. 627.4102, F.S. in Section 3 of the bill.

**Section 3.** Creates s. 627.4102, F.S., which allows an alternative mechanism to the current form filing and approval process required by s. 627.410, F.S. The bill specifies that except for workers’ compensation forms, all property and casualty forms are exempt from the requirements of s. 627.410, F.S., if they meet the requirements of s. 627.4102, F.S., which are:

- The form must be electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state.
- The informational filing must include a certification of compliance signed by the insurer’s president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The bill specifies the language that must be included in the certification.
- If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S.
- For a renewal policy that contains a change, a Notice of Change in Policy Terms form must be included as a part of the informational filing.

The bill specifies the provisions of Section 3 of the bill supersede the OIR Order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, 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:

None.

B. Private Sector Impact:

Proponents of the exempting certain lines of medical malpractice insurance from specified rate filing requirements assert that a competitive market exists for those types of insurance. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverage continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory. Proponents of previously granted exemptions, however, also often justified past exemptions by asserting that the purchaser would likely be a sophisticated business entity. It is less certain that health care practitioners such as occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians are sophisticated purchasers of coverage.

Permitting property and casualty insurance forms, other than for workers' compensation, will allow insurers to issue forms that have not been reviewed by the OIR for compliance with Florida law. The initial OIR order of April 9, 2012, that authorized self-certification for only commercial property and casualty forms cited as justification that the purchasers of commercial lines products "are sophisticated parties, and are more experienced in insurance transactions than consumers." However, such justification is not applicable to the expansion of the self-certification process to personal lines property and casualty insurance, which includes the auto insurance and property insurance lines, two lines that have historically had the highest incidence of non-compliant forms.

C. Government Sector Impact:

The bill relieves the specified types of medical malpractice insurance from rate filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review rate filings for the types of insurance that are being exempted from that requirement.

Exempting all property and casualty forms, other than workers' compensation, to be self-certified by the insurer should reduce the volume of form filings received by the OIR.

According to the OIR Order dated December 3, 2012, authorizing insurer self-certification of all property and casualty insurance forms until June 24, 2013, “insurers have filed a historically high number of property and casualty insurance forms” that have “taxed the OIR’s review resources and resulting in a lengthier period of review for many filings.” Allowing property and casualty insurers to certify forms as complying with Florida law in lieu of obtaining prior approval from the OIR will result in a decrease in the Office’s workload and may reduce its funding needs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 1770 contains similar provisions to those contained in Section 2 and Section 3 of this bill.

**VIII. 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 20, 2013:**

- Specifies the practice chapters of physicians whose medical malpractice insurance policies may not be exempted from the full rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S.
- Revises the contents of the notarized self-certification an insurer must execute to exempt property and casualty insurance forms from prior review by the OIR, to state that if the certification is not in compliance with Florida law, the form will be disapproved, rather than subjecting the company to appropriate regulatory action.
- Specifies that the provisions of Section 3 of the bill supersede the OIR Order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, F.S.

**B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic INSURANCE

Bill Number 468

Name GARY FARMER

Amendment Barcode 620194  
(if applicable)

Job Title ATTORNEY

Address 425 N. ANDREWS AVE

Phone 954-574-2828

Street

FT. LAUD FL 33301

E-mail GARY@PATHTOJUSTICE.COM

City

State

Zip

Speaking:  For  Against  Information

Representing FLORIDA JUSTICE ASS'N

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)

3/20/13  
Meeting Date

Topic Jobs, Rates & Forms

Bill Number 468

Name Rebecca Matthews

Amendment Barcode 620194  
(if applicable)

Job Title Deputy COS / Gov. Affairs

Address 200 E. GAINES ST.  
Street  
Tallahassee FL 32311  
City State Zip

Phone 850-509-3494

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

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)

3/20/2013

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 468  
*(if applicable)*

Name Gerald Wester

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 101 E College Av

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing American INS Association AIF

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic Estates Bill -

Bill Number 492  
*(if applicable)*

Name Martha Edenfield

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address PO BOX 10095  
*Street*

Phone 850-222-3533

Tallahassee FL 32302  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information Support the bill

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

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 Committee on Banking and Insurance

**BILL:** CS/SB 648

**INTRODUCER:** Banking and Insurance Committee and Senator Hukill

**SUBJECT:** Health Insurance Marketing Materials

**DATE:** March 20, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Burgess	BI	Fav/CS
2.			HP	
3.				
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 648 deletes the requirement that health insurers and health maintenance organizations submit marketing communications for small employer health plans to the Office of Insurance Regulation (OIR) for review. The bill also deletes the requirement that each marketing communication contain specific disclosures, but retains the requirement that such disclosure be provided to a small employer upon the offer of coverage.

The bill continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such material upon filing, subject to subsequent disapproval by OIR. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertisement with respect to the business of insurance, which is untrue, deceptive, or misleading.

This bill substantially amends the following sections of the Florida Statutes: 627.6699 and 627.9407

## II. Present Situation:

### Small Employer Health Coverage

*Florida Law* - The Employee Health Care Access Act (s. 627.6699, F.S.), enacted in 1992, requires health insurers and health maintenance organizations (carriers) to offer a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans, to any small employer who applies for coverage, regardless of the health status of the employees (“guaranteed-issue”). In general, a small employer is defined as an employer with 1 to 50 eligible employees, including a sole proprietor. Carriers may also offer a “limited benefit policy” to a small employer, as well as additional benefits to the standard and basic health benefit plans

The current law requires that upon offering coverage to a small employer of a standard health benefit plan, basic health benefit plan, or limited benefit policy, the carrier must provide the small employer with a statement disclosing the following:

- a) An explanation of those mandated benefits and providers that are not covered by the policy or contract;
- b) An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
- c) An explanation of the primary and preventive care features of the policy or contract.

The current law also requires that each marketing communication for small employer health benefit plans must be submitted by the carrier to the Office of Insurance Regulation for review prior to use. The law does not require prior approval by OIR and does not specify that OIR may disapprove the use of the marketing communication. The marketing communications must contain the disclosures specified above.

*Federal Law* - Effective January 1, 2014, the federal Patient Protection and Affordable Care Act<sup>1</sup> (PPACA) requires each health insurance issuer that offers health insurance coverage in the individual or group market to accept every individual and employer in the state that applies for such coverage.<sup>2</sup> Final regulations require that health insurance issuers offer to any individual or employer in the state all products that are approved for sale in the applicable market.<sup>3</sup> PPACA also requires, effective January 1, 2014, that coverage offered in the individual and small group market include a specified category of “essential health benefits.”<sup>4</sup>

Under PPACA, state insurance laws continue to apply except to the extent that they prevent the application of a provision of PPACA. Title I of PPACA, which includes the requirements

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<sup>1</sup> Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152)

<sup>2</sup> Section 1201, amending section 2702 of the Public Health Services Act (42 U.S.C. s. 300gg-1)

<sup>3</sup> 77 FR 70612, February 27, 2013

<sup>4</sup> Section 1201, amending section 2707 of the Public Health Services Act (42 U.S.C. s. 300gg-6)



summarized above, contains the following provision related to preemption of state insurance laws:

*No Interference With State Regulatory Authority—Nothing in the title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.*<sup>5</sup>

Many of the provisions of PPACA, including those related to guaranteed-issuance of coverage, do not apply to a “grandfathered health plan,” which is individual or group coverage in which an individual was enrolled on March 23, 2010.<sup>6</sup> Under federal regulations, plans lose grandfathered status if the insurer makes certain changes that reduce benefits or increase cost sharing.<sup>7</sup> A grandfathered health plan that is exempt from a provision of PPACA would remain subject to any comparable state insurance law, including the Employee Health Care Access Act.

It is not entirely clear which provisions of the Employee Health Care Act may be preempted by PPACA and which continue to apply. It appears that the Florida requirement for small employer carriers to offer a standard, basic, and high-deductible health plan will be preempted to the extent that carriers will be required under federal law to offer all plans approved for sale in the small group market and that such plans must include the essential health benefits. However, the disclosure requirement of state law and the requirement to submit marketing materials to OIR for review would appear not to be preempted. For grandfathered-health plans exempt from these requirements of PPACA, the current requirements of the Employee Health Care Access Act would continue to apply.

### **Long-Term Care Insurance**

Long-term care insurance generally covers care in a nursing home and one or more lower levels of care such as home health care or assisted living. Coverage typically includes the cost of personal care and services that are not covered by traditional health insurance or a Medicare Supplement insurance policy, such as assistance with activities of daily living. Florida law imposes specific requirements on long-term care insurance policies in part XVIII of chapter 627 (ss. 627.9410 - 627.9408), F.S., designated as the Long-Term Care Insurance Act.

The Act requires that an insurer must file with the Office of Insurance Regulation any long-term care insurance advertising material intended for use in Florida at least 30 days before the advertisement is used. Within this 30-day period, the OIR must disapprove any advertisement that, in its opinion, violates any provision of the Act, any rule adopted by the Financial Services Commission, or any provision of part IX of chapter 626 (Unfair Insurance Trade Practices). The Act further authorizes OIR to disapprove an advertisement at any time and enter an immediate order requiring that it be discontinued if OIR determines that the advertisement violates any such provisions.<sup>8</sup>

The Act requires the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies, for the stated purpose of

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<sup>5</sup> Section 1321(d)

<sup>6</sup> Section 1251; 42 U.S.C. s. 18011

<sup>7</sup> 45 C.F.R. s. 147.140

<sup>8</sup> Section 627.9407(2), F.S.

protecting applicants from unfair or deceptive sales or enrollment practices.<sup>9</sup> The rules for long-term care insurance policies cross-reference the advertising rules that apply to life and health insurance policies, generally, which include various form, content, and disclosure requirements.<sup>10</sup>

### **Related Requirements**

Persons involved in the business of insurance are prohibited from engaging in specified unfair insurance trade practices, including knowingly making, publishing, or circulating any advertisement, announcement, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.<sup>11</sup>

The Office of Insurance Regulation is authorized to perform market conduct examinations on each authorized insurer as often as it deems necessary, for the purpose of ascertaining compliance with ch. 627 and other specified provisions of the Florida Insurance Code.<sup>12</sup>

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

CS/SB 648 deletes the requirement that health insurers and health maintenance organizations submit each marketing communication for small employer health plans to the Office of Insurance Regulation for review. The bill also deletes the requirement that each marketing communication contain the specific disclosures that carriers are required to provide to a small employer upon offering a standard benefit plan, basic benefit plan, or limited benefit policy. However, the bill does not delete the requirement that this disclosure be provided to a small employer.

The bill continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such material upon filing, subject to subsequent disapproval by OIR. Following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertisement with respect to the business of insurance, which is untrue, deceptive, or misleading.

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

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

None.

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<sup>9</sup> Id.

<sup>10</sup> 69O-157.115, F.A.C, referencing 69O-150, F.A.C.

<sup>11</sup> Section 626.9541(1)(b), F.S.

<sup>12</sup> Section 624.3161, F.S.

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 bill would reduce costs of insurers associated with filing marketing materials for small employer health plans.

C. Government Sector Impact:

There will be some reduction in staff time of OIR devoted to review of marketing materials, but will not significantly impact OIR resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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 20, 2013:**

The CS clarifies that advertising materials for long-term care insurance policies, which the bill allows an insurer to begin using upon filing, are subject to subsequent disapproval by the office. The CS further clarifies that following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material.

B. Amendments:

None.

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 242

INTRODUCER: Senator Hukill

SUBJECT: Interstate Insurance Product Regulation Compact

DATE: March 16, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.			GO	
3.			AGG	
4.			AP	
5.				
6.				

**I. Summary:**

SB 242 enacts the Interstate Insurance Product Regulation Compact (Compact). The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

Upon joining the Compact, Florida will become a member of the Interstate Insurance Product Regulation Commission (Commission). The Commission primary duties are to:

- Develop uniform standards for product lines;
- Receive and promptly review products; and
- Approve product filings that satisfy applicable uniform standards.

The bill has an effective date of October 1, 2013.

This bill creates undesignated sections of the Florida Statutes.

## II. Present Situation:

### The Interstate Insurance Product Regulation Compact

The Interstate Insurance Product Regulation Compact (Compact) is an agreement among the compacting states to uniform standards for the regulation of four insurance product lines:

- Life insurance,
- Annuities,
- Disability income, and
- Long-term care insurance.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (Commission).<sup>1</sup> Each compacting state is represented by one member, who is that state's representative to the Commission. All Compact members<sup>2</sup> receive one vote under the Compact. The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members. The Commission is governed by a 14-member management committee. The Management Committee members currently include the seven largest Compacting States according to premium volume,<sup>3</sup> four mid-sized states with at least 2 percent of the national premium volume<sup>4</sup> and one additional state from each of four regional zones<sup>5</sup>

The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

If Florida joins the Compact, any product whose product line is governed by the Compact and is submitted to the Commission, if approved, will be approved to be offered for sale in Florida<sup>6</sup> if it complies with the requirements of the Compact. The model laws and regulations of the Compact will govern and generally preempt the application of conflicting Florida law governing the product.<sup>7</sup> A state may opt out of a uniform standard via legislation or rule either at the time the

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<sup>1</sup> The Commission is a multi-state joint public entity that came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. The Commission did not become operational for purposes of adopting uniform product standards until it May 2006, when it met the requirement set by the terms of the Compact. The Commission has 41 Member States representing approximately two-thirds of the premium volume nationwide.

<sup>2</sup> The other Compact members are Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming

<sup>3</sup> Illinois, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Texas.

<sup>4</sup> Maryland, Missouri, Virginia, and Wisconsin

<sup>5</sup> Kansas, Mississippi, New Hampshire and Washington

<sup>6</sup> If the insurer is authorized to transact business in Florida.

<sup>7</sup> All lawful actions of the Commission, including all uniform standards, rules, and operating procedures, are binding on compacting states. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General.

state enacts the Compact or prior to the enactment of a new standard or rule approved by the Commission. Florida will opt out of Commission standards for long-term care insurance and join the Compact for life insurance, annuities, and disability income insurance under SB 242.

The Florida Legislature has in the past enacted laws containing greater consumer protections than are generally available in other states. For instance, in Florida, the suitability of an annuity—the appropriateness of a particular annuity product relative to the consumer’s age, investment objectives, and current and future financial needs—has been a primary concern with regard to transactions involving consumers, particularly senior consumers. In 2004, the Florida Legislature enacted a model law on annuities, the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.<sup>8</sup> The 2008 Legislature, however, subsequently passed the John and Patricia Seibel Act, which strengthened Florida’s annuity standards and procedures.<sup>9</sup> Those standards were further strengthened by the 2010 Legislature.<sup>10</sup>

To date, the Commission has adopted uniform standards for the following individual product lines: term and whole life insurance, variable and non-variable adjustable life insurance, variable and non-variable annuities, long-term care insurance, and disability income insurance. The Commission has also promulgated standards relating to the applications for the various individual lines of insurance, the benefit features of individual life policies, the benefit features of individual annuities, and for changes to mortality tables used for individual life insurance. Standards for group term life insurance have also been adopted. The Commission is in the process of developing uniform standards for group annuities and standards for specific benefits offered in group term life insurance policies.

### **Life Insurance**

Life insurance is insurance of human lives.<sup>11</sup> Life insurance provides survivor benefits for designated beneficiaries upon the death of the insured. The three most common types of life insurance are whole life, term life, and universal life. Whole life insurance provides a fixed amount of life insurance coverage while building cash value. The premium remains the same until the maturity date (usually age 100). Benefits are payable upon the death of the insured or on the maturity date. The cash value of the policy increases as premiums are paid and allow loans to be made on the policy for up to the amount of the cash value. Term life insurance is purchased for a specific time period and pays a death benefit only if the insured dies during the specified time period. Term insurance does not build cash value. Term life insurance policies may contain provisions allowing the insured to renew the policy after expiration of the term or convert the policy to a whole life policy. Universal life insurance is a combination of a term life policy and the ability to accumulate cash value.

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<sup>8</sup> Section 146, ch. 2004-390, L.O.F.

<sup>9</sup> Section 9, ch. 2008-237, L.O.F.

<sup>10</sup> Section 52, ch. 2010-175, L.O.F.

<sup>11</sup> Section 624.602, F.S.

## **Annuities**

An annuity is a form of life insurance transaction involving a contract between a customer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years.

## **Disability Income Insurance**

Disability income insurance pays a weekly or monthly income for a specific period if the insured suffers a disability and cannot continue working or obtain work. The disability may involve sickness, injury or a combination of the two. Disability policies often contain an elimination period, which is a specified time period after the date of disability that must pass before the insured may receive benefits. Most disability insurance plans coordinate benefits with Social Security benefits and workers' compensation to eliminate duplication of coverage.

## **Long-Term Care Insurance**

Long-term care insurance policies provide benefits for a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time for services not covered by a regular health insurance, Medicare or Medicare supplement insurance policy. The need for long-term care insurance may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

Florida law establishes requirements for long-term care policies in the Long-Term Care Insurance Act.<sup>12</sup> The act specifies filing requirements, disclosure, advertising, and performance standards for such policies, minimum standards for home health care benefits, mandatory offers, cancellation requirements, and standards for benefit triggers for receiving benefits under the policy. The act also provides consumers grace periods for late payment and notice of cancellation.<sup>13</sup>

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<sup>12</sup> Part XVIII of chapter 627, F.S.

<sup>13</sup> Section 627.94073, F.S.

### III. Effect of Proposed Changes:

SB 242 enacts the Interstate Insurance Product Regulation Compact. The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

#### **Legislative Findings and Declaration of Intent**

**Section 1** Creates an undesignated section of statute stating that Florida intends to join the Interstate Insurance Product Regulation Compact (Compact) and become a member of the Interstate Insurance Product Regulation Commission (Commission). The Legislature finds that the Compact will, through a single source for filing new products and a uniform set of product standards that provide a high level of consumer protection, address the increased mobility of the populace and significant changes in the financial services marketplace that have resulted in asset-based insurance products competing directly with other retirement and estate planning instruments sold by banks and securities firms. The Legislature also declares that it is adopting the compact under the understanding that no uniform standards long-term care insurance rate increase filings will be developed.

#### **Enactment of the Compact and Membership in the Commission**

**Section 2** Makes the state a compacting state under the Compact and a member of the Commission, whose purposes are to protect consumer interests, develop uniform standards for insurance products, establish a clearinghouse to promptly review insurance products and related advertisements, give regulatory approval to product filings and advertisements that satisfy the applicable uniform standard, coordinate regulatory resources among states, create the Commission, and perform these and other related functions.

#### ***Definitions***

Defines terms used in the compact, including, but not limited to:

- **Product** – A product is the policy form or contract and includes any application, endorsement, or related form that is attached to and part of the policy or contract. The term also includes any evidence of coverage or certificate for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.
- **Rule** – A Commission statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or that prescribes law or policy or describes the requirements of the Commission which has the force and effect of law in compacting states. Rules include such statements adopted as of March 1, 2013, and



subsequent amendments if the methodology of the amendment remains substantially consistent. Commission uniform standards are rules.

- Uniform Standard – A commission standard for a product line and includes the aggregated product requirements. It includes all standards adopted as of March 1, 2013, and subsequent amendments if the methodology remains substantially consistent. A uniform standard must be construed to prohibit the use of inconsistent, misleading, or ambiguous provisions in a product. The uniform standard must also ensure that the form of any product made available to the public is not unfair, inequitable, or against public policy as determined by the Commission.

### ***Powers of the Commission***

The bill establishes the Interstate Insurance Product Regulation Commission. The Commission may:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

The Commission has the power to adopt rules that have the force and effect of law and are binding in the compacting states. Such rules include uniform standards for product and related advertisements that are filed with the Commission. Any uniform standards for long-term care insurance products must provide the same protections specified in the NAIC Long-Term Care Insurance Model Act and the Long-Term Care Insurance Model Regulation adopted as of 2001.

The Commission also has authority to receive and review products filed with the Commission and rate filings for disability income and long-term care insurance products. Products and rates that satisfy the appropriate uniform standard may be approved. Commission approval has the force and effect of law and is binding on compacting states.

The Commission may designate certain products and advertisements that may self-certify compliance with uniform standards and commission rules and are not required to obtain prior approval from the Commission. The Commission may issue subpoenas requiring the testimony of witnesses and production of evidence and may also bring and prosecute legal proceedings if the standing of any state insurance department to sue or be sued is not affected.

### ***Commission Membership, Voting, and Bylaws***

Each compacting state has one member of the Commission, who is entitled to one vote. The Commission is governed by a management committee of up to 14 members consisting of:

- One member each from the four compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products.
- One member from the four compacting states with at least 2 percent of the market described above selected on a rotating basis, other than from the six states with the largest premium volume.

- One member from four compacting states with less than 2 percent of the market described above, with one selecting from each of the four zone regions of the NAIC.

The Commission annually elects officers from the management committee and is authorized to select an executive director who serves as secretary to the Commission but may not be a Commission member.

The Compact requires the establishment of legislative and advisory committees. The legislative committee consists of state legislators and monitors and makes recommendations to the Commission. The management committee must consult with the legislative committee prior to adopting any uniform standard, change in Commission bylaws, annual budget or other significant matter. Two advisory committees must be established, one comprising independent consumer representatives and another composed of insurance industry representatives. Additional advisory committees may be established.

The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members.

#### ***Rulemaking by the Commission and State Opt-Out Procedure***

The rulemaking process must conform to the Model State Administrative Procedure Act of 1981, as amended. Prior to adopting a uniform standard, the Commission must give written notice to the relevant state legislative committees in each compacting state. In adopting a uniform standard, the Commission must consider all submitted materials and issue a concise explanation of its decision. Uniform standards are effective 90 days after their adoption by the Commission.

Judicial review of Commission rules (including uniform standards) or operating procedures is available but limited by the Compact. Any person may petition for judicial review, but the petition does not stay or prevent the rule or operating procedure from becoming effective unless the court finds the petitioner has a substantial likelihood of success. The court may not find a Commission rule or operating procedure unlawful if it represents a reasonable exercise of the Commission's authority

A state may opt out of a uniform standard via legislation or rule. Florida is prospectively opting out of all uniform standards involving long-term care insurance products, as allowed by the terms of the Compact. Opting out of a uniform standard via rule requires the state to give the Commission written notice within 10 business days after the uniform standard is adopted and find that the uniform standard does not provide reasonable protections to the consumers of that state. The OIR Commissioner must make specific findings of fact and conclusions of law detailing the facts that warrant departure of the uniform standards and that those facts outweigh the Legislature's intent to join the compact and a presumption that the uniform standard provides reasonable consumer protections.

#### ***Commission Records***

The Commission must adopt rules creating conditions and procedures for the public inspection and copying of information and official records, except for records involving the privacy of

individuals and insurers' trade secrets. The Commission may also adopt additional rules allowing it make available otherwise exempt records and information to federal and state agencies, including law enforcement.

### ***Compliance Enforcement***

The Commission monitors compacting states for compliance with Commission bylaws, rules, uniform standards, and operation procedures, and provides written notice to a state that is in noncompliance.

The state insurance commissioner retains authority to oversee the market regulation of the activities of insurers in that state. An insurance product or advertisement that has been approved or certified by the Commission, however, does not violate the provisions, standards, or requirements of the Compact unless the Commission holds a hearing and issues a final order finding a violation. If an advertisement has not been approved or certified to the Commission, the state insurance commissioner may only bring an action for violating a standard of the Compact if the Commission first authorizes the action.

### ***Product Filing and Approval***

To obtain approval of a product, the insurer must file the Product with the Commission and pay applicable fees. Any product approved by the Commission may be sold or otherwise issued in any compacting state in which the insurer is authorized to do business. An insurer may alternatively file its product with a state insurance department, and such filing will be subject to the laws of that state.

### ***Review of Commission Decisions Regarding Filings***

A disapproved product or advertisement may be appealed to a review panel appointed by the Commission within 30 days of the Commission's determination. An allegation that the Commission disapproved a product or advertisement arbitrarily, capriciously, abused its discretion, or otherwise acted not accordance with law is subject to judicial review. Judicial proceedings must be brought in a court where the principal office of the Commission is located (Washington, DC).

### ***Commission Funding and Expenses***

The Commission covers the cost of its operations and activities through the collection of filing fees. The annual budget may not be approved until it has been subject to the required notice and comment period. The Commission is exempt from all taxation by compacting states. The Commission may not pledge the credit of any compacting state except with the legal authorization of the compacting state. Complete and accurate accounts of Commission financial records must be kept and shall be audited annually by an independent certified public accountant. At least every 3 years, the audit must include a management and performance audit of the Commission.

### ***Amendments to the Compact***

Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. An amendment is adopted only if unanimously enacted into law by all of the compacting states.

### ***Withdrawing From or Dissolving the Compact; State Default, Suspension and Termination***

A state may withdraw from the Compact by repealing the law that enacted the Compact. Withdrawal from the Compact does not affect product filings approved or self certified, or approved advertisements, except by mutual agreement of the Commission and the withdrawing state, unless the state formally rescinds approval in the same manner as provided by the laws of that state for disapproving products or advertisements previously approved under state law. The compact is dissolved once there is only one compact member.

The Commission may suspend a state that is determined to have defaulted in the performance of its obligations or duties under the Compact or the bylaws, rules, or operating procedures of the Compact. The Commission must notify a defaulting state in writing and provide a time period within which the state may cure the default. The state will be terminated from the Compact if the default is not timely cured. Products and advertisements approved by the Commission, or self-certified, remain in force in the same manner as though the state had withdrawn voluntarily. Reinstatement following termination requires reenacting the Compact.

### ***Severability Clause***

The Compact provisions are severable from provisions that are deemed unenforceable.

### ***Actions of Commission are Binding on States; Conflict of Laws; Advisory Opinions***

All lawful actions of the Commission, including all rules and operating procedures, are binding on compacting states. Agreements between the Commission and compacting states are binding in accordance with their terms. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General. A Compact provision is ineffective as to a state, however, if it exceeds the constitutional limits imposed on the Legislature of a state. If an insurance product is filed with an individual state, it is subject to the law of that state.

If requested by a party to a conflict over the meaning or interpretation of Commission actions and approved by a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

## State Opt-Out of All Uniform Standards for Long-Term Care Insurance Products

**Section 3.** Opts the state out of all uniform standards contained in the Compact involving long-term care insurance products. Each state may, at the time the Compact is enacted by that state, opt-out of all uniform standards involving long-term care insurance products.

## Rulemaking Authority Grant to OIR to Implement the Compact

**Section 4.** Grants rulemaking authority to the Office of Insurance Regulation to implement the compact. Rulemaking may also be used to opt out of new uniform standards until they are approved by the Legislature.

## Effective Date

**Section 5.** The effective date of the act is October 1, 2013.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

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

None.

### C. Trust Funds Restrictions:

None.

## Non-Delegation Doctrine

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires application of a “strict separation of powers doctrine...which encompasses two fundamental prohibitions’.”<sup>14</sup> No branch of Government may delegate its constitutionally assigned powers to another branch.<sup>15</sup>

The Legislature may constitutionally transfer subordinate functions to “permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions.”<sup>16</sup> However, the Legislature “may not delegate the

<sup>14</sup> *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), and *Chiles*, 589 So.2d at 264).

<sup>15</sup> *Chiles*, 589 So.2d at 264.

<sup>16</sup> *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

power to enact a law or the right to exercise unrestricted discretion in applying the law."<sup>17</sup> Further, the nondelegation doctrine precludes the legislature from delegating its powers "absent ascertainable minimal standards and guidelines."<sup>18</sup> When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide ... in the execution of the powers delegated."<sup>19</sup>

### **Inspection and Copying of Public Records**

Section VIII of the Compact requires the Commission to adopt rules establishing conditions and procedures for the inspection of its information and official records. This implicates Florida's constitutional and statutory laws which provide a broad grant of authority to the public to inspect or copy any public record.

Article I, s. 24 of the State Constitution, provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution."

In addition to the State Constitution, the Public Records Act, which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states that, "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record." Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean, "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

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<sup>17</sup> *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

<sup>18</sup> *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

<sup>19</sup> *Martin*, 916 So.2d at 770.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Representatives from the Florida Department of Revenue state that, “[e]ven though Article XII of the Compact exempts the Commission from all taxation, if the Commission employs persons who work in Florida, it will be subject to the labor laws of Florida in ch. 443, F.S. Federal law (26 U.S.C. 3309) requires states to make nonprofit entities and governmental entities liable for reemployment tax. Certain employers are allowed to elect to reimburse Florida for reemployment benefits (not a tax) paid to any of its employees instead of paying the Florida reemployment tax. The Commission, as a non-profit entity, would be permitted to elect to be a reimbursing employer in Florida. If the Commission does not make such election for any Florida employees, the Commission would be required to pay the reemployment tax.”

**B. Private Sector Impact:**

Representatives from the Office of Insurance Regulation indicate that the state’s membership in the Compact could potentially reduce the cost of filing and obtaining approval of asset-based insurance products.

**C. Government Sector Impact:**

If Florida becomes a member of the Compact, the Office of Insurance Regulation may experience a reduction in its workload for those functions now performed by the Commission. That reduction in workload could result in decreased appropriation needs for the Office. Representatives from the OIR indicate that the office will not incur a fiscal impact if Florida adopts the Compact.

**VI. Technical Deficiencies:**

Section 4 of the bill grants rulemaking authority to the Office of Insurance Regulation. The Florida Statutes do not authorize the OIR with rulemaking authority under s. 624.308, F.S. The Financial Services Commission, not the OIR, should be granted rulemaking authority to implement the Compact.

**VII. Related Issues:**

None.

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

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

None.

B. Amendments:

None.

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

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**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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**BILL:** CS/SB 866

**INTRODUCER:** Banking and Insurance Committee and Senator Abruzzo

**SUBJECT:** Certified Audit Program

**DATE:** March 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Fav/CS</b>
2.			AFT	
3.			AP	
4.				
5.				
6.				

**I. Summary:**

CS/SB 866 expands the Certified Audit Program to allow participation by taxpayers after they have been selected for an audit by the Department of Revenue. The CS also increases the amount of interest that is abated for participating taxpayers who have not been selected for audit to an abatement of the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

The Revenue Estimating Conference estimates that this bill will have a negative but indeterminate impact on state and local revenues.

This CS substantially amends the following sections of the Florida Statutes: 213.21, 213.285, and 213.053.

**II. Present Situation:**

The Department of Revenue (department) is required to regularly audit businesses to determine compliance with Florida’s tax laws.<sup>1</sup> The department begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records (notice of intent).<sup>2</sup> This notice identifies the audit period and taxes to be examined. Generally, Florida has a 3-year statute of limitations for assessments of unpaid taxes.<sup>3</sup> Thus, an audit generally is concerned with a business’s books and records for the prior 3 years.

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<sup>1</sup> Section 20.21(2)(c), F.S.

<sup>2</sup> Form DR-840 or CA-I

<sup>3</sup> Section 95.091(3)(a)1.b., F.S.

In order to enhance the review of tax compliance, the department conducts the Certified Audit Program<sup>4</sup>, a cooperative effort between the department and the Florida Institute of Certified Public Accountants. The Certified Audit Program allows a taxpayer to hire a certified public accountant to conduct a tax audit. A taxpayer may not participate in the certified audit program if the taxpayer is currently under audit or has received a written notice of intent from the department.

As an incentive to participate in the program, taxpayers receive a waiver of all penalties, abatement of the first \$25,000 of interest, and abatement of 25 percent of any additional interest liability in excess of \$25,000.<sup>5</sup>

After being hired to conduct a certified audit, the qualified auditor is required to notify the department.<sup>6</sup> Once the status of the taxpayer is reviewed, the department will send a notice of qualification to participate in the certified audit program.<sup>7</sup> Thereafter, the qualified auditor has 30 days in which to submit a proposed audit plan for review by the department.

Once the audit is complete, the auditor will submit a report to the department and the department will make any required assessments.<sup>8</sup> Except in cases of fraud or misrepresentation, the results of a certified audit are considered final and the report closes the examined period for further assessment.<sup>9</sup>

To conduct a certified audit, the certified public auditor must possess an active Florida Certified Public Auditor license, attend a 2.5-day training seminar, and pass an examination. For a firm to be eligible to conduct certified audits, several additional requirements must be met. The firm must be a licensed audit firm with the Florida Board of Accountancy, have received a timely on-site peer review, and must conduct the audits using agreed-upon procedures. A staff member of the firm must have completed department-provided training on Florida multi-tax software.<sup>10</sup>

To be eligible to provide a certified audit service to a taxpayer, the qualified CPA firm must also be independent with respect to that taxpayer, pursuant to the guidelines established by the Florida Board of Accountancy.<sup>11</sup>

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002.<sup>12</sup> The sunset was subsequently extended to July 1, 2006,<sup>13</sup> and then it was repealed entirely.<sup>14</sup>

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<sup>4</sup> Section 213.285, F.S.

<sup>5</sup> Section 213.21(8), F.S. However, waiver and abatement are not permitted where taxes have been collected but not remitted.

<sup>6</sup> Section 213.285(4)(a), F.S.

<sup>7</sup> Section 213.285(4)(c), F.S.

<sup>8</sup> Section 213.285(6), F.S.

<sup>9</sup> Section 213.285(6), F.S.

<sup>10</sup> Rule 12-25.0305, F.A.C.

<sup>11</sup> <http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx> (last reviewed March 17, 2013).

<sup>12</sup> Section 1, Chapter 98-95, Laws of Florida

<sup>13</sup> Section 36, ch. 2002-218, Laws of Florida

<sup>14</sup> Section 40, ch. 2003-254, Laws of Florida

### III. Effect of Proposed Changes:

The CS amends the certified audit program to limit audits to sales and use tax, tourist development tax and tourist impact tax. The program is amended to allow participation by a taxpayer, regardless of whether the taxpayer has received a notice of intent. For taxpayers who participate prior to receiving a notice of intent, the CS amends the interest abatement to allow abatement of the first \$50,000 of interest and 50 percent of the remaining interest. These taxpayers retain their 30-day period after a notice of qualification for submitting a proposed audit plan to the department.

For taxpayers who participate in the program after receiving a notice of intent, the CS provides for interest abatement equal to the first \$15,000 and 15 percent of remaining interest. The time period for submitting a proposed audit plan for taxpayers that have received a notice of intent is modified, giving the taxpayer 60 days to submit a proposed audit plan.

Within 90 days after the notice of intent was issued, the department shall designate the agreed-upon procedures for that audit. The auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

### IV. Constitutional Issues:

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

The Legislature may not enact, amend, or repeal a general law if the anticipated effect of doing so would be to reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989, except by a two-thirds vote of the membership of each chamber.<sup>15</sup> However, laws that have an “insignificant fiscal impact,” which for fiscal year 2012-13 is \$1.9 million, do not need a two-thirds vote.<sup>16</sup>

The Revenue Estimating Conference estimates that this bill will reduce local government revenues by a total of \$0.8 million. Since the CS is expected to reduce local revenues by less than \$1.9 million, a two-thirds vote is not required.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>15</sup> Fla. Const. Art. VII, s. 18(b)

<sup>16</sup> Fla. Const. Art. VII, s. 18(d)

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Taxpayers who take advantage of the certified audit program may see their tax liability decrease due to the abatement of interest and waiver of penalties. CPAs who are certified by DOR to conduct such audits will see additional demand for their services should the expanded eligibility lead to more participation.

**C. Government Sector Impact:**

The Revenue Estimating Conference estimates that this bill will have a negative but indeterminate impact on state and local revenues. Total local revenue is estimated to decrease by \$0.8 million.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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 20, 2013:**

The CS makes the following changes:

- Taxpayers who request to participate in the certified audit program after the department selects the taxpayer for audit will receive interest abatement equal to the first \$15,000 of interest and 15 percent of any additional interest liability, and
- The certified audit program is limited to audits of sales and use tax, tourist development tax, and tourist impact tax.

**B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

20 Nov 13  
Meeting Date

Topic AUDITS

Bill Number 866  
*(if applicable)*

Name Jennifer Green

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address P.O. Box 390

Phone 850 841 1726

Tally FL  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FLA. INSTITUTE OF CPAS

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 Committee on Banking and Insurance

BILL: SB 356  
 INTRODUCER: Senator Abruzzo  
 SUBJECT: Financial Guaranty Insurance Corporations  
 DATE: March 16, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Favorable</b>
2.			CM	
3.				
4.				
5.				
6.				

**I. Summary:**

SB 356 allows a financial guaranty insurance corporation to be organized as a mutual insurance company.

This bill substantially amends the following sections of the Florida Statutes: 627.971 and 627.972

**II. Present Situation:**

**Organization of Insurance Companies**

A prerequisite for authorization to transact insurance in this state is that an insurer must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer.<sup>1</sup> Florida law provides the following definitions for these three types of insurers:

- Stock insurer – An incorporated insurer with its capital divided into shares and owned by its stockholders.
- Mutual insurer – An incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with part I of ch. 628, F.S. A mutual insurance company is owned by its policyholders.
- Reciprocal insurer<sup>2</sup> – An unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance<sup>3</sup> among themselves.

<sup>1</sup> Section 624.404, F.S.

## Financial Guaranty Insurance

Financial guaranty insurance<sup>4</sup> is a surety bond, insurance policy, and indemnity contract issued by an insurer, or a similar guaranty, under which loss is payable once the insured claimant, obligee, or indemnitee provides proof of an occurrence of:

- The failure, as a result of a financial default or insolvency of an obligor on a debt instrument or other monetary obligation<sup>5</sup> to make principal, interest, premium, dividend, or purchase price payments when due;
- Changes in interest rate levels or the differential in interest rates between various markets or products;
- Changes in currency exchange rates;
- Changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
- Other events which the Office of Insurance Regulation (Office or OIR) determines are substantially similar to any of the foregoing.

A financial guaranty insurance company may only be organized as a stock insurer, in the same manner as a stock property and casualty insurer.<sup>6</sup> To transact financial guaranty insurance in Florida, the insurer must have an initial surplus to policyholders of \$50 million when initially licensed and maintains a surplus of at least \$35 million. The insurer must also establish a specified contingency reserve, and meet other requirements. Financial guaranty insurance corporations are subject to all provisions of the Florida Insurance Code applicable to property and casualty insurance, to the extent they are not inconsistent with Part XX, Ch. 627, F.S. An authorized property and casualty insurer may also transact such insurance if it has a total policyholder surplus of greater than \$100 million, not more than 20 percent of its total net premiums and policyholder surplus is used to transact financial guaranty insurance, and other conditions are met.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 627.971, F.S., to amend the definition of “financial guaranty insurance corporation” to include a mutual insurance company that is licensed to transact financial guaranty insurance business in this state.

**Section 2.** Amends s. 627.972, F.S., to allow a financial guaranty insurance corporation to be organized as a mutual insurance company. If the corporation is organized as a mutual insurer, it must be organized and licensed in the manner prescribed for mutual property and casualty

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<sup>2</sup> Section 629.031, F.S.

<sup>3</sup> Reciprocal insurance consists of interexchange among persons (subscribers) of reciprocal agreements of indemnity that is effectuated through an attorney in fact common to all subscribers.

<sup>4</sup> See Section 627.971, F.S.

<sup>5</sup> An “other monetary obligation” includes common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract. The insurance is available whether the obligation is incurred directly or as guarantor by or on behalf of another obligor who also defaulted.

<sup>6</sup> Section 627.972(1), F.S.

insurers, with exceptions. The requirements applicable to stock insurance companies are unchanged by the bill.

**Section 3.** 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 Office of Insurance Regulation has expressed support for the legislation in the interest of bringing new insuring entities to Florida.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions of this bill are also included within SB 1046.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.



B. Amendments:

None.

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13  
Meeting Date

Topic Fin Guar. Inv. Companies Bill Number 356  
Name Rebecca Matthews Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title Gov. Affairs  
Address 200 E. Gaines Street Phone 850-509-3494  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL OIR

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)

3-20-13

Meeting Date

Topic \_\_\_\_\_

Bill Number 356  
*(if applicable)*

Name Paul Sanford

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 106 S. Monroe St

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Build America Mutual

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 (10/20/11)

**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 Committee on Banking and Insurance

BILL: SB 324

INTRODUCER: Senator Brandes

SUBJECT: The Florida Insurance Guaranty Association

DATE: March 15, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oh	Burgess	BI	<b>Pre-meeting</b>
2.			CM	
3.			AFT	
4.			AP	
5.				
6.				

**I. Summary:**

SB 324 revises provisions of the Florida Insurance Guaranty Association (FIGA) Act relating to the funding and the assessment process. FIGA is the guaranty association for property and casualty insurance that provides a mechanism for the payment of covered claims of insolvent insurance companies.

The bill adds options for FIGA to levy and collect assessments. The bill provides that in addition to its current authority to levy regular assessments on insurance companies, FIGA can choose instead to levy all or part of the regular assessment directly on policyholders, to be collected by the insurers.

The bill also changes the primary method for levying and collecting emergency assessments. When an insurer is rendered insolvent by the effects of a hurricane, current law allows FIGA to levy emergency assessments on insurance companies. The bill provides that emergency assessments, when necessary, shall be levied directly upon policyholders and collected by member insurers. The bill provides that if FIGA determines that it must immediately begin paying covered claims and that financing is not reasonably available, FIGA can levy the emergency assessments on insurance companies, rather than directly on policyholders.

The effective date of the bill is July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 631.52 and 631.57.

## II. Present Situation:

### **Florida Insurance Guaranty Association, Incorporated**

FIGA is a nonprofit corporation created by s. 631.55, F.S. to provide a mechanism for payment of covered claims of insolvent property and casualty insurance companies. All property and casualty insurance companies<sup>1</sup> doing business in Florida are required to be a member of FIGA as a condition of their authority to transact insurance. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

For administrative and assessment purposes, FIGA is divided into two accounts:<sup>2</sup>

- The auto liability and auto physical damage account; and
- The account for all other included insurance lines (the all-other account).

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the remaining claims of the company's policyholders. The maximum claim amount FIGA will cover is \$300,000, but special limits apply to damages to structure and contents on homeowners, condominium, and homeowners' association claims. For damages to structure and contents on homeowners' association claims FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association. All claims are subject to a \$100 FIGA deductible, in addition to any other deductible in the insurance policy.

### ***FIGA Funding***

In order to pay the remaining claims and maintain the operations of an insolvent insurer, FIGA has several potential sources from which to obtain the necessary funds. FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies.<sup>3</sup> FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

Additionally, after insolvency occurs, FIGA is authorized to levy assessments against Florida property and casualty insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment as necessary for either account identified in s. 631.55(2)(b), F.S., of up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. This assessment is commonly referred to as the "regular assessment," although it is not identified as such in the statute.

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<sup>1</sup> Workers' compensation insurance is excluded from FIGA. The Florida Workers' Compensation Guaranty Association was created pursuant to s. 631.902, F.S., and provides a mechanism for the payment of covered claims of insolvent insurance workers' compensation carriers and self-insurance funds.

<sup>2</sup> S. 631.55(2), F.S.

<sup>3</sup> Typically, insurers are put into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. See s. 631.061, F.S., for the grounds for liquidation.

The second statutory provision under which FIGA is authorized to levy an assessment is s. 631.57(3)(e), F.S. The assessment under this section is identified as an emergency assessment, and may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. Like the regular assessment, the emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

### ***Assessment and Recoupment of Assessments***

The specific procedure used by 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 are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments as follows:

1. FIGA determines that an assessment is needed to pay claims or administration costs, or to pay bonds issued by FIGA.
2. FIGA certifies the need for an assessment levy to the OIR.
3. 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 their assessment to FIGA.
4. Regular assessments must be paid by the insurance companies within 30 days of the levy, and emergency assessments can be paid either in one payment at the end of that month, or spread out over 12 months, at the option of FIGA.
5. For both types of assessment, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.<sup>4</sup>

According to data from FIGA, since 2006, FIGA had a 2 percent regular and emergency assessment in 2006, a 0.8 percent regular assessment in 2009, and a 0.9 percent regular assessment in 2012. The assessments were paid upfront by the insurers and recouped from policyholders upon issuance or renewal of the policies.

### ***Accounting for Assessments***

Most insurers produce financial statements using both Generally Accepted Accounting Principles (GAAP) and statutory accounting. Insurer financial information prepared in accordance with GAAP is typically used by investors, whereas insurer financial information prepared in accordance with statutory accounting is used by the OIR. FIGA's levy of assessments against insurers reduces an insurer's net worth under both GAAP and statutory accounting. Under both GAAP and statutory accounting, insurers incur a liability that is charged against surplus (i.e., a reduction to surplus) in the amount of the assessment when the company is billed. However, GAAP and statutory accounting have different treatments for an asset to offset that liability. Under GAAP accounting, there is no offsetting asset allowed, so the insurer's net worth is immediately reduced in the full amount of the assessment and is only restored as the recoupment is collected from policyholders over the course of the year. Under statutory accounting, however,

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<sup>4</sup> If a company's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

there is an offsetting asset (receivable) that is included on the insurer's financial statement when the assessment is paid to FIGA, so the reduction to surplus remains from the time the assessment is billed until the time it is paid.

### III. Effect of Proposed Changes:

**Section 1** amends s. 631.52, F.S. Currently, s. 631.52, F.S., provides numerous exemptions to the kinds of insurance to which the FIGA Act applies. Among the exemptions is "insurance provided by or guaranteed by government." The bill specifies that risk apportionment policies issued by plans under s. 627.351, F.S., are included in the exemption that currently applies for insurance provided or guaranteed by government.

**Section 2** amends s. 631.57, F.S. The bill explicitly identifies the assessments described in s. 631.57(3)(a), F.S., to be "regular assessments." The bill retains current law which allows FIGA to collect the regular assessments from insurers within 30 days of the assessment levy, but the bill adds a second option for the collection of regular assessments. The bill provides that in lieu of collecting a regular assessment from insurers, FIGA can opt to levy all or part of the regular assessment directly on policyholders.

If FIGA selects the option of direct collection from policyholders, FIGA must first determine the need for and amount of a regular assessment and notify the OIR of its determination. The OIR then will issue an order to every participating insurer specifying the assessment percentage to be collected by the insurer from its policyholders over the next 12 months at policy issuance or renewal. The OIR order will specify when the insurers must begin collecting the assessments, but it must be at least 90 days after FIGA levies the assessment. The maximum assessment cannot exceed 2 percent per year per account.

The bill changes the primary method for levying and collecting emergency assessments. The bill provides that emergency assessments, when necessary to pay claims of an insurer rendered insolvent by a hurricane, shall be levied directly upon policyholders and shall be collected by member insurers. Pursuant to this method of collection, the OIR must issue an order specifying when insurers must begin collecting the assessments, which must be at least 90 days after FIGA levies the assessment and cannot exceed 2 percent. The assessments collected by the insurers will be transferred to FIGA as set forth in the OIR's order. If, however, FIGA determines that it must immediately begin paying covered claims and that financing is not reasonably available, FIGA can levy the emergency assessments on insurance companies, rather than directly on policyholders. The process for levying emergency assessments on insurance companies would be the same as levying regular assessments, except that it can be paid either as a single payment or, at the option of FIGA, in 12-monthly installments.

**Section 3** establishes an effective date of July 1, 2013.

### 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:

Insurance companies contend that the current process under which they pay the full assessments upfront and recoup them over the course of a year or more can have a negative impact on the solvency of an insurance company, particularly when the assessment follows an event that has required the insurer to pay out a significant amount for its own claims.

The bill authorizes FIGA to levy regular and emergency assessments directly on policyholders. In those cases in which FIGA levies assessments on policyholders, insurance companies would not be forced pay these assessments upfront. Accordingly, the negative impact on insurer surplus is avoided, allowing and insurer a greater ability to pay its own claims and to write additional policies.

FIGA will be forgoing its quick availability of funds in those cases in which FIGA decides to levy regular assessments directly on policyholders, or in those circumstances in which FIGA levies an emergency on policyholders. For the regular assessments, however, FIGA can choose the method, so it should be able to prevent any potential cash flow problems. For emergency assessments, the bill allows FIGA to levy the assessment on insurers if it determines that it must immediately begin paying covered claims and that financing is not reasonably available. If FIGA needs to immediately begin payments using available financing, the costs of the financing will be added to the assessment.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

**VII. Related Issues:**

The OIR does not believe the OIR or FIGA has the legal authority to enforce the order of levy imposed on policyholders because policyholders are neither the subject of regulation nor in contractual relationships with the OIR or FIGA. The current law only provides a provision



relative to enforceability against member insurance companies which are in default on assessments.<sup>5</sup>

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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<sup>5</sup> Bill analysis from the OIR, on file with the Banking & Insurance Subcommittee.

**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 Committee on Banking and Insurance

BILL: SB 1046

INTRODUCER: Senator Brandes

SUBJECT: Insurance

DATE: March 17, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.			AGG	
3.			AP	
4.				
5.				
6.				

**I. Summary:**

SB 1046 enacts the following changes related to insurance:

- Prevents the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund (Cat Fund) emergency assessments;
- Authorizes motor vehicle proof of insurance cards to be issued in electronic form.
- Extends the examination period for licensing foreign or alien insurers;
- Includes employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease;
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators and neutral evaluators under the alternative dispute resolution programs run by the DFS for property, motor vehicle, and sinkhole claims;
- Eliminates the requirement that viatical insurance life expectancy providers register with the Office of Insurance Regulation (OIR);
- Includes using multiple approved hurricane models, an average of models, or a weighted average of models as factors the OIR must consider in a rate filing;
- Increases from 60 days to 120 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Repeals an annual report to the Legislature a report detailing the aggregate net probable maximum losses, financing options, and potential assessments of the Cat Fund and Citizens;
- Establishes a uniform 100 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies;
- Authorize a licensed company to provide the sworn statement of liability insurance coverage required by current law;

- Allows a policyholder to elect electronic delivery of policy documents;
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium;
- Eliminates the requirement that an insurer must offer a \$500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, effective January 1, 2014, the insurer must offer a \$500 deductible or a 1 percent deductible;
- Creates conflict of interest standards for appraisers in residential property insurance claims;
- Expand the use of separate sinkhole deductibles to all property insurance policies;
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until March 1 of the following year;
- Deletes a bond requirement on non-resident licensed risk retention and purchasing group insurance agents;
- Allows a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer;
- Exempts captive insurers from the statutory trust deposit required under s. 624.411, F.S.; and
- Provides exceptions to certain financial requirements applicable to service warranty associations.

The bill is effective upon becoming a law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 215.555, 316.646, 320.02, 624.413, 626.321, 626.601, 626.9914, 626.99175, 626.9919, 626.992, 626.9925, 626.99278, 627.062, 627.0628, 627.072, 627.281, 627.4133, 627.4137, 627.421, 627.43141, 627.701, 627.7015, 627.706, 627.7074, 627.736, 627.745, 627.952, 627.971, 627.972, 628.901, 628.909, and 634.406

The bill creates the following section of the Florida Statutes: 627.70151.

The bill repeals the following section of the Florida Statutes: 627.3519.

## II. Present Situation:

### **Florida Hurricane Catastrophe Fund Emergency Assessments**

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt fund administered by the State Board of Administration (SBA) that was created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. Insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF must charge insurers the “actuarially indicated” premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. The bonds are funded by assessments on direct premiums for all property and casualty lines of business in Florida except workers’ compensation and medical malpractice. The exemption for medical malpractice is scheduled for automatic repeal on May 31, 2013.

### **Proof of Financial Responsibility**

Every owner or operator of a motor vehicle that is required to be registered in Florida must:

- Maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law.<sup>1</sup>
- Demonstrate financial responsibility to cover up to \$10,000 of property damage resulting from the use of the motor vehicle.<sup>2</sup>
- For individuals who have been found guilty or entered a plea of nolo contendere to driving under the influence must demonstrate financial responsibility to cover up to:<sup>3</sup>
  - \$100,000 for death or injury to any one person;
  - \$300,000 for death or injury to two or more people;
  - \$50,000 for property damage in any one crash.

Section 316.646, F.S., specifies how proof of the financial securities described above must be maintained. The statute requires that a person must have in his or her immediate possession at all times while operating a motor vehicle:

- A uniform proof-of-insurance card in a form prescribed by the Department of Highway Safety and Motor Vehicles;
- A valid insurance policy;
- An insurance policy binder;
- A certificate of insurance; or
- Such other proof as may be prescribed by the department.

### **Motor Vehicle Registration**

Every person who owns a motor vehicle that is operated on Florida roads is required to register that vehicle with Department of Highway Safety and Motor Vehicles.<sup>4</sup> In order to register a vehicle, the owner must provide proof that the coverages required under s. 324.022, F.S., s. 324.023, F.S., and s. 627.733, F.S., have been purchased. Section 320.02(5), F.S., specifies that the proof this coverage can be satisfied by a number of alternative documents, one of which is a proof-of-purchase card. The statute requires that an insurer providing the required coverage must issue to its policyholder a uniform proof-of-purchase card in a form prescribed by the department that contains:

- The name of the insurance company;
- The coverage identification number;

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<sup>1</sup> Sections 627.730 – 627.405, F.S., comprise the “Florida Motor Vehicle No-Fault Law.” Section 627.733, F.S., requires that every owner or operator of a motor vehicle that is required to be registered in Florida must maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law. Section 627.736, F.S., requires that coverage of \$10,000 for medical and disability benefits and \$5,000 for death benefits must be purchased to cover: the named insured, relatives residing in the same household, persons operating the motor vehicle, passengers, and other people struck by the vehicle who are not in another vehicle at the time. Section 627.736, F.S., specifies that the provisions contained in ch. 324, F.S., for maintaining proof of financial responsibility also apply to the Florida Motor Vehicle No-Fault Law.

<sup>2</sup> See s. 324.022, F.S.

<sup>3</sup> See s. 324.023, F.S.

<sup>4</sup> Section 320.02(1), F.S.

- The make, year, and vehicle identification number of the vehicle; and
- A statement notifying the applicant of the penalty specified in s. 316.646(4), F.S.

### **Foreign or Alien Insurer Application for Certificate**

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.<sup>5</sup> A domestic insurer is defined as being formed under the laws of Florida.<sup>6</sup> An alien insurer is defined as an insurer other than a foreign or domestic insurer.<sup>7</sup> When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 3-year period preceding the date of application.<sup>8</sup> In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.

### **Limited Agent Licenses**

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance; In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for motor vehicle rental insurance, the licensee may sell coverage only when the coverage is offered or sold incidental to the rental or lease of a motor vehicle, the lease or rental period is for no more than 60 days, and the coverage is limited to only those risks specified in statute. Further, the license may be issued only to an employee of a licensed general lines agent or to a business entity that offers motor vehicles for lease or rent. A limited license that is issued to such a business entity encompasses each office or place of business that uses the entity's name to offer the specified coverage.

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<sup>5</sup> S. 624.06(2), F.S.

<sup>6</sup> S. 624.06(1), F.S.

<sup>7</sup> S. 624.06(3), F.S.

<sup>8</sup> S. 624.413(1)(f), F.S.

## **Inquiries into Improper Conduct**

Current law provides that the DFS and the OIR is authorized to inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under the insurance code.<sup>9</sup> The DFS or the OIR may then initiate an investigation if it has reasonable cause to believe there has been a violation of the code.

## **Suspension of Viatical Settlement Provider License**

A viatical settlement contract typically includes an agreement on the part of the owner of a life insurance policy to sell the policy to another person or entity for less than the expected death benefit payable under the policy.<sup>10</sup> Current law specifies the circumstances under which the OIR is required suspend, revoke, deny, or refuse to renew the license of a viatical settlement provider.<sup>11</sup> Among numerous circumstances under which sanctions are to be imposed is when the licensee obtains or utilizes life expectancies from life expectancy providers who are not registered with the OIR.<sup>12</sup>

Life expectancy providers are used in viatical settlements. The discounted amount paid to a policyholder is generally based upon the life expectancy of the insured, his or her general health, and other similar considerations. A life expectancy provider is used in a viatical settlement to determine life expectancy or mortality ratings used to determine a life expectancy.

Life expectancy providers are required to register with the OIR.<sup>13</sup> Every 3 years, a registered life expectancy provider must file an audit of all life expectancies by the provider for the five years preceding the audit. The audit compares actual to projected mortality data. According to the OIR, the OIR reviews the audit to verify it was done, is complete, and in the proper format, but does not verify the accuracy of the audit because the OIR has no authority to regulate the life expectancy provider.

## **Hurricane Loss Projection Models**

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.<sup>14</sup> The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:<sup>15</sup>

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<sup>9</sup> S. 626.601, F.S.

<sup>10</sup> See s. 626.9911(10), F.S.

<sup>11</sup> S. 626.9914, F.S.

<sup>12</sup> S. 626.9914(1) (k), F.S.

<sup>13</sup> S. 626.99175, F.S.

<sup>14</sup> See s. 627.0628, F.S.

<sup>15</sup> S. 627.0628(2) (b), F.S.

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an expert insurance finance and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert statistics in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."<sup>16</sup>

### **Retrospective Rating Plan in Workers' Compensation**

Retrospective rating plans<sup>17</sup> may be used by workers' compensation insurance carriers to compete on price. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer is able to limit the amount and the magnitude of claims, it will pay lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

### **Notice of Cancellation or Nonrenewal**

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;

<sup>16</sup> S. 627.0628(3) (d), F.S.

<sup>17</sup> See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at <http://www.floir.com>.

- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;
- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

### **Required Disclosures by Liability Insurers**

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance.<sup>18</sup> Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.<sup>19</sup>

In June, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.<sup>20</sup>

<sup>18</sup> S. 627.401, F.S.

<sup>19</sup> S. 627.421, F.S.

<sup>20</sup> See Federal Trade Commission and Department Of Commerce publication: "Electronic Signatures in Global and National Commerce Act," published June 2001, available at <http://www.ftc.gov/os/2001/06/esign7.htm>.



ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN.

Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

### **Notice of Change in Policy Terms**

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S.

### **Personal Lines Residential Required Deductible Offering**

Currently, s. 627.701(7), F.S., requires that for personal lines residential insurance, the insurer must offer a deductible of \$500 applicable to losses from perils other than hurricanes. This offer must be made in a form approved by the OIR and must be made at least once every 3 years.

### **Alternative Procedure for Resolution of Disputed Property Insurance Claims**

The DFS has established alternative dispute resolution programs for various types of insurance. The property insurance claim mediation program is authorized under s. 627.7015, F.S.; the automobile insurance claim mediation program is authorized under s. 627.745, F.S.; and the sinkhole claim neutral evaluation program is authorized under s. 627.7074, F.S.

The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluation program for sinkhole insurance claims. To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute,<sup>21</sup> and must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators. In

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<sup>21</sup> s. 627.745 (3)(b), F.S., requires a mediator to possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

order to ensure there is a training program available for those who want to be DFS mediators, for the past several years DFS has approved the mediator training program offered by the courts.

### **Insurance Contract Appraisal Process**

Most insurance contracts contain an appraisal clause which establishes a procedure for resolving disputed amounts under a claim. Disputes over coverage are determined by the courts, but an appraisal process can be used to resolve disputed amounts. Generally, the appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. If one of the parties does not agree, the case can still be litigated in court.

Current law does not address disqualification of an umpire due to impartiality. As a result, a party seeking to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. There are no parameters in current law for a judge to rule on an umpire's impartiality.

### **Personal Injury Protection Insurance (PIP)**

In 2012, the Legislature enacted HB 119,<sup>22</sup> making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a) 2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...and the applicable fee schedule or payment limitation applies throughout the remainder of that year....

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,<sup>23</sup> stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

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<sup>22</sup> Ch. 2012-151, L.O.F.

<sup>23</sup> Available at <http://www.flair.com/Sections/PandC/ProductReview/PIPInfo.aspx>. Last visited March 16, 2013.

### **Risk Retention Group Agents**

A risk retention group is defined in s. 627.942(9), F.S., as a corporation or limited liability association whose primary activity consists of spreading the liability exposure of its group members. Within the definition, the statute imposes numerous requirements and limitations for operating a risk retention group.

Section 627.952 (1), F.S., establishes requirements for risk retention and purchasing group agents. The statute requires that any person selling, purchasing, or servicing an insurance contracts for a purchasing group or risk retention group to a Florida resident must have an appointment to act general lines agent. In order to place business through a surplus lines carrier, a resident agent must be licensed and appointed as a surplus lines agent. If not a resident of Florida, the agent must be licensed and appointed as a surplus lines agent in her or his state of residence and must file and maintain a fidelity bond. The statute specifies the amount (\$50,000) and the conditions that are required for the fidelity bond.

### **Financial Guaranty Insurance**

Financial guaranty insurance is defined<sup>24</sup> as a surety bond, insurance policy, or similar guaranty, under which payment is made upon the occurrence of financial loss to an insured, as a result of:

- The failure of an obligor on a debt to make payments when due, if the failure is the result of a financial default or insolvency;
- Changes in the levels of interest rates;
- Changes in the rate of exchange of currency;
- Changes in the value of specific assets or commodities, or price levels in general; or
- Other events which the OIR determines are substantially similar to any of the foregoing.

Section 627.971, F.S., defines a financial guaranty insurance corporation as a stock insurer licensed to transact financial guaranty insurance business in this state. The definition makes no provision for mutual insurers. A stock insurer is defined as an incorporated insurer with its capital divided into shares and owned by its stockholders.<sup>25</sup> A mutual insurer is defined as an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with part I of ch. 628, F.S.<sup>26</sup>

### **Captive Insurance**

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a “captive insurance company” as a domestic insurer established under part V, and

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<sup>24</sup> S. 627.971(1) (a), F.S.

<sup>25</sup> S. 628.021, F.S.

<sup>26</sup> S. 628.031, F.S.

includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined.

Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,<sup>27</sup> meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.

Chapter 628, F.S., also defines “captive reinsurance company” as a stock corporation reinsurer formed under part V of ch. 628, F.S., that is wholly owned by a qualifying reinsurance parent company. A “qualifying reinsurance parent company” is defined as a reinsurer that:

- Holds a certificate of authority or a letter of eligibility; or
- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.

### **Service Warranty Associations**

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.<sup>28</sup> A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.<sup>29</sup>

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least \$750,000.
- Utilizes a contractual liability insurance policy approved by the office which:
  - Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least \$100 million; or
  - Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least \$200 million.
- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least \$100 million.
  - Is rated “A” or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

<sup>27</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. [www.captive.com](http://www.captive.com).

<sup>28</sup> S. 634.401(13), F.S.

<sup>29</sup> S. 634.401(14), F.S.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

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

#### **Florida Hurricane Catastrophe Fund Exemption for Medical Malpractice Insurance**

**Section 1.** Amends s. 215.555, F.S., to prevent the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Cat Fund emergency assessments.

#### **Proof of Motor Vehicle Insurance in Electronic Form**

**Sections 2 and 3.** Amends ss. 316.646 and 320.02, F.S., to authorize the uniform motor vehicle proof of insurance card to be issued in electronic form. The bill grants the DHSMV rulemaking authority to implement s. 316.646, F.S.

#### **Certificates of Authority Application Process for Foreign and Alien Insurers**

**Section 4.** Amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

#### **Scope of Limited Licensure for Motor Vehicle Rental Insurance**

**Section 5.** Amends s. 626.321, F.S., to include employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease.

#### **Department of Financial Services Oversight of Mediators and Neutral Evaluators**

**Section 6.** Amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators and neutral evaluators and subsequently to initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

**Section 23.** Amends s. 627.7015(4)(b), F.S., to delete the requirement that the Department of Financial Services adopt rules that qualify mediators for the property insurance mediation program who are eligible pursuant to the Florida Rules of Certified and Court Appointed Mediators, or that the DFS determines have appropriate education, training, or expertise to serve as a mediator. The bill retains current law that the DFS adopt rules specifying that mediators be qualified under the requirements of s. 627.745, F.S., but adds language specifying that s. 627.745, F.S., also governs the denial of application, suspension, revocation and other penalties for mediators in the program.

**Section 26.** Amends s. 627.7074, F.S., to require the Department of Financial Services to adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator. The rules must be based on the neutral evaluator qualifications contained in ss. 627.7074, 627.706, and s. 627.745(4), F.S.

**Section 28.** Amends s. 627.745, F.S., to change the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of \$10,000 or less, or for property damage claims of any amount. A mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2013, who has conducted at least one mediation on behalf of the DFS within 4 years prior to that date. The bill eliminates the 40-hour mediation training program and test that all mediators under the program currently must complete in order to be approved as a mediator under the program.

The bill also requires the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer this requirement.

### **Repeal of Registration Requirement for Viatical Insurance Life Expectancy Providers**

**Sections 7 – 12.** Amends s. 626.99175, F.S., (Section 8 of the bill) to eliminate the requirement that viatical insurance life expectancy providers register with the Office of Insurance Regulation. Sections 626.9914, 626.9919, 626.992, 626.9925, and 626.99278, F.S., are also amended to conform to the elimination of the registration requirement.

### **Use of Hurricane Models in Rate Filings**

**Section 13.** Amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses that have been estimated using multiple models, an average of models, or a weighted average of models found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.<sup>30</sup>

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<sup>30</sup> Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from

**Section 14.** Amends s. 627.0628, F.S., to increase from 60 days to 120 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane Loss Projection Methodology. This section also specifies that an insurer is not prohibited from averaging model results, output ranges, or using weighted averages in a rate filing.

### **Workers' Compensation Retrospective Rating Plans**

**Section 15.** Amends s. 627.072, F.S., to allow workers' compensation insurance retrospective rating plans that authorize the employer and insurer to negotiate and determine the retrospective rating factors used to calculate the employer's premium if the employer has exposure in more than one state and an estimated countrywide standard premium of \$1 million or more for workers' compensation coverage.

**Section 16** contains a technical, conforming change to s. 627.281, F.S.

### **Repeal of Financial Services Commission Report of Hurricane Risk**

**Section 17.** Repeals s. 627.3519, F.S., which requires the Financial Services Commission to annually provide the Legislature a report detailing the aggregate net probable maximum losses, financing options, and potential assessments of the Cat Fund and Citizens.

### **Notice of Non-Renewal for Residential Property Insurance Policies**

**Section 18.** Amends s. 627.4133, F.S., to reduce to 100 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy when the nonrenewal, cancellation, or termination that:

- Is effective between June 1 and November 30, which under current law requires the insurer to provide written notice by June 1 or at least 100 days notice, whichever is greater.
- Is for a residential structure that has been insured by the insurer or the insurer's affiliate for at least 5 years, which under current law requires the insurer to provide at least 120 days written notice.

### **Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses**

**Section 19.** Amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the policy. Current law allows the sworn statement to be provided by the insurer's claims manager or superintendent, or a corporate officer of the insurer.

### **Electronic Delivery of Insurance Policy Documents**

**Section 20.** Amends s. 627.421(1), F.S., to authorize an insurer to allow a policyholder to elect electronic delivery of policy documents, rather than delivery by mail. The bill does not alter the requirement that the insurer provide the policy no later than 60 days after the effectuation of coverage.

### **Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium**

**Section 21.** Amends s. 627.43131(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide or make available electronically to the insured's insurance agent the Notice of Change in Policy Terms before or at the same time the notice is given to the insured.

### **Insurer Choice to Offer \$500 or 1 Percent Mandatory Residential Property Insurance Non-Hurricane Deductible**

**Section 22.** Amends s. 627.701(7), F.S., to eliminate the requirement that an insurer must offer a \$500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, effective January 1, 2014, the insurer must offer a \$500 deductible or a deductible equal to 1 percent of the policy dwelling limits (if the deductible is not less than \$500) for such losses. The section also deletes the requirement that each insurer notify the insured of the availability of a \$500 deductible for non-hurricane losses at least once every 3 years on a form approved by the OIR.

### **Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires**

**Section 24.** Creates s. 627.70151, F.S., to provide conflict of interest standards for appraisers in residential property insurance claims. The insurer or policyholder may challenge impartiality and seek to disqualify the appraisal umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person's interests are materially adverse to the interests of any party; or
- The umpire has worked as an employer or employee of any party within the preceding 5 years.



### **Separate Sinkhole Deductible Expanded to All Property Insurance Policies**

**Section 25.** Amends s. 627.706, F.S., to expand the authorization of sinkhole deductibles of 1 percent, 2 percent, 5 percent, or 10 percent to all property insurance policies. Current law authorizes such deductibles only for residential property insurance.

### **Personal Injury Protection Medical Fee Schedule Clarification**

**Section 27.** Amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until March 1 of the following year.

### **Non-Resident Risk Retention and Purchasing Group Agents**

**Section 29.** Amends s. 627.952, F.S., to delete the requirement that non-resident licensed risk retention and purchasing group insurance agents, in order to place business through Florida eligible surplus lines carriers, must file and maintain a fidelity bond of at least \$50,000 in favor of the people of the State of Florida that is issued by an admitted surety company.

### **Allowing Financial Guaranty Insurance Corporations to Organize as Mutual Insurers**

**Sections 30 and 31.** Amends s. 927.972, F.S., to allow a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer under the Florida Insurance Code. Current law only permits organization as a stock property and casualty insurer. The bill makes a conforming change to s. 627.971, F.S., revising the definition of “financial guaranty insurance corporation” to include a mutual insurer.

### **Statutory Deposit for Captive Insurers**

**Section 32.** Amends s. 628.901(13), F.S., to strike a reference to a satisfactory non-approved reinsurer in the definition of “qualifying reinsurer parent company” in part V of ch. 628, F.S., governing captive insurers.

### **Repeal of Captive Insurer Trust Deposit Requirement**

**Section 33.** Amends s. 628.909, F.S., to exempt captive insurers from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

### **Service Warranty Association Financial Requirements**

**Section 34.** Amends s. 634.406, F.S., to revise the requirement that if a service warranty association’s premiums to exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of \$750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the office. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy

must either maintain at least a \$100 million policyholder surplus or maintain a policyholder surplus of at least \$200 million and issue a policy that complies with the provisions of subsection (3).<sup>31</sup>

**Effective Date**

**Section 35.** The bill is effective 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.

D. Other Constitutional Issues:

Issuance of proof of motor vehicle insurance cards in electronic format implicates the “Plain View Doctrine” of the Fourth Amendment of the United States Constitution. The doctrine provides that when a person voluntarily grants access to an otherwise protected area, evidence discovered in the course of that search is admissible if the evidence discovered in the course of that search is in plain view; the officer discovers evidence, contraband, or a fruit or instrumentality of a crime; and the officer has probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of a crime.<sup>32</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>31</sup> Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) state the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (4) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

<sup>32</sup> See *Arizona v. Hicks*, 480 U.S. 321 (1987).

**B. Private Sector Impact:**

Representatives from the Department of Highway Safety and Motor Vehicles note that “according to the Department’s Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance.” The use of electronic cards may reduce the number of such citations.

Preventing the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Cat Fund emergency assessments will benefit the purchasers of such premiums, who would otherwise be subject to assessment.

Replacing the mandatory offer of a \$500 deductible for non-hurricane losses on a personal lines residential policy with an option for the insurance company to offer either a \$500 or 1 percent deductible on such losses may result in customers no longer being able to purchase a policy with a \$500 deductible from many insurance carriers. Eliminating the requirement to offer a \$500 deductible may create efficiencies for some insurers who write in multiple states and generally do not offer such a deductible to their policyholders in other states.

Life expectancy providers will no longer be required to register with the Office and send the Office an actuarial audit every 3 years.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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**BILL:** CS/SB 644

**INTRODUCER:** Banking and Insurance Committee and Senator Richter

**SUBJECT:** Licensure by the Office of Financial Regulation

**DATE:** March 21, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Fav/CS</b>
2.			CJ	
3.			ACJ	
4.			AP	
5.				
6.				

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**I. Summary:**

CS/SB 644 allows the Office of Financial Regulation (OFR) to exercise discretion regarding whether to deny an application for licensure as a mortgage broker or mortgage lender if the applicant’s licensure or its equivalent was revoked in any jurisdiction. Current law requires the automatic denial of the licensure application. The bill also changes the method by which the OFR collects fingerprints from applicants for registration as securities dealers, associated persons, or securities issuers and applicants for money services business licensure. The new method of fingerprinting is live-scan processing. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 494.00321, 494.00611, 517.12, 560.141, and 560.143.

**II. Present Situation:**

**Licensure as a Mortgage Broker or Mortgage Lender**

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 sets a minimum federal standard that an individual who is an applicant for a state loan originator license must have never

had his or her loan originator license revoked in any other governmental jurisdiction.<sup>1</sup> In 2009, Florida adopted this requirement for loan originators in s. 494.00312(5), F.S.<sup>2</sup> Florida also adopted parallel requirements for persons (employers, businesses, and individuals) who are applicants for licenses as mortgage brokers and mortgage lenders, exceeding the federal requirement.

According to representatives from the Office of Financial Regulation, the issue that has arisen is that states may use the term “revoked” differently. In Florida, if a licensee does not timely complete the annual renewal or pay the annual fee, their license “expires” on December 31. In other states, if the licensee does not pay that state’s annual assessment when due, the regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be “revoked” in the other state, it would cause the Florida license to be revoked, or a new license application in Florida to be denied, under current law.

### **Office of Financial Regulation Fingerprint Requirements**

Under ch. 517, F.S., no dealer, associated person, or issuer of securities may sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, without being registered with the OFR. Under ch. 560, F.S., persons engaged in business as a money services business (payment instrument seller, foreign currency exchanger, check casher, or money transmitter) must be licensed with the Office. The application for such registration or licensure requires the applicant to submit fingerprint cards that are subsequently processed by the Florida Department of Law Enforcement (FDLE) and Federal Bureau of Investigation (FBI). The FDLE and FBI no longer accept physical fingerprint cards; they now only accept electronic or live-scan fingerprints for processing.

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

**Section 1.** Amends s. 494.00321(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage broker licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

**Section 2.** Amends s. 494.00611(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage lender licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

**Section 3.** Amends s. 517.12(7), F.S., to require securities dealers, associated persons, or securities issuers to submit the fingerprints for live scan processing as part of the mandatory requirement to register with the OFR. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency or in a manner otherwise approved by rule, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

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<sup>1</sup> See 12 U.S.C. Sec. 5104(b)(1).

<sup>2</sup> See Chapter 2009-241, L.O.F.

**Section 4.** Amends s. 560.141, F.S., to require the applicant for money services business licensure to submit the fingerprints for live scan processing as part of the mandatory licensure requirements to register with the OFR. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The bill also requires the fingerprints to be entered into the statewide automated fingerprint identification system. The OFR must pay an annual fee to the Department of Law Enforcement to participate in the system. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

**Section 5.** Amends s. 560.143, F.S., to provide that OFR fingerprint retention fees are prescribed by rule.

**Section 6.** Provides effective dates. Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

#### **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 provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may result in additional fees imposed on persons required to undergo live-scan fingerprinting.

**C. Government Sector Impact:**

The Office of Financial Regulation currently collects fingerprint fees from applicants that are subsequently transferred to the Florida Department of Law Enforcement. Switching from fingerprint cards to live-scan fingerprint processing is estimated to result in the following reductions for fiscal year 2013-2014:

- A reduction of \$15,675 related to fingerprinting required under ch. 494, F.S. (mortgage brokers and mortgage lenders) and ch. 560, F.S. (money services businesses). The estimated non-operating budget authority needed in Category 310175 is reduced by \$97,800.
- A reduction of \$121,500 related to elimination of the processing fee for fingerprinting. The estimated non-operating budget authority needed in category 310175 is reduced by \$150,000.

Representatives from the Florida Department of Law Enforcement indicate that the impact of this bill does not necessitate additional FTE or other resources, but, in combination with additional background screening bills, could rise to the level requiring additional staffing and other resources.

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may alter the fiscal impact of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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 20, 2013:**

- Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.
- Eliminates the repeal of s. 560.143(1)(f), F.S.
- Specifies that OFR fingerprint retention fees will be prescribed by rule.

- B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic Licensure by OFR

Bill Number 644  
*(if applicable)*

Name Greg Black

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 215 S. Monroe St., Suite 505  
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Phone 205-9000

TLH FL 32301  
*City State Zip*

E-mail greg.black@metzlaw.com

Speaking:  For  Against  Information

Representing Securities Industry & Financial Markets Assoc (SIFMA)

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**

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3/20/13

Meeting Date

Topic OPR LICENSURE

Bill Number 644  
*(if applicable)*

Name Erica Chanti (Shanti)

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title lobbyist

Address 108 E Jefferson St, Ste B  
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Phone \_\_\_\_\_

Tallahassee FL 32301  
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Speaking:  For  Against  Information

Representing Florida Community Financial Services 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.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic License by OFR

Bill Number 644

Name FRENCH BROWN

Amendment Barcode 690434  
(if applicable)

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Speaking:  For  Against  Information

Representing OFFICE of FINANCIAL REGULATION

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 (10/20/11)

**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 Committee on Banking and Insurance

BILL: SB 566

INTRODUCER: Senator Detert

SUBJECT: Security of Protected Consumer Information

DATE: February 20, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Favorable</b>
2.	_____	_____	CM	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 566 establishes a procedure by which a representative of a protected consumer may request that a consumer-reporting agency create a protected consumer’s record and place a security freeze on the record. The establishment of a consumer record for a person who does not have a credit report and the placement of a security freeze on the record would restrict the ability of a consumer-reporting agency to release the record, thereby potentially preventing child identity theft by individuals who obtain the social security number of a minor or other protected consumer. For purposes of the bill, a “protected consumer” means a person younger than 16 years of age or a person represented by a guardian or other advocate.

A recent study estimated that 142,000 instances of identity fraud are perpetrated on minors in the United States each year.<sup>1</sup> An identity thief will typically apply for credit with a child’s Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years. While parents typically apply for a Social Security number for their child shortly after birth, a credit-reporting agency does not create a credit report or history until an application for credit is received.<sup>2</sup> The consumer’s representative or the protected consumer may authorize the removal of a credit freeze by submitting a \$10 fee and providing specified documentation.

This bill amends the following section of the Florida Statutes: 501.005.

<sup>1</sup> See ID Analytics, *More than 140,000 Children Could be Victims of Identity Fraud Each Year* (News Release July 12, 2011), available at [www.idanalytics.com](http://www.idanalytics.com).

<sup>2</sup> If a parent adds a teenager to a credit card account, as a joint account holder, that action may establish a credit report or file for the teenager.

The bill creates the following section of the Florida Statutes: 501.0051.

## II. Present Situation:

### **Fair Credit Reporting Act**

The federal Fair Credit Reporting Act (FCRA)<sup>3</sup> governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States. The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.

Consumer reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

In 2003, the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") amended the FCRA.<sup>4</sup> The FACT Act added several sections to assist consumers and businesses in combating identity theft and reducing the damage to consumers when that crime occurred. The FACT Act established a national fraud alert system,<sup>5</sup> and ordered credit-reporting agencies to adopt rules on proper disposition of consumer report information and on what companies should do to respond to the "red flag" indicators of identity theft.

### **Credit Freezes**

In response to concerns regarding identity theft, 47 states, including Florida and the District of Columbia, have adopted laws that allow a consumer to place a credit freeze on their credit report.<sup>6</sup> A security freeze restricts a consumer-reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a credit report until the consumer removes it. Generally, a person can "thaw" or temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer provides the consumer-reporting agency with special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

### **Florida Statutory Provision Relating to Credit Freezes**

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<sup>3</sup> 15 U.S.C. s. 1681 et seq.

<sup>4</sup> P.L. 108-159.

<sup>5</sup> Fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent new credit accounts.

<sup>6</sup> Consumers Union's Guide to Security Freeze Protection, at [http://www.consumersunion.org/campaigns/learn\\_more/003484/indiv.html](http://www.consumersunion.org/campaigns/learn_more/003484/indiv.html).

Currently, s. 501.005, F.S., allows a consumer to place a “security freeze” on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. Generally, the security freeze prohibits the consumer credit reporting agency from releasing the consumer’s credit report or any information contained within the report without the authorized consent of the consumer.<sup>7</sup> A credit-reporting agency may charge a fee, not to exceed \$10, when a consumer elects to temporarily lift or remove a security freeze on his or her credit report. However, the law prohibits a consumer-reporting agency from charging a fee to a consumer age 65 or older or to a victim of identity theft for the placement or removal of a security freeze.

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as authorized by s. 501.005(16), F.S. Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000, plus the cost of the action together with reasonable attorney’s fees. Any person who is negligent in failing to comply with any requirement imposed under this s. 501.005, F.S., with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000.

Also, s. 501.005, F.S., provides that any individual who obtains a consumer report under false pretenses or knowingly without a permissible purpose is liable to the consumer for actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000, whichever is greater. Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater. Section 501.005(16), F.S., allows for the assessment of punitive damages for willful violations of s. 501.005, F.S. Upon a finding by the court that an unsuccessful pleading, motion was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney’s fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

### **Child Identity Theft**

An identity thief will typically apply for credit with a child’s Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years. While parents typically apply for a Social Security number for their child shortly after birth, credit-reporting agencies do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time. Through a variety of means, identity thieves use a minor’s social security or fabricate a social security number that coincidentally has been assigned to a child, in order to obtain employment, apply for government benefits, open new accounts, or apply for car loans. A child’s unused social security number is valuable to a thief because it typically lacks a previous credit history and can be paired with any name and

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<sup>7</sup> Section 501.005(12), F.S., allows for the release of information that would otherwise be protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide credit reports to consumers on their request, to persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

birth date. In effect, a child's identity can be used to obtain goods and services over many years because parents typically do not monitor their child's credit. The identity theft may not be detected until the child becomes an adult and seeks employment, or applies for student or car loans.<sup>8</sup>

A credit history can be established by a minor because of a parent adding their minor as a joint account holder. According to Experian's website, minors may request a copy of their credit report after age of 14.<sup>9</sup> When a minor reaches the age of 18, the credit history becomes available for access by authorized persons. However, parents or legal guardians may request a credit history for their minors by providing sufficient documentation that they are the parent or guardian.

In addition to the penalties and remedies under s. 501.005, F.S., relating to credit reports and credit freezes, s. 817.568, F.S., addresses criminal use of personal identification. In regards to minors, the section provides:

(6) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

### III. Effect of Proposed Changes:

**Section 1** creates s. 501.0051, F.S., to establish a process to allow the institution of a credit freeze for a person younger than 16 years of age or a person represented by a guardian or other advocate. Definitions for the terms "consumer reporting agency," and "consumer report," are created, which are identical to the definitions in s. 501.005, F.S. The term, "protected consumer," is defined to mean a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to chapter 39,<sup>10</sup> chapter 393,<sup>11</sup> or chapter 744,<sup>12</sup> F.S. A record is defined to mean a compilation of information that identifies a protected consumer and may not be created or used to consider the protected person's creditworthiness or eligibility for other financial services. A "representative" of a protected consumer also includes a guardian appointed pursuant to s. 914.17, F.S.

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<sup>8</sup> See Experian website at <http://www.experian.com/ask-experian/20110914-credit-reports-not-established-based-on-age.html>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Chapter 39, F.S., pertains to proceedings relating to children.

<sup>11</sup> Chapter 393, F.S., relates to developmental disabilities.

<sup>12</sup> Chapter 744, F.S., relates to guardianship.

The definition of credit freeze is similar to the current definition found in s. 501.005, F.S., except that it also includes a notice that is placed on the protected consumer's record that prohibits the consumer reporting agency from releasing the record, except as provided in s. 501.0051, F.S., section. A record is created if a consumer does not have a credit report or file.

### ***Security Freeze***

The bill authorizes the representative of a protected consumer to place a security freeze on a protected consumer's record by submitting a request to the credit-reporting agency and providing sufficient proof of identification, and paying the agency a \$10 fee, as authorized under this section. The representative would submit a request to a consumer-reporting agency in the manner prescribed by the consumer-reporting agency. The fee is waived if the representative submits at the time of the freeze request, a copy of a valid investigative report or incident report or complaint with law enforcement about the unlawful use of the protected consumer's identifying information.

The consumer-reporting agency is required to place a security freeze on a consumer's record within 30 days of the request. The consumer-reporting agency is required to send a written confirmation of the security freeze within 10 days after creating the security freeze. Once the security freeze is in effect, a credit-reporting agency is not authorized to change the name, address, date of birth, and the social security number without sending written confirmation to the consumer within 30 days after the change is posted to the protected consumers' record. The credit-reporting agency is also required to provide instructions for removing the security freeze and a unique personal identifier for use in removing the security freeze. The consumer-reporting agency is authorized to charge a fee not to exceed \$10, if the representative fails to retain the personal identifier and an identifier must be reissued.

The section also delineates the procedures and documents required of the representative or protected consumer for the removal of the credit freeze. A representative must provide sufficient proof of identification, unique personal identifier, and payment of the \$10 fee. A protected consumer must provide proof of identification as well as documentation that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

Certain persons and specified reasons are allowed to access a consumer record that is subject to a credit freeze. These exemptions are similar to the exemptions found in s. 501.005, F.S. However, the bill also allows access and use of a consumer's record for personal insurance policy information and noncredit information used for insurance purposes.

The section requires a credit-reporting agency that violates a security freeze by releasing such information without proper authorization to notify the representative of the protected consumer within 5 days after the discovery or notification of the release.

### ***Penalties and Remedies***

The bill provides that a consumer-reporting agency that willfully fails to comply with the requirements of this section would be subject to an administrative fine of up to \$500 issued

pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the representative and protected consumer for actual damages in an amount of at least \$100 but not more than \$1,000. A person who obtains a record under false pretenses or knowingly without a permissible purpose is liable to the credit-reporting agency for actual damages sustained by the credit-reporting agency or \$1,000, whichever is greater. These provisions are also provided under s. 501.005, F.S.

**Section 2** amends s. 501.005, F.S., to require credit-reporting agencies to disclose the availability of credit freezes on a protected consumer's record. This written disclosure would provide notice of the availability of the credit freeze for protected consumers. Specifically, the notice provides, that if a person is a custodial parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under ch. 39, ch. 393, ch. 744, or ch. 914,<sup>13</sup> F.S., they have the right to place a security freeze on the consumer report of the person in their care. If there is no credit report, the parent, guardian, or advocate may request the creation of a consumer record and the placement of a security freeze on the consumer record.

**Section 3** provides that this act would take effect September 1, 2013.

#### **Other Potential Implications:**

The bill does not provide the same remedies and penalties as found in the security freeze provisions of s. 501.005, F.S. Section 501.005, F.S., requires a consumer-reporting agency that fails to comply with the security freeze provisions is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000, plus allows for the recovery of the cost of the action and reasonable attorney fees. Section 501.005, F.S., also authorizes the assessment of punitive damages for willful violations of that section. Section 501.005, F.S., provides that any person who is negligent in failing to comply with the provisions of that section with respect to any consumer is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000. Section 501.005, F.S., also allows the court to award reasonable attorney's fees to the prevailing party in an action that was filed in bad faith or for purposes of harassment.

Currently, s. 501.005, F.S., exempts certain transactions from the credit freeze, thereby allowing access to information contained in a credit file or report. The bill, which is applicable to protected consumers, including minors, contains similar exemption found in s. 501.005, F.S., except that the bill would also allow the use of the protected consumer records by a consumer-reporting agency's database or file that is used exclusively for personal insurance policy information and noncredit information used for insurance purposes.

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<sup>13</sup> Chapter 914, F.S., relates to witnesses and criminal proceedings.



**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:

With the increasing incident of child identity theft, the creation of security freezes on credit records of minors under age 16 and other persons, represented by a guardian or advocate, without an existing credit report would provide additional safeguards and deter identity theft.

## C. Government Sector Impact:

The Department of Agriculture and Consumer Services will incur indeterminate administrative costs in adopting rules and investigating alleged violations of the provisions of this bill. However, the department anticipates using existing resources to administer the new duties.

**VI. Technical Deficiencies:**

A protected consumer is defined to mean, “a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to ch. 39, ch. 393, or ch. 744, F.S.” However, the written disclosure relating to the availability of a credit freeze that would be required under s. 501.005, F.S., references a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under ch. 39, ch. 393, ch. 744, or ch. 914, F.S.

**VII. Related Issues:**

Pursuant to s. 501.005, F.S., a request for a credit freeze must be submitted in writing by certified mail to the credit-reporting agency. However, SB 566 provides that the representative would submit a request to a consumer-reporting agency in the manner prescribed by the agency.

It is unclear whether each consumer-reporting agency would require certified mail or some other method, such as email.

The bill requires the credit-reporting agency to place a credit freeze on a credit record within 30 business days after confirming authenticity of such a request. Section 501.005, F.S., relating to credit freezes on credit reports, requires a credit-reporting agency to place a freeze within 5 business days after receiving a request for a credit freeze on a credit report.

A request for the removal of a credit freeze on a credit record must be completed within 30 days, rather than 3 days as required for credit freezes of records under s. 501.005, F.S. This could result in a significant delay for a teenager applying for a car loan or applying for an apartment lease, even if the parents are cosigning for the loan or lease.

### **VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

Topic SECURITY FREEZE

Bill Number 566  
*(if applicable)*

Name JUSTIN HOLLIS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LEGISLATIVE AFFAIRS

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Speaking:  For  Against  Information

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.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20

Meeting Date

Topic Security of Protected Consumer Information

Bill Number SB 566  
*(if applicable)*

Name Aimee Lyon

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

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Speaking:  For  Against  Information

Representing Consumer Data Industry 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.**

S-001 (10/20/11)

**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 Committee on Banking and Insurance

BILL: SB 662

INTRODUCER: Senator Hays

SUBJECT: Workers' Compensation

DATE: March 16, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Favorable</b>
2.	_____	_____	HP	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 662 revises requirements for determining the amount of reimbursement for prescription medications of workers' compensation claimants by providing that the reimbursement rate is the same for repackaged or relabeled drugs as for non-repackaged drugs, unless the carrier has contracted for a lower rate. Reimbursement for repackaged or relabeled drugs would be determined by multiplying the number of units of the drug dispensed by the per-unit average wholesale price (AWP) set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled. This provision would not apply in situations where the employer or insurer has contracted for a lower reimbursement amount.

Chapter 440, F.S., generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment, and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the AWP plus a \$4.18 dispensing fee, or the contracted rate, whichever is lower.<sup>1</sup>

It is estimated that the bill would reduce workers' compensation costs overall by 1.1 percent or \$27 million.<sup>2</sup>

<sup>1</sup> Section 440.13(12), F.S.

<sup>2</sup> National Council on Compensation Insurers, Analysis of Florida Proposal to Revise Reimbursement for Repackaged or

This bill amends the following section of the Florida Statutes: 440.13.

## II. Present Situation:

### State and Federal Regulation of Prescription Drugs

Section 510 of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. s. 360, requires registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution. Drug products are identified and reported to the FDA using a unique, three-segment number, called the National Drug Code (NDC), which is a universal product identifier for human drugs. The current edition of the NDC Directory is limited to prescription drugs and insulin products that have been manufactured, prepared, propagated, compounded, or processed by registered establishments for commercial distribution.<sup>3</sup>

The term “repackaged” drugs refers to drugs that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients. Repackagers of drugs are required to register and list all such drug products repackaged and relabeled with the FDA.

In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment.

Rule 64F-12, F.A.C., defines “repackaging or otherwise changing the container, wrapper, or labeling to further the distribution” to mean:

- Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic. For example, repackaging from bottles of 1,000 to bottles of 100.
- Altering a manufacturer’s package for sale under a label different from the manufacturer. For example: a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; packaged together and marketed as an immunization kit under a label of manufacturer Z.
- Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product.<sup>4</sup>

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Relabeled Prescription Drugs, February 20, 2013. On file with Banking and Insurance Committee Staff.

<sup>3</sup> *National Drug Code Database Background Information*, U.S. Food and Drug Administration. Found at:

<http://www.fda.gov/drugs/developmentapprovalprocess/ucm070829>

<sup>4</sup> The Rule provides that repackaging does not include:

- a. Selling or transferring an individual unit which is a fully labeled self-contained package that is shipped by the manufacturer in multiple units, or
- b. Selling or transferring a fully labeled individual unit, by adding the package insert, by a person authorized to distribute prescription drugs to an institutional pharmacy permit, health care practitioner, or emergency medical service provider for the purpose of administration and not for dispensing or further distribution.

According to the Workers' Compensation Research Institute, some states, such as Massachusetts, New York, and Texas prohibit physicians from dispensing drugs.<sup>5</sup> In Florida, s. 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

To become a dispensing practitioner in Florida, a practitioner is required to register under s. 465.0276, F.S., with the applicable professional licensing board as a dispensing practitioner and pay a \$100 fee.<sup>6</sup> Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections. A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III in s. 893.03, F.S.<sup>7</sup>

Section 458.347, F.S., allows a supervising physician to delegate dispensing authority to his or her physician assistant (PA). No registration is required for a PA to dispense. The PA may prescribe under his or her supervising physician; however, a PA cannot prescribe controlled substances.

According to advocates of physician dispensers, there are some advantages for patients from physicians dispensing drugs. These benefits may include greater compliance by the patient in taking a drug dispensed directly by the physician, more convenience for patients residing in remote areas, and the benefit of prompt treatment.

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the Department of Financial Services (DFS) or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

Section 440.13(14), F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under ch. 440, F.S., and department rule. However, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

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<sup>5</sup> *Prescription Benchmarks for Massachusetts* by the Workers' Compensation Research Institute, March 2010.

<sup>6</sup> If the practitioner is dispensing complimentary packages of medicinal drugs, the practitioner is not required to register.

<sup>7</sup> See s. 465.0276(1)(b), F.S.

## **Reimbursement for Prescription Drugs in Workers' Compensation**

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs.<sup>8</sup>

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is found in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) of the drug plus \$4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The AWP is comparable to a wholesaler's suggested price and the term, AWP, is not defined in ch. 440, F.S. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

An NDC is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel, and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug.

## **Costs of Prescription Drugs in the Workers' Compensation System**

According to a recent Workers Compensation Research Institute (WCRI)<sup>9</sup> report,<sup>10</sup> the average payment per claim for prescription drugs in Florida was \$536, which was the second highest average prescription cost per claim among the 17 states in the study.<sup>11</sup> Between 2005/2006 and 2007/2008, the average prescription cost per claim increased 14 percent in Florida. Over the same period, prices per pill paid to physicians grew more rapidly than prices paid to pharmacies for the same prescription. In 2007/2008, the prices paid to physician dispensers for many common drugs were 40-80 percent higher than what was paid to pharmacies for the same drugs. For generic drugs, physicians were paid much higher prices per pill than pharmacies for the same prescription. According to the WCRI, this suggests that if physicians stop dispensing prescription drugs in response to a large price drop, more pharmacies would dispense the same prescriptions at a lower price, resulting in a decline in prescription costs.

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<sup>8</sup> Section 440.13(2)(a), F.S.

<sup>9</sup> The Workers Compensation Research Institute is an independent, not-for-profit research organization providing information about public policy issues involving workers' compensation systems. Organized in late 1983, the WCRI does not take positions on the issues it researches.

<sup>10</sup> *Prescription Benchmarks for Florida, 2<sup>ND</sup> Edition*, by Workers' Compensation Research Institute, July 2011.

<sup>11</sup> The following states were included in the WCRI study: Florida, California, Tennessee, Indiana, Texas, Louisiana, Michigan, Minnesota, North Carolina, Iowa, Pennsylvania, Illinois, Maryland, Wisconsin, New Jersey, New York, and Massachusetts.



### III. Effect of Proposed Changes:

The bill amends s. 440.13, F.S., to require the same reimbursement rate for repackaged or relabeled drugs that currently exists for non-repackaged drugs in Florida. The bill provides that regardless of the location or the provider of a prescription to a claimant, the reimbursement amount is the average wholesale price, plus the \$4.18 for the dispensing fee, unless the carrier has contracted for a lower amount.

If a drug has been repackaged or relabeled, the reimbursement amount is calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill also provides that the price of the repackaged or relabeled drug may not exceed the amount otherwise payable if the drug had not been repackaged or relabeled.

The act takes effect July 1, 2013.

### 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 NCCI<sup>12</sup> estimates that the changes proposed in SB 662 to revise reimbursement rules for repackaged or relabeled prescription drugs would result in an impact of -1.1 percent or -\$27.3 million<sup>13</sup> on overall workers' compensation costs for employers in Florida.<sup>14</sup>

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<sup>12</sup> In Florida, the National Council on Compensation Insurance (NCCI) is the rating and statistical organization that files rates on behalf of worker's compensation insurers in the state. The Office of Insurance Regulation licenses the NCCI.

<sup>13</sup> Overall system costs are based on NAIC Annual Statement data as provided by A.M. Best including an estimate of self-insured premium. The estimated dollar impact of -\$27.3M (million) is the percent impact displayed multiplied by A.M. Best 2011 written premium (preliminary) of \$1,794M for Florida plus an estimate of the self-insured premium from the Florida Division of Workers Compensation for 2011 of \$692M. This figure does not include the policyholder retained portion of

In Florida, drug costs represent 15.1 percent<sup>15</sup> of workers compensation (WC) medical costs. Repackaged or relabeled drug costs represent 24.3 percent of Florida's WC drug costs, or 3.7 percent (=24.3 x 15.1) of medical costs. Non-repackaged drugs represent 11.4 percent (=15.1 - 3.7) of medical costs.

In order to estimate the cost impact of this proposal, NCCI compared the paid amount of repackaged or relabeled drugs to the expected payment for drugs if they had been dispensed in their original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data File™ (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in their original packaging from the manufacturer within the Florida Workers Compensation Data licensed to NCCI.

Since HB 7095, effective July 1, 2011, bans dispensing of Schedule II and Schedule III controlled substances by a physician, these drugs were omitted from the cost impact analysis.

NCCI has assumed the difference between the current reimbursement for repackaged or relabeled drugs and the current reimbursement for the equivalent of these drugs that are not repackaged or relabeled to be a reasonable estimate of the cost impact due to the proposed rule.

The current and proposed reimbursements for each repackaged or relabeled drug were calculated as follows:

*Current Cost* = Average price per unit for repackaged or relabeled drug  
x total units of repackaged or relabeled drug

*Proposed Cost* = Average price per unit for equivalent drug that is not repackaged or relabeled x total units of repackaged or relabeled drug

Where: *Units* = Total number of pills per prescription

*Average price per unit* = Total paid divided by total units

The current and proposed reimbursements are summed over all the transaction-level data to obtain total current and total proposed costs. The estimated direct impact on drug costs is the ratio of total proposed costs to total current costs. The impact on total prescription drugs due to the above proposals is summarized in the table below:

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deductible policies, or adjustments for subsequent changes in premium levels. The use of premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs

<sup>14</sup> *Ibid.*

<sup>15</sup> Based on Florida Division of Workers' Compensation (DWC) data for Service Year 2011. This data would be on a calendar year basis – and include all 2011 medical provided on any open claim regardless of date of accident.

Type of Prescription Drug	Cost Distribution <sup>16</sup>	Impact
Repackaged	24.3%	-45.1%
Non-Repackaged	75.7	0.0
Total Prescription Drugs	100.0%	-10.9%

The above impact of -10.9 percent on total prescription drugs is then multiplied by the Florida percentage of medical costs attributed to prescription drug payments (15.1 percent) to arrive at the estimated impact of -1.6 percent on medical costs. The resulting impact on medical costs is multiplied by the percentage of Florida benefit costs attributed to medical benefits (68.4 percent<sup>17</sup>) to arrive at the estimated impact on Florida overall workers compensation system in costs of -1.1 percent or -\$27.3 million.

**C. Government Sector Impact:**

State and local governments manage their workers’ compensation risks by insuring or self-insuring. The impact on local government is indeterminate at this time. A local government that secures workers’ compensation coverage would expect to experience a reduction in prescription drug costs to the extent that physicians dispense repackaged drugs to their employees. If a local government has contracted for a lower reimbursement rate, the bill would not affect that particular local government’s costs.

Since the Division of Risk Management<sup>18</sup> in the Department of Financial Services has a contract provision regarding repackaged drug costs in its contract with its pharmacy benefits manager, it does not currently reimburse at the repackaged drug invoice price, and therefore the bill would not have a fiscal impact on the Division of Risk Management.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

<sup>16</sup> Based on Florida Division of Workers’ Compensation (DWC) data for Service Year 2011.

<sup>17</sup> Based on NCCI Financial Call data from Policy Years 2009 and 2010 projected to 1/1/2013. This estimated date is subject to change depending on the effective date of this proposal.

<sup>18</sup> The Division of Risk Management is responsible for the management of claims reported by or against state agencies for coverage under the self-insurance fund known as the "State Risk Management Trust Fund." Coverages provided through the trust fund include Workers' Compensation, Property, Fleet Automobile Liability, General Liability, Federal Civil Rights/Employment Discrimination and Court Awarded Attorney Fees.

<sup>19</sup>Department of Financial Services, Division of Risk Management Bill Analysis, February 15, 2013. On file with Banking and Insurance Committee staff.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 20, 2013  
Meeting Date

Topic Workers' Comp Drug Repack

Bill Number 662  
*(if applicable)*

Name Samantha Padgett

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title General Counsel

Address 227 S. Adams St.

Phone 850 222 4082

Villabasse FL 32301  
City State Zip

E-mail samantha@frt.org

Speaking:  For  Against  Information

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic Workers' Comp

Bill Number 667  
*(if applicable)*

Name Rebecca Mathews

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Gov. Affairs

Address \_\_\_\_\_

Phone 850-507-3494

Street

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing FL OLR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20

Meeting Date

Topic Workers Compensation

Bill Number SB 662  
*(if applicable)*

Name JIM BRAINERD

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 2814 Rabbit Hill Road

Phone (850)-508-6716

Street

Tallahassee, FL 32308

City

State

Zip

E-mail BRAINERDLAW@  
connect.net

Speaking:  For  Against  Information

Representing Florida Association of Insurance Agents

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

*Meeting Date*

Topic Workers' Compensation Bill Number SB 662  
*(if applicable)*

Name David Hart Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Vice President

Address 136 S Bronough St Phone 850-521-1235

*Street*

Tallahassee FL 32301

*City*

*State*

*Zip*

E-mail dhart@flchamber.com

Speaking:  For  Against  Information

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic WORKERS' COMP

Bill Number SB 662  
*(if applicable)*

Name CAM FENTRISS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ # 3243

Phone 222-2772

Street

TAU

City

State

Zip

E-mail \_\_\_\_\_

FRSA

Speaking:  For  Against  Information

Representing FEA ROOFING, SHEET METAL + AC CONTRACTORS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic Drug Repackaging

Bill Number 662  
*(if applicable)*

Name MONTE STEVENS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DIRECTOR OF Payment Advocacy

Address PO BOX 10269

Phone 224-6496

Street

TALLAHASSEE

FL

32302

City

State

Zip

E-mail mstevens@flmedical.org

Speaking:  For  Against  Information

Representing FL. MEDICAL ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/20/13  
Meeting Date

Topic Workers' comp

Bill Number 662  
*(if applicable)*

Name Teye Reeves (pronounced "Tia")

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 108 S. Monroe St.

Phone 850 681 0024

Tallahassee, FL 32301  
City State Zip

E-mail treeves@flapartners.com

Speaking:  For  Against  Information

Representing AIF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic Workers Compensation

Bill Number 662  
*(if applicable)*

Name Tom Panza

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 215 South Monroe Street, Ste 320  
*Street*

Phone (954) 390-0100

Tallahassee FL 32301  
*City State Zip*

E-mail tpanza@panzamaurer.com

Speaking:  For  Against  Information

Representing Automated Health Care Solutions

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-20-13

Meeting Date

Topic WC Pharmacy

Bill Number 662  
*(if applicable)*

Name Kevin Tribout

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Govt Affs

Address 175 Kelsey Lane  
*Street*

Phone \_\_\_\_\_

Tampa FL 33619  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing PMSI + Comp Pharma

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**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 Committee on Banking and Insurance

**BILL:** SB 1622

**INTRODUCER:** Senator Richter

**SUBJECT:** Establishment of a Clearinghouse Diversion Program within Citizens Property Insurance Corporation

**DATE:** March 15, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1622 establishes a clearinghouse within the Citizens Property Insurance Corporation. Policies seeking new and renewal coverage from Citizens must first be submitted through the clearinghouse to allow private market insurers the opportunity to offer coverage before being placed in Citizens. Any policyholder who receives offers of coverage from admitted carriers at approved rates within 15 percent of Citizens' rate would not be eligible for coverage with Citizens.

This bill creates the following section of the Florida Statutes: 627.3518, F.S.

**II. Present Situation:**

**Citizens Property Insurance Corporation (Citizens)**

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of

<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

### **Citizens Accounts**

Citizens offers three types of property and casualty insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>3</sup> Assets may not be commingled or used to fund losses in another account.<sup>4</sup> The three Citizens accounts are:

**Personal Lines Account (PLA):** Statewide account offering multiperil policies covering homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

- Policies in Force: 838,143
- In Force Premium: \$1,379,410,864
- Total Exposure: \$175,864,284,312

**Coastal Account (COASTAL):** Coastal area account offering personal residential wind-only policies, commercial residential wind-only policies and commercial nonresidential wind-only policies issued in limited eligible coastal areas. In addition, in August of 2007, Citizens began offering personal and commercial residential multiperil policies in the Coastal account.

- Policies in Force: 438,642
- In Force Premium: \$1,144,655,922
- Total Exposure: \$191,101,715,209

**Commercial Lines Account (CLA):** Statewide account offering multiperil policies covering commercial residential-condominium associations, apartment buildings and homeowners associations; and commercial non-residential policies.

- Policies in Force: 8,016
- In Force Premium: \$200,296,331
- Total Exposure: \$38,748,152,744

**Total All Accounts Combined:**<sup>5</sup>

- Policies in Force: 1,284,801
- In Force Premium: \$2,724,363,117
- Total Exposure: \$405,714,152,265

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<sup>3</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>4</sup> Section 627.351(6)(b)2b., F.S.

<sup>5</sup> Citizens weekly report as of 3/1/2013 on file with committee staff.

## Citizens Financial Resources

“Citizens’ financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. As of December 13, 2013, Citizens will have an accumulated surplus of approximately \$6.34 billion. For the 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the FHCF. For the 2013 hurricane season Citizens’ probable maximum loss (PML) from a 1-in-100 year event is \$20.42 billion.”

If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers’ compensation insurance and medical malpractice insurance.<sup>6</sup> The assessments Citizens may impose and their sequence is as follows:

**Citizens Surcharge:** Requires up to 15 percent of premium surcharge for 12 months on all Citizens’ policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens’ accounts with a maximum assessment of 45 percent of premium.

**Regular Assessment:** If the Citizens’ surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers compensation). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens’ policyholders.

**Emergency Assessment:** Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens’ policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida’s varicose insurance policyholders is 30 percent per policy.

## Citizens Rates

Citizens’ rates for coverage are required to be actuarially sound and are subject to the rate standards for property and casualty insurance in s. 627.062, F.S., except as otherwise provided.<sup>7</sup> From 2007 until 2010, Citizens rates were frozen by statute<sup>8</sup> at the level that had been established in 2006. In 2010, the Legislature established a “glide path” to impose annual rate increases up to a level that is actuarially sound.<sup>9</sup> Citizens must implement an annual rate increase which does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase,

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<sup>6</sup> Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.



Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

### **Eligibility**

If a policyholder seeking coverage from Citizens is offered coverage from an admitted carrier at the admitted carrier's current rate approved by the OIR and such offer of coverage is within 15 percent of Citizens' rate, that policyholder is not eligible for coverage with Citizens.<sup>10</sup> Policyholders who have coverage with Citizens remain eligible for such coverage regardless of any offer made by an admitted carrier.<sup>11</sup>

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

The bill creates s. 627.3518, F.S., and recognizes Citizens current authority to establish a clearinghouse for the purpose of determining the eligibility of new and renewal risks who are seeking insurance coverage with Citizens. The bill requires Citizens to implement such a clearinghouse by July 1, 2013. The bill requires that all new and renewal applications, excluding commercial residential, must be submitted to the clearinghouse before Citizens can bind or renew coverage.

The clearinghouse:

- Must develop an application process to facilitate private insurers in determining whether or not to make an offer of coverage through the clearinghouse.
- Must enter into contracts with Florida property insurance companies to participate in the clearinghouse and must accept appointments from voluntary market insurers.
- Must require all new and renewal applicants to be submitted to the clearinghouse to see if there are any offers of coverage from an authorized insurer.
- Must require all new applications for coverage to be subject to a 48-hour period that allows a private insurer participating in the clearinghouse to select applicants for coverage.
- Allows an applicant to accept an offer from a surplus lines insurer if the applicant does not receive an offer of coverage from admitted insurers.
- May charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse. Insurers participating in the clearinghouse are not required to pay a fee or use the clearinghouse.

All licensed insurers are authorized to participate in the clearinghouse. Insurers making offers of coverage through the clearinghouse are allowed, but not required, to appoint the agent whose customer is bound and underwritten through the clearinghouse for as long as that policy remains with the insurer. If the insurer does not appoint the agent, it must enter into a limited agency agreement with the agent who is not appointed. If an insurer makes an offer for an applicant

<sup>7</sup> Section 627.351(6)(n)1., F.S.

<sup>8</sup> Section 627.351(6)(n)4., F.S.

<sup>9</sup> Ch. 2009-87; s.10, L.O.F.

<sup>10</sup> Section 627.351(6)(c)5.a., F.S.

<sup>11</sup> Id.

whose agent is an exclusive agent, that agent can give the applicant an opportunity to accept coverage from an insurer with whom the agent has a limited servicing agreement. All agents must maintain the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the clearinghouse.

The corporation is authorized to recognize private entities that independent agents may elect to use as an alternative to the clearinghouse. The alternative option cannot be used as a replacement for the clearinghouse. Neither the clearinghouse nor an alternative private entity can prohibit insurers from electing to participate in more than one program, but an insurer participating in the private entity alternative must also participate in the clearinghouse.

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

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

None.

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

A public records exemption bill SB 1606 has been filed to exempt certain policyholder information submitted to the clearinghouse.

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

None.

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

##### **A. Tax/Fee Issues:**

The bill authorizes Citizens' clearinghouse to charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse.

##### **B. Private Sector Impact:**

Policyholders with Citizens who receive offers of coverage from admitted carriers at approved rates within 15 percent of Citizens' rate would no longer be eligible for coverage with Citizens.

##### **C. Government Sector Impact:**

Citizens will need to spend an indeterminate amount of surplus to start up the clearinghouse.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1606

INTRODUCER: Senator Richter

SUBJECT: Public Records/Citizens Property Insurance Corporation

DATE: March 16, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Pre-meeting</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

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**I. Summary:**

SB 1606 exempts from public record all underwriting guidelines, manuals, rating information and other underwriting criteria used by insurers participating in the Citizens clearinghouse program.

The exemptions of the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends the following section of the Florida Statutes: 627.3518

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, s. 24, Fla. Constitution.

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency or to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements, then an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>15</sup>

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

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<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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

The bill exempts from public record all underwriting guidelines, manuals, rating information and other underwriting criteria used by insurers participating in the Citizens clearinghouse program.

The exemptions of the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

### **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:**

Proprietary information belonging to the insurers participating in the Citizens clearinghouse program will be protected.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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**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 Committee on Banking and Insurance

BILL: SB 1262

INTRODUCER: Senator Hays

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: March 11, 2013

REVISED: 3/16/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.			AP	
3.				
4.				
5.				
6.				

**I. Summary:**

SB 1262 reduces the Florida Hurricane Catastrophe Fund (Cat Fund) coverage limits and maximum reimbursement percentage, and eliminates the Temporary Increase in Coverage Limit option after the conclusion of the 2012-2013 Cat Fund contract year. The bill is designed to reduce the overall financial obligations of the fund, reducing the likelihood and amount of bonding and emergency assessments needed to fund deficits in the event the Fund experiences a shortfall after a major hurricane. The major proposed changes are summarized as follows:

Phases in annual decreases of the \$17 billion Cat Fund mandatory coverage limit beginning in the 2013-2014 contract year as follows:

- For the 2013-2014 contract year, \$16 billion.
- For the 2014-2015 contract year, \$15 billion.
- For the 2015-2016 contract year and thereafter, \$14 billion.

Reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and thereafter, 75 percent.

The bill eliminates the \$2 billion Temporary Increase in Coverage Limit (TICL) optional coverage layer for the 2013-2014 contract year. The State Board of Administration is required to adopt revised or amended rules and forms, or addenda thereto, necessary to ensure that the

statutory changes made by SB 1262 apply to each participating insurer's Cat Fund reimbursement contract for the 2013-2014 contract year that begins on June 1, 2013.

The bill deletes a prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

The effective date of the bill is July 1, 2013.

This bill amends the following sections of the Florida Statutes: 215.555, 624.424, 627.062, 627.0629, and 627.351.

## **II. Present Situation:**

### **The Florida Hurricane Catastrophe Fund (Cat Fund)**

The Cat Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The Cat Fund provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the Cat Fund, the fund acts to lower residential property insurance premiums for consumers. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

### **Cat Fund Mandatory Coverage**

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the Cat Fund. The Cat Fund is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer).

Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the Cat Fund for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention. To access the Cat Fund an insurer must have incurred losses above the retention levels calculated and set by statute. When faced with a multi-storm season, insurers must reach their full retention levels on the two largest storms of the season. The retention level is then reduced to one-third the normal amount for any other storms that season. Citizens Property Insurance

Corporation is the largest purchaser of Cat Fund coverage. For the 2012 - 2013 hurricane season Citizens will have purchased \$1.75 billion in private reinsurance coverage along with the \$5.73 billion in mandatory layer reinsurance from the Cat Fund.

### **Cat Fund Premiums**

The Cat Fund must charge insurers the “actuarially indicated” premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The “actuarially indicated” premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the Cat Fund annual reimbursement premiums that are proportionate to each insurer’s share of the Cat Fund’s risk exposure. The cost of Cat Fund coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a “risk load.”

### **Cat Fund Bonding and Assessment Authority**

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the Cat Fund is insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the Cat Fund, bond issues totaling over \$8 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers’ compensation and medical malpractice liability insurance. The Cat Fund’s broad-based assessment authority is one of the reasons the Cat Fund was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

### **Cat Fund Financial Obligations and Claims Paying Resources**

The Cat Fund’s coverage obligations for the 2012-2013 hurricane season<sup>1</sup> totaled \$17.023 billion dollars for a single storm, which consisted of \$17 billion of mandatory coverage and \$23 million dollars in optional TICL coverage. The Cat Fund projected year-end cash balance for the 2012-2013 hurricane season is \$8.503 billion. Obligations exceeding the cash balance of the Cat Fund would require bonding of up to \$8.503 billion. The assessment base for the Cat Fund is approximately \$34.640 billion for premiums written at year end 2011, enabling the Cat Fund to levy annual assessments of as much as \$2.078 billion for one contract year and \$3.454 billion for multiple contract years.

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<sup>1</sup> June 1, 2012 – May 31, 2013

### Cat Fund Claims-Paying Capacity Estimates

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 9, 2012, Claims Paying Capacity Estimate (Estimate)<sup>2</sup> is the most recent such report to be issued.<sup>3</sup> The report, prepared by Raymond James, evaluated the Cat Fund's bonding capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan). The October 9, 2012, Estimate noted that the Cat Fund's total obligations of \$17.023 billion exceed the projected year-end fund balance of \$8.503 billion, thus the Cat Fund may need to raise up to \$8.503 billion through bonding in order to fund its liabilities.

The senior managers from Citi, Goldman Sachs, J.P. Morgan, and Barclays estimated the bonding capacity of the Cat Fund to be from \$2 billion to \$12 billion over the 12 months following a storm, leading to an average estimate of \$7 billion in bonding capacity. The Estimate anticipated, however, that the Cat Fund would have an additional bonding capacity of \$6 billion from 12 to 24 months after the hurricane, which would have enabled the Cat Fund to pay its entire obligations. A hurricane requiring the Cat Fund to pay its full obligation \$17.023 billion would leave an estimated \$4.480 billion in bonding capacity and \$1.354 billion in new premium collections to fund losses in the subsequent hurricane season, leaving the fund with over \$11 billion in unfunded obligations for that subsequent hurricane season.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 215.555, F.S. by reducing the Florida Hurricane Catastrophe Fund coverage limits and reducing the maximum reimbursement percentage. This section is effective upon becoming a law. The major proposed changes are summarized as follows:

#### Decreases the Maximum Reimbursement Percentage for Cat Fund Coverage

Under current law, insurers have the option to purchase Cat Fund reinsurance that provides reimbursement of 90 percent, 75 percent, or 45 percent of the insurer's losses within the mandatory Cat Fund layer of coverage. The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and thereafter, 75 percent.

<sup>2</sup> Claims-Paying Capacity Estimates (October 9, 2012).

<sup>3</sup> The first Claims Paying Capacity Estimate for the 2013-2014 hurricane season is due to be published in May 2013.

The bill requires insurers that elect the maximum coverage level available must purchase the following year's renewal of the reimbursement contract at the highest available coverage level if revenue bonds after a covered event (hurricane) are outstanding.

#### Decreases the Cat Fund Mandatory Coverage Limit

The bill phases in annual decreases of the \$17 billion Cat Fund mandatory coverage limit beginning in the 2013-2014 contract year as follows:

- For the 2013-2014 contract year, \$16 billion.
- For the 2014-2015 contract year, \$15 billion.
- For the 2015-2016 contract year and thereafter, \$14 billion.

#### Other Provisions

The bill terminates the \$2 billion layer of Temporary Increase in Coverage Limit (TICL) options Cat Fund coverage. TICL coverage is an optional Cat Fund coverage that insurers may elect to purchase. The coverage was established by the Legislature in Special Session 2007-A to provide additional reinsurance capacity from the Cat Fund beginning in the 2007 hurricane season and ending after the 2013 hurricane season (the 2013-2014 contract year).

The State Board of Administration Finance Corporation (SBA Finance Corporation or Corporation) is the new name of the Florida Hurricane Catastrophe Fund Corporation. The SBA Finance Corporation is the public benefits corporation that issues bonds to fund Cat Fund reimbursements when, after a hurricane, the Corporation board determines that the moneys in the Cat Fund are (or will be) insufficient to pay the amount of reimbursement promised in reimbursement contracts.

**Section 2.** Amends s. 627.062, F.S., to delete the prohibition against insurers recouping reinsurance costs that duplicate coverage provided by the Cat Fund.

**Sections 3-5.** Make conforming changes to s. 627.062, F.S., s. 627.0629, F.S., and s. 627.351(6)(v), F.S.

**Section 6.** Creates an unnumbered statute requiring the State Board of Administration to adopt revised or amended rules and forms, or addenda thereto, necessary to ensure that the statutory changes made by SB 1262 apply to each participating insurer's Cat Fund reimbursement contract for the 2013-2014 contract year that begins on June 1, 2013. Such rules, forms, and addenda supersede previously adopted rules, forms, and addenda that apply to the 2013-2014 contract year in the event of any conflicts. The SBA may use emergency rulemaking to assure timely adoption of the revisions, amendments, and addenda.

**Section 7.** Provides an effective date of July 1, 2013.

**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:**

Eliminating the TICL coverage layer and reducing the mandatory layer to \$16 billion and the maximum reimbursement percentage to 85 for the 2013 – 2014 Contract Year could result in an unconstitutional impairment of contracts. Section 215.555(18), F.S., requires insurers purchasing Cat Fund coverage to execute the reimbursement contract (essentially, their Cat Fund policies) by March 1 prior to the upcoming Contract Year. Accordingly, all insurers in the state have executed their reimbursement contract for the coming 2013-2014 Contract Year based upon a 17 billion dollar mandatory layer of coverage and a 90 percent maximum reimbursement. Though the bill authorizes emergency rulemaking to alter the reimbursement contracts, it is questionable whether the state could successfully require insurers to rewrite their reimbursement contracts.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>4</sup> “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>5</sup> If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>6</sup> The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and

<sup>4</sup> U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

<sup>5</sup> *Susan Cohn v. The Grand Condominium Association, Inc., et al*; 62 So. 3d. 1120 (Fla. 2011). See also *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>6</sup> *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983).

- Whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.<sup>7</sup>

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Representatives from the Cat Fund state that the current mandatory layer of coverage (\$17 billion) plus the optional coverages offered under current law (\$2 billion in TICL coverage for 2013-2014) place potential liabilities on the fund that it may not be able to meet due to the current status of the financial markets. These representatives note that if a major hurricane had fallen upon Florida during the 2012 hurricane season, the Fund would have needed to rely upon an \$8.503 billion bond issue, which is in excess of the estimated \$7 billion in bonding posited in the October 2012 Claims Paying Capacity Estimates. Though additional bonding capacity may be available if the bond issues are spread out over a longer period of time (2 years instead of 1 year), some private market insurers may require prompt payment of Cat Fund funds to maintain their ability to pay claims timely and avoid insolvency in the event of a major storm.

Representatives from the Cat Fund assert that lowering coverage limits and the maximum reimbursement percentage will reduce the fund's potential reliance on bonding backed by assessments. In addition, the increase in co-pays will encourage responsible claims practices among insurers, and the reduction in the limit will improve the Cat Fund's ability to provide coverage for subsequent storm seasons after a major event. Changing the name of the Finance Corporation should improve the marketability of the Cat Fund's bonds.

Most insurers likely will purchase reinsurance to offset the reductions in Cat Fund limits and maximum reimbursement percentages, the cost of which will be included in the premiums they charge consumers. Cat Fund representatives note that the costs of reinsurance fluctuate from year to year, and thus it is difficult to make a precise estimate of the consumer impact of this bill. The actuary for the Office of Insurance Consumer Advocate in the Department of Financial Services has projected the following premium impact of the bill:

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<sup>7</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

- 2013/2014 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 85 percent and reducing the mandatory layer to 16 billion.
- 2014/2015 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 80 percent and reducing the mandatory layer to \$15 billion.
- 2015/2016 Contract Year – 1.2 percent premium increase associated with reducing the maximum reimbursement percentage to 75 percent and reducing the mandatory layer to \$14 billion.
- Total Estimated Cumulative Premium Increase – 3.7 percent
  - The premium impact calculations assume that private market reinsurance covering the same layers of coverage as the Cat Fund will be available at a rate on line of 20 percent for the 2013/2014 contract year and subsequent contract years. According to representatives from the Office of the Insurance Consumer Advocate, the rate on line for such coverage was 22 percent during the 2012/2013 contract year. The premium impact of the bill’s provisions are directly affected by the cost of private market reinsurance.

Representatives of some business groups have voiced support for reducing the Cat Fund’s capacity and reimbursement percentage because these changes will reduce the likelihood that the Cat Fund will be required to levy assessments on all property and casualty lines of business (except workers’ compensation and medical malpractice liability insurance). Many of these business groups view these assessments as a “tax” on other lines of insurance (such as motor vehicle insurance) that subsidizes the residential property insurance market. Another asserted benefit is that a smaller Cat Fund will be in a better financial position to pay its obligations the year after a major storm that depletes the cash reserves of the fund and requires bonding. The most recent Cat Fund Claims-Paying Capacity Estimates indicate that if a storm triggered the entire layer of Cat Fund recoverable, the fund anticipates only having \$5.824 billion in claims paying resources (cash reserves plus estimated bonding capacity).

Representatives of some insurers and consumer advocates have voiced concern that reducing the mandatory layer and maximum reimbursement percentage of the Cat Fund may have a negative effect on the private homeowners property insurance market. The reductions in the Cat Fund will result in most insurers purchasing additional layers of reinsurance from the global reinsurance market at a higher cost than Cat Fund coverage. The cost of such reinsurance will likely be passed onto policyholders by private market insurers, but not necessarily by Citizens Property Insurance Corporation, which is not required to purchase reinsurance that guarantees the corporation’s ability to pay all claims stemming from a 1 in 100 year probable maximum loss storm, a benchmark that most private market insurers meet in their reinsurance programs. These representatives also assert that reductions in Cat Fund size resulting in private market premium increases may hinder the depopulation of Citizens by increasing the disparity between rates charged by Citizens and private market insurers.

The coverage changes effective for the 2013 – 2014 Contract Year are contrary to the provisions of s. 215.555(18), F.S., which discourages the Legislature from passing laws



changing Cat Fund coverage that are effective for the Contract Year beginning shortly after the conclusion of the regular session of the Legislature in which the law was passed. The Legislative findings state that because the Legislative session ends approximately 1 month before the new Cat Fund contract year, “participants in the fund always face the possibility that legislative actions will change the coverage provided or offered by the fund with only a few days or weeks of advance notice. The timing issues...can create uncertainties and disadvantages for the residential property insurers that are required to participate in the fund when such insurers negotiate for the procurement of private reinsurance or other sources of capital.”

**C. Government Sector Impact:**

The bill reduces the assessment liability of the Cat Fund, which decreases the probability that the Fund will be required to issue bonds to meet its financial obligations. Supporters of the legislation also note that the Cat Fund is not the only insurance-related state entity granted assessment authority. Citizens and the Florida Insurance Guaranty Association each have statutory authority to issue bond debt to meet obligations incurred in the event a major hurricane exhausts the financial resources of each entity. Reducing the likelihood of Cat Fund bonding and assessments will assist Citizens and FIGA in being able to raise funds from bond issues because Cat Fund bonds will be less likely to be in competition for investors in the event of a storm.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.

**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 Banking and Insurance Committee

BILL: SB 282

INTRODUCER: Senator Richter

SUBJECT: Consumer Finance Charges

DATE: March 15, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Favorable</b>
2.			CM	
3.				
4.				
5.				
6.				

**I. Summary:**

SB 282 amends chapter 516, F.S., the Florida Consumer Finance Act (Act), which defines “consumer finance loan” as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases, as follows:

- \$1 - \$2,000 principal, up to 30 percent allowable interest;
- \$2,001 - \$3,000 principal, up to 24 percent allowable interest;
- \$3,001 - \$25,000 principal, up to 18 percent allowable interest.

The bill increases by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged within each tier. The bill increases from \$10 to \$15, the maximum amount that can be charged to a borrower for making a payment that is in default for at least 10 days.

This bill substantially amends the following sections of the Florida Statutes:  
516.031 and 516.19.

**II. Present Situation:**

Under ch. 516, F.S., the Florida Consumer Finance Act (Act), the Office of Financial Regulation (OFR) licenses entities that issue consumer finance loans.<sup>1</sup> The license fees under the Act are \$625 for the initial application, plus a \$200 investigation fee, and \$625 for a renewal. A license is valid for not more than 2 years. Under the requirements a licensee must maintain evidence of liquid assets of at least \$25,000. The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the Act. At present, the Office of Financial Regulation licenses approximately 301 consumer finance lenders in Florida.<sup>2</sup>

Under the Act, interest rates on consumer finance loans are tiered and limited based on the principal amount subject to each tier of the loan.

- For principal amounts up to \$2,000, maximum interest rate of 30 percent per annum;
- For principal amounts between \$2,001 and \$3000, maximum interest rate of 24 percent per annum;
- For principal amounts between \$3,001 and \$25,000, maximum interest rate of 18 percent per annum.<sup>3</sup>

The principal amounts upon which interest rates are computed were last addressed by the Legislature in 1997.<sup>4</sup>

Additionally, the Act allows a lender to charge a delinquency fee of up to \$10 for each payment that is in default for at least 10 days. Under the Act, the delinquency fee must first be agreed upon in writing by both parties.<sup>5</sup> The delinquency fee was last addressed by the Legislature in 2000.<sup>6</sup>

**III. Effect of Proposed Changes:**

The bill increases by \$1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged for each tier.

<b>Proposed Change</b>	<b>Current Law</b>
\$1 - \$3,000 up to 30 percent interest	\$1 - \$2,000 up to 30 percent interest
\$3,001 - \$4,000 up to 24 percent interest	\$2,001 - \$3,000 up to 24 percent interest
\$4,001 - \$25,000 up to 18 percent interest	\$3,001 - \$25,000 up to 18 percent interest

Under the proposed change, consumers who borrow could be subject to an additional 6 percent of annual interest on up to \$1,000 on monies borrowed above \$2,000 and another 6 percent of annual interest of up to \$1,000 on monies borrowed above \$3,000.

<sup>1</sup> Section 516.01(2) defines “consumer finance loan” as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.

<sup>2</sup> Office of Financial Regulation Analysis of HB 275 dated November 7, 2011, on file.

<sup>3</sup> Section 516.031(1), F.S.

<sup>4</sup> Section 1, ch. 97-181, L.O.F.

<sup>5</sup> Section 516.031(3)(a)9., F.S.

<sup>6</sup> Section 1, ch. 2000-127, L.O.F.

The bill increases from \$10 to \$15, the maximum amount that can be charged for a payment in default for at least 10 days, and keeps the requirement that both parties must first agree in writing to the delinquency fee.

The bill takes effect July 1, 2013.

**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:

Consumers who borrow could be subject to an additional 6 percent of annual interest on up to \$1,000 on monies borrowed above \$2,000 and another 6 percent of annual interest on up to \$1,000 on monies borrowed above \$3,000.

Borrowers who default on a payment could be subject to an additional \$5 in charges for each defaulted payment.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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

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

*Meeting Date*

Topic CONSUMER FINANCE Bill Number SB 282  
Name JAMES HAROLD THOMPSON Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title LOBBYIST / ATTORNEY (if applicable)  
Address 123 S. CARLETON ST Phone 850 224 9115  
*Street* TALLAHASSEE, FL 32301 E-mail JThompson@Ausley.com  
*City State Zip*

Speaking:  For  Against  Information

Representing FLORIDA FINANCIAL SERVICE ASSOCIATION, INC

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/20/13

Meeting Date

Topic Consumer Finance Charges

Bill Number 282  
*(if applicable)*

Name Alice Vickers

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 623 Beard St.

Phone 850 556-3121

Street

Tallahassee FL 32303

City

State

Zip

E-mail alice@fcan.org

Speaking:  For  Against  Information

Representing FL Consumer Action Network

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 (10/20/11)

# CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Senate Banking and Insurance Cmte. Judge:

Started: 3/20/2013 3:04:46 PM

Ends: 3/20/2013 5:28:38 PM

Length: 02:23:53

3:04:49 PM Meeting called to order by Chairman  
3:05:42 PM CAA calls roll -- quorum present  
3:06:29 PM Chairman Simmons turn chair over to Senator Clemens  
3:20:53 PM SB 1666 by Senator Latvala - recognized by Chair to explain bill  
3:22:13 PM Amd. 465466 by Sen. Richter - amd. explained by Sen. Latvala - w/o objection -- passed  
3:23:09 PM Amd. 945378 - Explained by Sen. Latvala -- w/o objection -- favorable  
3:23:43 PM Amd. 164702 -- w/o objection -- favorable  
3:24:06 PM Amd. 366976 -- w/o favorable  
3:24:23 PM Amd. 453924 -- w/o objection -- favorable  
3:25:26 PM 2/3 vote for late amendments -- favorable  
3:25:48 PM 2/3 vote for late amendments -- favorable  
3:25:53 PM Senator Montford withdraws 2 late filed amendments  
3:46:46 PM Lt. Governor Kottkamp speaks on bill  
3:47:47 PM Senator Latvala recognized - further information on bill  
3:49:17 PM Leslie Dughi on bill  
3:52:29 PM Woody Ryan, Mortgage Justice Group  
3:53:29 PM Richard Frary, Mortgage Justice Group  
3:55:01 PM Robert Sublett, Mortgage Justice Group  
3:56:39 PM Dean Cammarata, Mortgage Justice Group  
3:57:46 PM Jim Trider, Mortgage Justice Group  
4:02:48 PM Ronald Gillis, Muradock FL  
4:05:11 PM Deborah Lilley, Murdick, FL  
4:07:40 PM Joseph Stehens, Foreclosure Fraud Investigators  
4:08:53 PM Eddie Walker, Pastor, PICO FI and FOCUS Orlando  
4:09:47 PM Errol Thompson, PICO  
4:10:21 PM Booker Perry, PICO  
4:11:04 PM Gregory Clark, attorney, representing self  
4:13:31 PM Sen. Clemens turns chair back to Chairman Simmons  
4:14:16 PM Yeline Goin, Exe. Director, Community Assoc. Leadership Lobby  
4:14:49 PM Alice Vickers, PICO United Florida  
4:15:29 PM Anthony D. Marco, Florida Bankers Association  
4:15:57 PM Matt Walsh, FL Press Association  
4:16:54 PM Chris Mobley, Daily Business Review  
4:18:14 PM Dean Ridings, FL Press Association  
4:19:15 PM Diana Ferguson, Community Advocacy Network  
4:19:56 PM Pete Dunbar, Florida Bar  
4:23:10 PM motion for cs -- adopted  
4:23:23 PM Senator Latvala to close on bill  
4:25:51 PM CS motion by Senator Negrón  
4:26:03 PM Roll call on bill --Favorable as CS  
4:26:54 PM SB 464, Sen. Flores' aide presents the bill  
4:27:41 PM Roll call on SB 464 -- Favorable  
4:29:39 PM Sen. Hukill recognized to explain CS/SB 492  
4:30:26 PM Amd. 141568 by Sen. Lee  
4:30:46 PM Sen. Hukill recognized to explain amendment  
4:31:10 PM w/o objection 141568 -- favorable  
4:31:29 PM AMD. 595722 (Sen. Hukill explains amendment  
4:31:55 PM without objection 595722 adopted  
4:34:45 PM question by Senator Detert  
4:36:05 PM Motion for CS -- Sen. Lee  
4:36:20 PM Roll call on bill --favorable  
4:37:40 PM SB 468 by Sen. Hukill



4:37:51 PM Amd. 620194 by Sen. Lee  
4:38:53 PM Amd. 620194 by Sen. Lee  
4:41:02 PM Sen. Hukill explains the amendment  
4:44:00 PM Gary Farmer, Attorney, Florida Justice Ass'n  
4:45:01 PM Amd. 620194 -- w/o objection -- favorable  
4:45:25 PM Sen. Hukill recognized to close on bill.  
4:46:33 PM Sen. Hukill recognized to close on bill.  
4:46:35 PM Sen. Lee moves for CS--favorable  
4:47:05 PM roll call on bill -- favorable  
4:49:03 PM SB 866 by Sen. Aruzzo  
4:49:11 PM AMD. 617086 - explanation of amendment by Sen. Abruzzo  
4:49:40 PM w/o objection 617086 -- adopted  
4:49:52 PM Amd. 752860 - technical amendment - w/o objection -- adopted  
4:51:26 PM Sen. Clemens for CS -- w/o objection - passed  
4:52:46 PM CAA call roll on bill --passed  
4:53:49 PM SB 356 by Sen. Abruzzo  
4:54:00 PM Explanation of bill by Sen. Abruzzo  
4:54:33 PM Roll call on bill --favorable  
4:56:12 PM Roll call on bill --favorable  
4:57:01 PM SB 662 by Senator Hays  
4:58:00 PM Senator Hays explains the bill  
4:58:12 PM SB 622 --tp'd  
4:58:45 PM SB 566 by Senator Detert - explanation of bill of Senator Detert  
4:59:54 PM SB 566 by Senator Detert - explanation of bill of Senator Detert  
5:00:28 PM Roll call on SB 566 -- Favoable  
5:02:30 PM Motion to reconsider vote on SB 468 -- Margolis  
5:02:47 PM Roll call on SB 468 -- Favorable  
5:03:58 PM SB 644 by Sen. Richter--explanation of bill  
5:04:15 PM Amd. 690434 -- w/o objection--passed  
5:05:17 PM Motion for CS -- Sen. Richter -- w/o adopted  
5:06:16 PM Roll call on CS/SB 644 -- favorable  
5:08:11 PM SB 282 by Sen. Richter -- explanation of bill by Sen. Richter  
5:10:53 PM Alice Vickers, FL Consumer Action Network  
5:11:27 PM Roll call vote on SB 282 -- Favorable  
5:12:21 PM SB 648 by Senator Hukill  
5:12:55 PM Amd. by Sen. Lee 942304  
5:13:12 PM Sen. Hukill explains the amendment  
5:13:23 PM w/o objection 942304 -- adopted  
5:13:57 PM Motion for CS  
5:15:26 PM Roll call on SB 648 -- Favorable  
5:16:34 PM SB 662 by Senator Hays  
5:16:42 PM Explanation of bill by Senator Hays  
5:16:54 PM Question by Senator Lee  
5:19:49 PM Question by Senator Lee  
5:19:52 PM Kevin Triout, Director of Government Affairs Tampa  
5:22:11 PM Kevin Triout, Director of Government Affairs Tampa  
5:22:13 PM Tom Panza, Automated Health Care Solutions  
5:23:10 PM Tom Panza, Automated Health Care Solutions  
5:23:19 PM Monte Stevens, FL Medical Association  
5:24:33 PM CAA -- roll call vote on SB 622 -- Favorable  
5:26:49 PM CAA -- roll call vote on SB 622 -- Favorable  
5:26:58 PM SB 324 by Sen. Brandes - explanation of bill by Sen. Brandes' aide  
5:27:24 PM Amd. 484256 -- delete all amendment  
5:28:23 PM Meeting adjourned