

SB 594 by **Bean**; (Similar to H 0709) Nursing Homes and Related Health Care Facilities

377474	A	S	RCS	BI, Hays	Delete L.16:	04/16 03:02 PM
123374	A	S	RCS	BI, Hays	Delete L.132:	04/16 03:02 PM
858202	A	S	RCS	BI, Hays	Delete L.139 - 145:	04/16 03:02 PM

SB 1020 by **Hays**; (Compare to CS/H 1091) Banking

185768	D	S	RCS	BI, Hays	Delete everything after	04/16 03:02 PM
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SB 1262 by **Hays**; (Compare to H 1055) Florida Hurricane Catastrophe Fund

548468	D	S	FAV	BI, Ring	Delete everything after	04/16 04:17 PM
588276	SA	S	WD	BI, Hays	Delete L.28 - 1017:	04/16 04:17 PM
398790	ASA	S	FAV	BI, Ring	Delete L.5 - 165:	04/16 04:17 PM
303624	D	S	WD	BI, Hays	Delete everything after	04/16 04:17 PM

SPB 7152 by **BI**; Motor Vehicle Liability Insurance

818684	A	S	L	WD	BI, Simmons	Delete L.17 - 19:	04/16 03:02 PM
357706	A	S	L	RCS	BI, Simmons	Delete L.199:	04/16 03:02 PM

SPB 7150 by **BI**; Public Records/Insurance Policies

306156	A	S	L	RCS	BI, Simmons	Delete L.17 - 19:	04/16 03:02 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, April 16, 2013
TIME: 1:30 —3:30 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	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Executive Director, Citizens Property Insurance Corporation

1	Gilway, Barry J. (Ponte Vedra Beach)	Pleasure of the Board	Recommend Confirm Yeas 10 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	SB 594 Bean (Similar H 709)	Nursing Homes and Related Health Care Facilities; Clarifying provisions to exempt certain clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law from licensure requirements in this state if they hold specific federal certification; extending the exemption to clinics that are owned by certain entities, etc. HP 03/20/2013 Favorable BI 04/16/2013 Fav/CS RC	Fav/CS Yeas 10 Nays 0
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3	SB 1020 Hays (Compare CS/H 1091)	Banking; Prohibiting the Office of Insurance Regulation from initiating an administrative proceeding while a person is subject to a federal proceeding on the same grounds; clarifying that an institution may impose a fee for the settlement of a check under certain circumstances, etc. BI 04/16/2013 Fav/CS JU RC	Fav/CS Yeas 10 Nays 0
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COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, April 16, 2013, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1262 Hays (Compare H 1055, CS/H 1107, CS/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 BI 04/02/2013 Temporarily Postponed BI 04/16/2013 Fav/1 Amendment AP	Fav/1 Amendment (548468) Yeas 10 Nays 0

Consideration of proposed committee bill:

5	SPB 7152	Motor Vehicle Liability Insurance; Authorizing the use of an electronic device to provide proof of insurance; increasing financial responsibility limits with respect to bodily injury or death; revising the required threshold limit for self-insurers; repealing provisions relating to the effect of law on personal injury protection policies; requiring all claims relating to personal injury to be brought in a single action; repealing provisions relating to personal injury protection benefits; requiring the insurer to notify the insured about such changes by a certain date, etc.	Submitted as Committee Bill Yeas 10 Nays 0
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Consideration of proposed committee bill:

6	SPB 7150	Public Records/Insurance Policies; Providing a public records exemption for certain information regarding bodily injury liability insurance policies and deleting the exemption for personal injury protection policies; providing for future legislative review and repeal of the exemption for information regarding certain liability insurance policies under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	Submitted as Committee Bill Yeas 10 Nays 0
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Other Related Meeting Documents

1270

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Barry J. Gilway

is duly appointed Executive Director,

Citizens Property Insurance Corporation

for a term beginning on the
Sixteenth day of June, A.D., 2012,
to serve at the pleasure of the Board of Governors
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Eighth day of February, A.D., 2013.*



Ken Detzner

Secretary of State

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Barry J. Gilway
Executive Director, Citizens Property Insurance Corporation

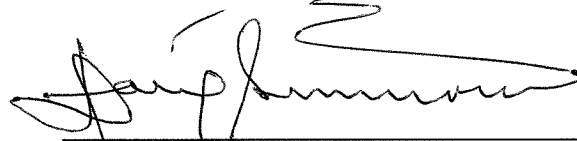
NOTICE OF HEARING

TO: Mr. Barry J. Gilway

YOU ARE HEREBY NOTIFIED that the Committee on Banking and Insurance of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, April 16, 2013, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 11th day of April, 2013

Committee on Banking and Insurance



Senator David Simmons
As Chair and by authority of the committee

cc: Members, Committee on Banking and Insurance
Office of the Sergeant at Arms

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 594

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: April 16, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.	Knudson	Burgess	BI	Fav/CS
3.			RC	
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 594 expands the types of clinic facilities that are exempt from the clinic licensure requirements of the Health Care Clinic Law. The CS exempts from clinic licensure pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. The bill also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Currently, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

The CS also exempts certain clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-fault Law.

The effective date is July 1, 2013.

This bill substantially amends section 400.9905 of the Florida Statutes.

II. Present Situation:

Clinics in the State of Florida must be licensed by the Agency for Health Care Administration (AHCA).¹ Florida law defines a clinic as “an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.”² There are, however, many exemptions from the definition of “clinic” and thus from the requirement to obtain a license from the AHCA.³ Orthotic or prosthetic clinical facilities that are publicly traded corporations or that own or are wholly owned by a publicly traded corporation are exempt from clinic licensure. Also exempt are entities owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the owners is a Florida-licensed health care practitioner who is responsible for supervising the business activities of the entity and is legally responsible for compliance with state law for purposes of the Health Care Clinic Act. Another exemption is for health care entities that are certified under 42 C.F.R. 485, subpart H, to provide physical therapy or speech pathology services along with entities that own, are owned by, or are under common ownership with, directly or indirectly, such health care entities.⁴ Providers certified under 42 C.F.R. 485, subpart H include:

- **Clinics** where the medical services are furnished by a group of three or more physicians practicing medicine together and a physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services;
- **Rehabilitation agencies** that provide an integrated interdisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team and provide at least physical therapy or speech-language pathology services; and
- **Public health agencies** established by a state or local government, the primary function of which is to maintain the health of the population served by performing environmental health services, preventive medical services, and in certain cases, therapeutic services.⁵

Data from AHCA indicates that there are 770 rehabilitation agencies in the state of Florida including 237 parent (primary) locations and 533 extension locations.⁶ The Agency for Health Care Administration is the contracted state agency for the Centers for Medicare and Medicaid Services (CMS). As the contracted state agency for CMS, AHCA conducts a certification survey of a rehabilitation agency and any of its extension locations at least once every 6 years. Medicare accepts the certification of a rehabilitation agency that is certified by AHCA. The survey focuses on services provided to ensure that the required conditions of participation are met, but does not examine issues related to billing.

¹ S. 400.991, F.S.

² S. 400.9905(4), F.S.

³ S. 400.9905(4)(a)-(n), F.S.

⁴ S. 400.9905(b)-(d), F.S.

⁵ 42 C.F.R. 485.703

⁶ Agency for Health Care Administration, *2013 Bill Analysis & Economic Impact Statement – SB 594*, (on file with the Senate Banking and Insurance Committee).

Pediatric Cardiology, Perinatology, and Anesthesia

Pediatric cardiology is a medical specialization that focuses on the study of the heart and diseases of the heart in children. Perinatology is a medical specialization that focuses on the care of mothers and their children during pregnancy. Anesthesiology is the practice of medicine that specializes in the relief of pain during and after surgical procedures and childbirth, during certain chronic disease processes, and during resuscitation and critical care of patients in the operating room and intensive care environments.⁷

Clinic Licensure Requirements Under the Florida Motor Vehicle No-Fault Law

In order to receive reimbursement under the Florida Motor Vehicle No-Fault Law (No-Fault law) health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S. The health care entities that are not required to obtain licensure in order to receive PIP medical benefits reimbursement are those that are:

- Wholly owned by a licensed physician;
- Wholly owned by a licensed dentist;
- Wholly owned by a licensed chiropractic physician;
- Wholly owned by a licensed physician, licensed dentist, or licensed chiropractor and the spouse, parent, child, or sibling of the physician, dentist, or chiropractor;
- Wholly owned or that wholly owns a licensed hospital; or
- A licensed clinical facility affiliated with an accredited medical school that provides training for medical students, residents, or fellows.

Florida Motor Vehicle No-Fault Law

Under the state's No-Fault law, owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance and \$5,000 in death benefits which compensates persons injured in accidents regardless of fault.⁸ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.⁹ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold. In contrast, under a tort liability system, the negligent party is responsible for damages caused, and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.¹⁰ Personal injury protection coverage includes medical, disability, and death benefits, provides reimbursement for 80 percent of reasonable medical expenses if the individual receives initial services and care within 14 days after the motor vehicle accident in the manner prescribed, 60

⁷ S. 458.3475(1)(c), F.S.

⁸ SS. 627.730 – 627.7405, F.S.

⁹ S. 627.736(1), F.S.

¹⁰ See s. 324.022, F.S., and s. 627.733, F.S.

percent of loss of income, and all expenses reasonably incurred in obtaining from others ordinary and necessary services which the insured would have performed, for bodily injury sustained in a motor vehicle accident, without regard to fault. Florida requires that the PIP medical benefit provide \$10,000 if the injured person is determined to have an emergency medical condition; otherwise the medical benefit is \$2,500.¹¹ A \$5,000 death benefit is also provided.¹² The PD coverage must provide a \$10,000 minimum benefit.¹³

Motor Vehicle Insurance Fraud in Florida

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That 3-year amount was nearly doubled by the 7,748 PIP fraud referrals received by the division during the 2011/2012 fiscal year. Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

"Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering..."

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders.

Legislative Response

Responding to widespread PIP related insurance fraud and the rising cost of automobile insurance, the Insurance Consumer Advocate formed the PIP Working Group in July of 2011, to assist in developing a policy paper that broadly reviewed and outlined the challenges regarding the rising fraud and abuse associated with Florida's No-Fault system. The working group was comprised of various stakeholders who provided data, commentary and policy direction. In December 2011, the working group released a report which concluded that absent much needed changes to Florida's No-Fault system, Florida consumers will be left with fewer choices, higher rates or, they will choose to go uninsured. In response to these issues and the working group's report, the 2012 Legislature passed CS/CS/HB 199 (CS/CS/SB 1860 by Senator Negrón), which was signed into law on April 24, 2012. The bill significantly changed to Florida's PIP insurance laws relating to:

¹¹ S. 627.736(1)(a)3., F.S.

¹² S. 627.736(1)(c), F.S.

¹³ S. 324.

- PIP medical benefits;
- PIP death benefits;
- The PIP medical fee schedule;
- Mandatory rate filings and data call;
- Attorney fees;
- Investigation and payment of claims; and,
- Prevention of PIP-related insurance fraud.

CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.¹⁴ All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.¹⁵ The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to exempt clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law if they are certified before June 30, 2014, or if they are owned by an entity which owns other clinics certified before June 30, 2014.

The CS provides exemptions from clinic licensure for pediatric cardiology, perinatology, or anesthesia clinical facilities that are publicly traded or that are wholly owned, directly or indirectly by a publicly traded corporation. The CS also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Currently, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

Section 2 creates an effective date of July 1, 2013.

¹⁴ Section 627.736(4)(i), F.S.

¹⁵ Section 627.736(5)(h), 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:

The bill could have a positive fiscal impact on health care entities certified under 42 C.F.R. part 485, subpart H, which will be newly eligible to receive reimbursement under the Florida Motor Vehicle No-Fault Law without obtaining a license from the AHCA. Pediatric cardiology, perinatology, and anesthesia health care facilities that are newly exempted from clinic licensure will benefit from being exempt from licensure fees. Representatives from AHCA indicate that pediatric cardiology, perinatology, and anesthesia health care facilities that are publicly traded corporations or owned by a publicly traded corporation historically have not violated the clinic licensure statute.

C. Government Sector Impact:

The exemption from clinic licensure for pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or owned by a publicly traded corporation created by the CS will reduce the clinic licensure fees paid to AHCA and also reduce the workload of the agency.

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 April 16, 2013:

The CS exempts from clinic licensure pediatric cardiology, perinatology, or anesthesia clinical facilities that are a publicly traded corporation or that are wholly owned, directly or indirectly, by a publicly traded corporation. The CS also revises the exemption for entities owned by a corporation with \$250 million or more in total annual sales of health care services provided by licensed health care practitioners by conditioning the exemption on whether one of the persons responsible for the operation of the entity is a Florida-licensed health care practitioner who supervises its business activities. Under current law, the exemption is conditioned on whether at least one owner is a Florida Licensed health care practitioner who supervises the business activities of the entity.

- B. **Amendments:**

None.



377474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment

Delete line 16
and insert:
(4) "Clinic" means an entity where health care



123374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment

Delete line 132
and insert:

(1) Orthotic, ~~or~~ prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a



858202

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment

Delete lines 139 - 145
and insert:

(m) Entities that are owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operation of the entity ~~owners~~ is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is legally responsible for the entity's compliance with state law for purposes of this part.

By Senator Bean

4-00277A-13

2013594

1 A bill to be entitled
 2 An act relating to nursing homes and related health
 3 care facilities; amending s. 400.9905, F.S.;
 4 clarifying provisions to exempt certain clinics that
 5 receive reimbursement under the Florida Motor Vehicle
 6 No-Fault Law from licensure requirements in this state
 7 if they hold specific federal certification; extending
 8 the exemption to clinics that are owned by certain
 9 entities; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (4) of section 400.9905, Florida
 14 Statutes, is amended to read:

15 400.9905 Definitions.—

16 (4) "Clinic" means an entity in which ~~where~~ health care
 17 services are provided to individuals and which tenders charges
 18 for reimbursement for such services, including a mobile clinic
 19 and a portable equipment provider. As used in this part, the
 20 term does not include and the licensure requirements of this
 21 part do not apply to:

22 (a) Entities licensed or registered by the state under
 23 chapter 395; entities licensed or registered by the state and
 24 providing only health care services within the scope of services
 25 authorized under their respective licenses under ss. 383.30-
 26 383.335, chapter 390, chapter 394, chapter 397, this chapter
 27 except part X, chapter 429, chapter 463, chapter 465, chapter
 28 466, chapter 478, part I of chapter 483, chapter 484, or chapter
 29 651; end-stage renal disease providers authorized under 42

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

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30 C.F.R. part 405, subpart U; providers certified under 42 C.F.R.
 31 part 485, subpart B or subpart H; or any entity that provides
 32 neonatal or pediatric hospital-based health care services or
 33 other health care services by licensed practitioners solely
 34 within a hospital licensed under chapter 395.

35 (b) Entities that own, directly or indirectly, entities
 36 licensed or registered by the state pursuant to chapter 395;
 37 entities that own, directly or indirectly, entities licensed or
 38 registered by the state and providing only health care services
 39 within the scope of services authorized pursuant to their
 40 respective licenses under ss. 383.30-383.335, chapter 390,
 41 chapter 394, chapter 397, this chapter except part X, chapter
 42 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
 43 of chapter 483, chapter 484, or chapter 651; end-stage renal
 44 disease providers authorized under 42 C.F.R. part 405, subpart
 45 U; providers certified under 42 C.F.R. part 485, subpart B or
 46 subpart H; or any entity that provides neonatal or pediatric
 47 hospital-based health care services by licensed practitioners
 48 solely within a hospital licensed under chapter 395.

49 (c) Entities that are owned, directly or indirectly, by an
 50 entity licensed or registered by the state pursuant to chapter
 51 395; entities that are owned, directly or indirectly, by an
 52 entity licensed or registered by the state and providing only
 53 health care services within the scope of services authorized
 54 pursuant to their respective licenses under ss. 383.30-383.335,
 55 chapter 390, chapter 394, chapter 397, this chapter except part
 56 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 57 478, part I of chapter 483, chapter 484, or chapter 651; end-
 58 stage renal disease providers authorized under 42 C.F.R. part

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

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2013594

59 405, subpart U; providers certified under 42 C.F.R. part 485,
60 subpart B or subpart H; or any entity that provides neonatal or
61 pediatric hospital-based health care services by licensed
62 practitioners solely within a hospital under chapter 395.

63 (d) Entities that are under common ownership, directly or
64 indirectly, with an entity licensed or registered by the state
65 pursuant to chapter 395; entities that are under common
66 ownership, directly or indirectly, with an entity licensed or
67 registered by the state and providing only health care services
68 within the scope of services authorized pursuant to their
69 respective licenses under ss. 383.30-383.335, chapter 390,
70 chapter 394, chapter 397, this chapter except part X, chapter
71 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
72 of chapter 483, chapter 484, or chapter 651; end-stage renal
73 disease providers authorized under 42 C.F.R. part 405, subpart
74 U; providers certified under 42 C.F.R. part 485, subpart B or
75 subpart H; or any entity that provides neonatal or pediatric
76 hospital-based health care services by licensed practitioners
77 solely within a hospital licensed under chapter 395.

78 (e) An entity that is exempt from federal taxation under 26
79 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
80 under 26 U.S.C. s. 409 that has a board of trustees at least
81 two-thirds of which are Florida-licensed health care
82 practitioners and provides only physical therapy services under
83 physician orders, any community college or university clinic,
84 and any entity owned or operated by the federal or state
85 government, including agencies, subdivisions, or municipalities
86 thereof.

87 (f) A sole proprietorship, group practice, partnership, or

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

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2013594

88 corporation that provides health care services by physicians
89 covered by s. 627.419, that is directly supervised by one or
90 more of such physicians, and that is wholly owned by one or more
91 of those physicians or by a physician and the spouse, parent,
92 child, or sibling of that physician.

93 (g) A sole proprietorship, group practice, partnership, or
94 corporation that provides health care services by licensed
95 health care practitioners under chapter 457, chapter 458,
96 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
97 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
98 chapter 490, chapter 491, or part I, part III, part X, part
99 XIII, or part XIV of chapter 468, or s. 464.012, and that is
100 wholly owned by one or more licensed health care practitioners,
101 or the licensed health care practitioners set forth in this
102 paragraph and the spouse, parent, child, or sibling of a
103 licensed health care practitioner if one of the owners who is a
104 licensed health care practitioner is supervising the business
105 activities and is legally responsible for the entity's
106 compliance with all federal and state laws. However, a health
107 care practitioner may not supervise services beyond the scope of
108 the practitioner's license, except that, for the purposes of
109 this part, a clinic owned by a licensee in s. 456.053(3)(b)
110 which provides only services authorized pursuant to s.
111 456.053(3)(b) may be supervised by a licensee specified in s.
112 456.053(3)(b).

113 (h) Clinical facilities affiliated with an accredited
114 medical school at which training is provided for medical
115 students, residents, or fellows.

116 (i) Entities that provide only oncology or radiation

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

4-00277A-13 2013594

117 therapy services by physicians licensed under chapter 458 or
 118 chapter 459 or entities that provide oncology or radiation
 119 therapy services by physicians licensed under chapter 458 or
 120 chapter 459 which are owned by a corporation whose shares are
 121 publicly traded on a recognized stock exchange.

122 (j) Clinical facilities affiliated with a college of
 123 chiropractic accredited by the Council on Chiropractic Education
 124 at which training is provided for chiropractic students.

125 (k) Entities that provide licensed practitioners to staff
 126 emergency departments or to deliver anesthesia services in
 127 facilities licensed under chapter 395 and that derive at least
 128 90 percent of their gross annual revenues from the provision of
 129 such services. Entities claiming an exemption from licensure
 130 under this paragraph must provide documentation demonstrating
 131 compliance.

132 (l) Orthotic or prosthetic clinical facilities that are a
 133 publicly traded corporation or that are wholly owned, directly
 134 or indirectly, by a publicly traded corporation. As used in this
 135 paragraph, a publicly traded corporation is a corporation that
 136 issues securities traded on an exchange registered with the
 137 United States Securities and Exchange Commission as a national
 138 securities exchange.

139 (m) Entities that are owned by a corporation that has \$250
 140 million or more in total annual sales of health care services
 141 provided by licensed health care practitioners where one or more
 142 of the owners is a health care practitioner who is licensed in
 143 this state and who is responsible for supervising the business
 144 activities of the entity and is legally responsible for the
 145 entity's compliance with state law for purposes of this part.

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146 (n) Entities that employ 50 or more licensed health care
 147 practitioners licensed under chapter 458 or chapter 459 where
 148 the billing for medical services is under a single tax
 149 identification number. The application for exemption under this
 150 subsection shall contain information that includes: the name,
 151 residence, and business address and phone number of the entity
 152 that owns the practice; a complete list of the names and contact
 153 information of all the officers and directors of the
 154 corporation; the name, residence address, business address, and
 155 medical license number of each licensed Florida health care
 156 practitioner employed by the entity; the corporate tax
 157 identification number of the entity seeking an exemption; a
 158 listing of health care services to be provided by the entity at
 159 the health care clinics owned or operated by the entity and a
 160 certified statement prepared by an independent certified public
 161 accountant which states that the entity and the health care
 162 clinics owned or operated by the entity have not received
 163 payment for health care services under personal injury
 164 protection insurance coverage for the preceding year. If the
 165 agency determines that an entity which is exempt under this
 166 subsection has received payments for medical services under
 167 personal injury protection insurance coverage, the agency may
 168 deny or revoke the exemption from licensure under this
 169 subsection.

170
 171 Notwithstanding this subsection, an entity shall be deemed a
 172 clinic and must be licensed under this part in order to receive
 173 reimbursement under the Florida Motor Vehicle No-Fault Law, ss.
 174 627.730-627.7405, unless exempted under s. 627.736(5)(h) or

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2013594

175 under this subsection as a provider certified under 42 C.F.R.
176 part 485, subpart H, before June 30, 2014. However, if a single
177 legal entity owns clinics certified under 42 C.F.R. part 485,
178 subpart H, which are exempted under this provision, the
179 exemption extends after June 30, 2014, to other clinics
180 certified under 42 C.F.R. part 485, subpart H, which are owned
181 by that entity.

182 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 16, 2013

Meeting Date

Topic Nursing Homes + Related Health Care Facilities Bill Number SB 594

Name James McFaddin Amendment Barcode 858202
(if applicable)

Job Title _____
(if applicable)

Address 123 S. Adams St. Phone 850-671-4401
Street

Tallahassee FL 32301 E-mail mfaddin@ssstrategy.com
City State Zip

Speaking: For Against Information

Representing CVS / Caremark

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/13

Meeting Date

Topic Clinic Licensure

Bill Number SB 594
(if applicable)

Name Brad C. Roush

Amendment Barcode _____
(if applicable)

Job Title Executive Vice President

Address 1110 Shawnee Rd.

Phone 419-226-6712

Street

Lima

OH

45805

City

State

Zip

E-mail broush@corahealth.com

Speaking: For Against Information

Representing CORA Health Services, 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
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 1020

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Banking

DATE: April 16, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.			JU	
3.			RC	
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 1020 amends provisions of the Financial Institutions Codes (Codes). The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Codes, chapters 655 to 667, F.S. The OFR ensures Florida-chartered financial institutions comply with state and federal requirements for safety and soundness. This bill provides the following changes to the Codes:

- Amends the definition of “related interest” to remove the individual’s family and household members for purposes of lending limits and certain reporting requirements.
- Amends the par value provision to clarify that the par value requirement only applies to the settlement of checks between financial institutions, and provides that institutions may charge fees to cash checks.
- Provides a statement of legislative intent for amending the par value statute.

This bill amends the following sections of the Florida Statutes: 655.005 and 655.85.

II. Present Situation:

The U.S. dual banking system allows commercial banks to become chartered and regulated under either federal or state law. National banks are chartered under federal law, i.e., the National Bank Act.¹ Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury. State-chartered banks are chartered under the laws of the headquarters' state. The primary federal regulator for state banks that are members of the Federal Reserve is the Federal Reserve. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation.

Federal Oversight

The Federal Deposit Insurance Corporation (FDIC) preserves and promotes public confidence in the U.S. financial system by insuring deposits in banks and thrift institutions for at least \$250,000; by identifying, monitoring and addressing risks to the deposit insurance funds; and by limiting the effect on the economy and the financial system when a bank or thrift institution fails. An independent agency of the federal government, the FDIC was created in 1933 in response to the thousands of bank failures that occurred in the 1920s and early 1930s. Since the start of FDIC insurance on January 1, 1934, no depositor has lost any insured funds because of a failure. The FDIC receives no Congressional appropriations; it is funded by premiums that banks and thrift institutions pay for deposit insurance coverage.

The FDIC directly examines and supervises more than 4,500 banks and savings banks for operational safety and soundness, more than half of the institutions in the banking system. The FDIC covers its examination costs in its premiums and assessments, which are based on the risk of the bank.² The FDIC Rules and Regulations require an annual, comprehensive on-site examination of every insured state nonmember bank at least once during each 12-month period.³ Annual examination intervals may be extended to 18 months if certain conditions are met. The FDIC notes that every effort should be made to coordinate examination schedules with state authorities to take advantage of state resources, to minimize duplications of effort, and to lessen business disruptions to institutions. Examinations may be conducted in alternate 12 (or 18) month periods if the FDIC determines that an onsite examination completed by the appropriate state supervisory authority during the interim period is acceptable.

The FDIC will accept and rely on state reports of examination in all cases in which it is determined that state examinations enable the FDIC to carry out its supervisory responsibilities. The following criteria⁴ may be considered, in whole or in part, when determining the acceptability of a state report of examination under Section 10(d) of the FDI Act:

¹ The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking” to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: “No national bank shall be subject to any visitatorial powers except as authorized by Federal law.” Id. at § 484(a).

² See <http://www.fdic.gov/deposit/insurance/calculator.html>, for the FDIC’s calculator.

³ Section 337.12 of the FDIC Rules and Regulations implements Section 10(d) of the FDI Act and governs the frequency of examinations for insured state nonmember banks.

⁴ These guidelines may also be found in the [Federal Register Volume 60, Number 123 \(Tuesday, June 27, 1995\)](#)

- The completeness of the state examination report. The state report of examination should contain sufficient information to permit a reviewer to make an independent determination on the overall condition of the institution.
- The adequacy of documentation maintained by state examiners to support observations made in examination reports.
- The ability over time of a state banking department to achieve examination objectives. At a minimum, the FDIC will consider the adequacy of state budgeting, examiner staffing and training, and the overall review and follow-up examination process of a state-banking department. Accreditation of a state banking department by the Conference of State Bank Supervisors (CSBS)⁵ is among the factors that will be considered.
- The adequacy of any formal or informal arrangement or working agreement between a state banking department and the FDIC.

CSBS Accreditation Standards

To achieve accreditation, a state-banking department must test itself against the criteria in the Self-Evaluation Questionnaire and achieve a total score of not less than 80 percent and a score of not less than 75 percent on the two Examination Sections and not less than 70 percent on all other sections.⁶ This score incorporates the standards noted below:

- The legal authority to charter, examine, supervise and regulate all state-chartered banks consistent with basic principles of safety and soundness, and protection of the public interest.
- The demonstrated capability to conduct safety and soundness examinations of state-chartered banks within acceptable time limits. This capability should be supported by a combination of active monitoring and review of federal examinations and other methods in a manner consistent with state statutes, safety and soundness and the public interest.
- Specialized capabilities as required in each state to assure safety and soundness of all state-chartered banks and full compliance with statutes.
- Adequate qualified staff with expertise to charter, examine, supervise and regulate all state-chartered banks and to perform other departmental functions and responsibilities.
- A policy, statutory or departmental, which requires an examination at least once every 18 months for CAMELS rated 1 and 2 financial institutions and not less frequently than once every 12 months for CAMELS rated 3, 4, and 5 financial institutions.
- Adequate statutory authority for the department to carry out its duties and responsibilities independently, including authority to take formal enforcement action(s).
- Adequate funding to achieve all above-mentioned criteria.

⁵ The CSBS is the nationwide organization of banking regulators from all 50 states. The CSBS Accreditation Program involves a comprehensive review of the critical elements that assure the ability of a state banking department or mortgage agency to discharge its responsibilities through an investigation of its administration and finances, personnel policies and practices, training programs, examination policies and practices, supervisory procedures, and statutory powers.

⁶ CSBS, *State Banking Accreditation Program*, August 2012. On file with staff of the Banking and Insurance Committee.

State Oversight

The OFR regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules.⁷ The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Associations
- Chapter 667, F.S. – Savings Banks

The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. The OFR does not regulate national banks and banks that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida. The OFR examination costs are financed through an annual assessment on a financial institution, which is based on the assets.

Section 655.041, F.S., allows the OFR to initiate administrative proceedings to impose a fine against persons that have been found to have violated the financial institutions codes, a cease and desist order of the OFR, or any written agreement with the OFR. Section 655.041, F.S., provides that a person must receive written notice of a violation and be provided with a reasonable period to cure the violation before the accrual of any fines or the initiation of any administrative proceedings to impose a fine.

According to the OFR, the OFR works with its federal counterparts and the banks to arrive at joint resolutions when possible. Since 2002, over 82 percent (336 of 408) of all administrative actions have been jointly resolved between the OFR, the federal regulator, and the institution. Of the 408 cases, only one case has risen to the level of the OFR and federal regulator seeking separate administrative hearings.⁸

Competitive Equality & Preemption

The U.S. dual banking system is premised on two related doctrines - the competitive equality doctrine and federal preemption. The competitive equality doctrine essentially states that national banks are subject to state laws concerning their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.⁹

⁷ Chapters 69U-100 through 69U-150, F.A.C.

⁸ *Id.*

⁹ *National Bank v. Commonwealth*, 9 Wall. 353, 362, 19 L.Ed. 701(1870).

However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to national banks is subject to the preemption doctrine. By operation of the U.S. Constitution's Supremacy Clause,¹⁰ federal regulation of a particular subject preempts state regulation related to the same subject. In *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), for instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance, preempted a Florida statute which prohibited such sales. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for "conflict preemption" articulated in the *Barnett Bank* decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise by the national bank's powers.¹¹

It is noted that the Codes contain a unique provision that ensures competitive equality for *Florida-chartered* financial institutions. If a state law places a Florida financial institution at a competitive disadvantage with national banks, Section 655.061, F.S., authorizes the OFR to grant Florida banks the authority to make any loan or investment or exercise any power which they could make or exercise as if they were federally chartered financial banks, and provides the entitled to the same privileges and protections granted to federally chartered or regulated banks. In addition, this provision states:

In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.¹²

Lending Limits and Related Interests

According to OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure equitable access to banking services.¹³ The lending limits apply to all loans and extensions of credit made by national banks and their domestic operating subsidiaries.

Florida-chartered banks are also subject to lending limits in the Codes:

- *General limitations*: a bank may extend unsecured credit to any person up to 15 percent of its capital accounts, and up to 25 percent of its capital accounts for secured credit. For the latter, the Codes specify that the 25 percent limitation must include the borrower's "related interests."¹⁴
 - If the bank's total extension of credit to any person (including his or her related interests) exceeds 15 percent of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance.
- *Loans to executive officers, directors, and related interests*: banks are prohibited from extending credit of more than \$25,000 to any of its executive officers and directors (and their

¹⁰ U.S. Const., Art. VI, cl. 2.

¹¹ 12 U.S.C. §25b(b)(1).

¹² The OFR's orders of general application are publicly available on its agency website.

<https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx> (last accessed March 16, 2013).

¹³ 12 C.F.R. 32.1(b).

¹⁴ Section 658.48(1)(a), F.S.

related interests), unless the majority of the board of directors have approved the loan in advance.

If the state lending limits are lower than those provided in Regulation O for state banks that are members of the Federal Reserve System, Regulation O provides that the state lending limits control.¹⁵

Currently, s. 655.005(1)(t), F.S., defines “related interest” as:

[W]ith respect to any person, *the person’s spouse, partner, sibling, parent, child, or other individual residing in the same household as the person*. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

- Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;
- Controls in any manner the election of a majority of the directors of the organization; or
- Has the power to exercise a controlling influence over the management or policies of the organization (emphasis added).

The 2011 Legislature enacted CS/HB 1121, relating to financial institutions, which made numerous changes to the Banking Codes. Prior to 2011, the term, “related interest,” was defined within the context of credit unions’ loan powers¹⁶ and lending limits for state banks,¹⁷ and was limited to only any partnership, corporation, or other business organization controlled by a person. Because of the 2011 legislation, “related interest” was moved to s. 655.005(1)(t), F.S., as a general definition and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.¹⁸

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System. Regulation O does state that a principal shareholder is a person with 10 percent or more of a bank’s voting securities, and accounts for shares owned by that person’s “immediate family.” However, Regulation O only considers an individual’s spouse, minor children, and the individual’s children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

“Related interest” also appears in other provisions of the Codes:

- *Required notice for significant events*: The Codes require financial institutions to provide a written disclosure for certain significant events, including any credit extension to an

¹⁵ 12 C.F.R. 215.2(i), footnote 2.

¹⁶ Section 657.038, F.S.

¹⁷ Section 658.48, F.S.

¹⁸ See Senate Banking and Insurance staff analysis of SB 1332, the Senate companion to CS/HB 1121 (General Session 2011).

institution's executive officer and his or her *related interests*, that when combined with all other extensions of credit to that officer, exceed 15 percent of the institution's capital accounts.¹⁹

- *Stock subscriptions*: Newly formed financial institutions must provide the OFR with a list of subscribers of the capital stock of a proposed bank or trust company, following the completion of a stock offering. The Codes require that the directors provide information to the OFR regarding persons subscribing to 10 percent or more of the voting stock or nonvoting convertible stock. This 10 percent threshold must include the person's *related interests*.²⁰
- *Changes in capital*: The Codes require banks and trust companies to provide notice to the OFR upon specified changes in capital. In certain situations where capital accounts have been diminished below regulatory requirements and the bank or trust company cannot reasonably replenish its capital, the Codes permit special stock offering plans subject to OFR's approval. The Codes provide that the OFR shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their *related interests*.²¹

Settlement of Checks/Par Value

Since 1992, the Codes require banks to settle checks "at par," or at face value.²² This means that if a person presented a check made out to him for \$500 to any bank in Florida, the bank is required to provide \$500 in funds. In the past several years, this provision has engendered significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved two main claims: federal preemption and whether the statute's limitations on fees apply to bank-to-bank transactions²³ or to the cashing of personal checks.

Vida Baptista ("Baptista"), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While the check was written by a Chase account holder, Baptista was not a Chase account holder, and was accordingly charged a \$6 fee by Chase to cash the check immediately. Baptista brought a class action lawsuit against Chase in federal court, asserting the fee violated s. 655.85, F.S. The federal court held that s. 655.85, F.S., applied to fees on personal checks presented by the payee in person. However, in applying the *Barnett Bank/Dodd-Frank* preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.²⁴

The OCC, empowered by the National Bank Act to adopt bank regulations, authorizes national banks to "charge its customers non-interest charges and fees."²⁵ The OCC has interpreted

¹⁹ Section 658.945(2)(a)5., F.S.

²⁰ Section 658.235(2), F.S.

²¹ Section 658.36(3)(c), F.S.

²² Section 655.85, F.S. This provision was enacted in 1992. Section 52, ch. 92-303, L.O.F.

²³ The Federal Reserve System operates a nationwide check-clearing system to facilitate the collection and settlement of checks between paying and collecting banks.

²⁴ 12 U.S.C. § 24 (Seventh).

²⁵ 12 C.F.R. § 7.4002(a).

“customer” to include “any person who presents a check for payment.”²⁶ In light of the OCC’s interpretation, the federal court held that *national banks* are not bound by the Florida statute disallowing fees to cash checks in person.²⁷

Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC and was charged a \$5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal reached the opposite conclusion from the federal courts’ decision in the *Baptista v. Chase* lawsuit, and found that a statute was not preempted. The court held that an out-of-state state-chartered bank was not permitted to charge check-cashing fees under the statute.²⁸ Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.

In an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S., was preempted by federal law.²⁹ However, when presented with PNC Bank (North Carolina-chartered bank operating in Florida) in the *Baptista* case, the court did not discuss the applicability of the 1997 federal Riegle-Neal Amendments³⁰ to the PNC Bank. This federal legislation allows out-of-state state-chartered banks that operate in multiple states to enjoy the same benefits of federal preemption as national banks.

On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both *Baptista* cases.³¹ Following the 11th Circuit Court of Appeal’s decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to *both* national banks and out-of-state state-chartered banks. The court declined to follow the Fifth DCA’s opinion to the extent that the Fifth DCA held s. 655.85, F.S. was not preempted,³² and applied the Riegle-Neal Amendments in favor of Regions Bank. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks. These decisions do not affect the statute’s prohibition on Florida-chartered banks to charge check-cashing fees, because banks must follow the laws and regulations of their chartering authority.

III. Effect of Proposed Changes:

Related Interest

Section 1 of the bill amends the definition of “related interest” under s. 655.005, F.S. The bill restores the pre-2011 language. By removing an individual’s spouse, partner, sibling, parent,

²⁶ Cited in *Wells Fargo Bank of Texas, NA v. James*, 321 F.3d 488 (5th Cir.C.A 2003) (holding that Texas par value statute was preempted by the National Bank Act).

²⁷ *Vida Baptista v. JPMorgan Chase Bank*, 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista’s petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.*, 132 S.Ct. 253 (2011).

²⁸ *Vida Baptista v. PNC, N.A.*, 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), *cert. denied*, 133 S.Ct. 895 (2013).

²⁹ *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).

³⁰ 12 U.S.C. § 1831a(j)1.

³¹ *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).

³² *Id.* at footnote 4. *See also Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (holding that federal courts are “not bound by state court interpretations” of federal law).

child, or other individual residing in the same household as the person from the definition, the bill defines “related interest” to include only *entities* controlled by the person.

Settlement of Checks/Par Value

Section 2 amends s. 655.85, F.S., to provide that financial institutions must settle checks at par, but overrides the Fifth DCA’s decision in *Baptista* to provide that this requirement only applies to the settlement of checks between banks. The bill provides that banks are not prohibited from charging fees to cash checks presented by payees in person, and thus provides consistency with the federal decisions discussed above. This will provide consistency with the federal laws permitting national banks and out-of-state state-chartered banks operating in Florida to charge check-cashing fees, and will place Florida-chartered banks on equal footing with national and other state-chartered banks.

Section 3 of the bill provides a statement of legislative intent for Section 3, indicating that the changes clarify the relevant portions of the Codes relating to the fees imposed by financial institutions.

Section 4 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill’s clarification that all banks may charge check-cashing fees may provide additional revenue for Florida-chartered banks. This may also result in more fees for consumers who are not customers of Florida-chartered banks.

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 by Banking and Insurance on April 16, 2013

The CS provides the following changes:

- Eliminates a provision that would have prohibited the Office of Financial Regulation from initiating an administrative proceeding while a person is subject to a federal proceeding on the same or similar grounds.
- Removes a definition of the term, “control of a company or bank,” and a conforming cross-reference.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (t) of subsection (1) of section
655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the
context otherwise requires, the term:

(t) "Related interest" means, with respect to any person,
~~the person's spouse, partner, sibling, parent, child, or other~~
~~individual residing in the same household as the person. With~~



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13 ~~respect to any person, the term means~~ a company, partnership,
14 corporation, or other business organization controlled by the
15 person. A person has control if the person:

16 1. Owns, controls, or has the power to vote 25 percent or
17 more of any class of voting securities of the organization;

18 2. Controls in any manner the election of a majority of the
19 directors of the organization; or

20 3. Has the power to exercise a controlling influence over
21 the management or policies of the organization.

22 Section 2. Section 655.85, Florida Statutes, is amended to
23 read:

24 655.85 Settlement of checks.—Whenever a ~~any~~ check is
25 forwarded or presented to a financial ~~an~~ institution for
26 payment, except when presented by the payee in person, the
27 paying institution or remitting institution shall settle the
28 amount of the check at par and may pay or remit the same, at its
29 option, ~~either~~ in money or in exchange drawn on its reserve
30 agent or agents in the City of New York or in any reserve city
31 within the Sixth Federal Reserve District; ~~however, an~~
32 ~~institution may not settle any check drawn on it otherwise than~~
33 ~~at par.~~ The term "at par" applies only to the settlement of
34 checks between collecting and paying or remitting institutions
35 and does not apply to, or prohibit an institution from,
36 deducting from the face amount of the check drawn on it a fee
37 for paying the check if the check is presented to the
38 institution by the payee in person. The provisions of this
39 section do not apply with respect to the settlement of a check
40 sent to such institution as a special collection item.

41 Section 3. It is the Legislature's intent that the



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42 amendment to s. 655.85, Florida Statutes, made by this act
43 clarify the relevant portions of the financial institutions
44 codes as defined in s. 655.005, Florida Statutes, relating to
45 fees imposed by a financial institution for the payment of
46 checks presented in person without requiring further amendment.

47 Section 4. This act shall take effect July 1, 2013.

48
49 ===== T I T L E A M E N D M E N T =====

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled
54 An act relating to banking; amending s. 655.005, F.S.;
55 revising the definition for "related interest";
56 amending s. 655.85, F.S.; clarifying that an
57 institution may impose a fee for the settlement of a
58 check under certain circumstances; providing
59 legislative intent; providing an effective date.

By Senator Hays

11-00727A-13

20131020__

A bill to be entitled

An act relating to banking; amending s. 655.005, F.S.; adding and revising definitions; amending s. 655.041, F.S.; prohibiting the Office of Insurance Regulation from initiating an administrative proceeding while a person is subject to a federal proceeding on the same grounds; amending s. 655.85, F.S.; clarifying that an institution may impose a fee for the settlement of a check under certain circumstances; providing legislative intent; amending s. 655.968, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present paragraphs (g) through (aa) of subsection (1) of section 655.005, Florida Statutes, are redesignated as paragraphs (h) through (bb), respectively, a new paragraph (g) is added to that subsection, and present paragraph (t) of that subsection is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(g) "Control of a company or bank" means that a person, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank; controls, in any manner, the election of a majority of the directors of the company or bank; or has the power to

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

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exercise a controlling influence over the management or policies of the company or bank.

1. A person is presumed to have control, including the power to exercise a controlling influence over the management or policies of a company or bank, if:

a. The person:

(I) Is an executive officer or director of the company or bank; and

(II) Directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

b. (I) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; and

(II) No other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

2. An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies of a company or bank, solely by virtue of the individual's position as an officer or director of the company or bank.

(u) ~~(t)~~ "Related interest" means, with respect to any person, the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

1. Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;

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

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59 2. Controls in any manner the election of a majority of the
60 directors of the organization; or

61 3. Has the power to exercise a controlling influence over
62 the management or policies of the organization.

63 Section 2. Subsection (1) of section 655.041, Florida
64 Statutes, is amended to read:

65 655.041 Administrative fines; enforcement.—

66 (1) The office may, by complaint, initiate a proceeding
67 pursuant to chapter 120 to impose an administrative fine against
68 any person found to have violated any provision of the financial
69 institutions codes or a cease and desist order of the office or
70 any written agreement with the office. ~~No~~ Such proceeding may
71 not shall be initiated and fines do not ~~no fine shall~~ accrue
72 pursuant to this section until after such person has been
73 notified in writing of the nature of the violation and ~~has~~ been
74 afforded a reasonable period of time, as set forth in the
75 notice, to correct the violation and ~~has~~ failed to do so.
76 However, such proceeding may not be initiated while the person
77 is subject to a federal proceeding on the same or similar
78 grounds.

79 Section 3. Section 655.85, Florida Statutes, is amended to
80 read:

81 655.85 Settlement of checks.—Whenever ~~a any~~ check is
82 forwarded or presented to a financial ~~an~~ institution for
83 payment, except when presented by the payee in person, the
84 paying institution or remitting institution shall settle the
85 amount of the check at par and may pay or remit the same, at its
86 option, ~~either~~ in money or in exchange drawn on its reserve
87 agent or agents in the City of New York or in any reserve city

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

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20131020__

88 within the Sixth Federal Reserve District; ~~however, an~~
89 ~~institution may not settle any check drawn on it otherwise than~~
90 ~~at par. The term "at par" applies only to the settlement of~~
91 checks between collecting and paying or remitting institutions
92 and does not apply to, or prohibit an institution from,
93 deducting from the face amount of the check drawn on it a fee
94 for paying the check if the check is presented to the
95 institution by the payee in person. The provisions of this
96 section do not apply with respect to the settlement of a check
97 sent to such institution as a special collection item.

98 Section 4. It is the Legislature's intent that the
99 amendment to s. 655.85, Florida Statutes, made by this act
100 clarify the relevant portions of the financial institutions
101 codes as defined in s. 655.005, Florida Statutes, relating to
102 fees imposed by a financial institution for the payment of
103 checks presented in person without requiring further amendment.

104 Section 5. Paragraph (b) of subsection (1) of section
105 655.968, Florida Statutes, is amended to read:

106 655.968 Financial institutions; transactions relating to
107 Iran or terrorism.—

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

109 (b) "Financial institution" has the same meaning as
110 provided defined in s. 655.005(1)(i).

111 Section 6. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/16/13

Meeting Date

Topic Banking

Bill Number 1020
(if applicable)

Name Brian Kemp

Amendment Barcode _____
(if applicable)

Job Title Government Consultant

Address 215 S. Monroe Street, Suite 500
Street

Phone 850-224-1585

Tallahassee FL 32301
City *State* *Zip*

E-mail bkemp@carltonfields.com

Speaking: For Against Information

Representing Fifth Third Bank

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)

4/16/13
Meeting Date

Topic Banking Bill

Bill Number 1020
(if applicable)

Name Anthony DiMarco

Amendment Barcode _____
(if applicable)

Job Title EUP

Address 1001 Thomasville Rd

Phone 224-2267

Callahan FL 32303
City State Zip

E-mail admarco@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/16/13

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

Meeting Date

Topic BANKING

Bill Number 1020

Name FRENCH BROWN

Amendment Barcode 185768
(if applicable)

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address 200 E. GAINES ST

Phone 850-410-9544

Street

TALLAHASSEE, FL 32399

City

State

Zip

E-mail FRENCH.BROWN@FLSFR.COM

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 1262

INTRODUCER: Senator Hays

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: April 16, 2013

REVISED: 4/17/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/1 amendment
2.			AP	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

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 season¹ 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-

¹ June 1, 2012 – May 31, 2013

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.

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)² is the most recent such report to be issued.³ 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

² Claims-Paying Capacity Estimates (October 9, 2012).

³ The first Claims Paying Capacity Estimate for the 2013-2014 hurricane season is due to be published in May 2013.

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.

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.⁴ “[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.”⁵ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.⁶ 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;

⁴ U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

⁵ *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).

⁶ *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 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
- 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.⁷

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:

⁷ *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:

Barcode 548468 by Banking and Insurance on April 16, 2013:

Deletes SB 1262 and instead:

- Reduces the aggregate retention level of the Cat Fund to \$5 billion, effective January 1, 2014. The aggregate retention level for the 2012-2013 contract year is \$7.389 billion.
- Obligates the Cat Fund to provide \$17 billion in reimbursements, regardless of the claims paying capacity of the fund. Under current law, the Cat Fund is obligated to provide reimbursement up to its actual claims paying capacity, not to exceed \$17 billion.

- Requires the SBA to negotiate a line of credit to reimburse insurers if Cat Fund payments to insurers exceed available assets and bonding receipts. The line of credit must cover projected receipts from at least 3 years' bonding and for second-event catastrophes. The line of credit must be closed by July 1, 2014.
- Repeals the Cat Fund cash build-up factor. Under current law, for the 2013-3014 contract year and thereafter, a factor of 25 percent must be added to the actuarially indicated reimbursement premium that insurers pay to the fund.
- Expands the types of losses for which the Cat Fund must provide reimbursement to include:
 - Loss adjustment expenses, unless unallocated;
 - Reimbursement to a policyholder for condominium association or homeowners' association loss adjustments or under similar coverages for contractual liabilities;
 - Bad faith awards, punitive damage awards, or other court imposed fines sanctions, or penalties; and
 - Amounts in excess of coverage limits under a policy.
- Requires the SBA to publish a statement of the Cat Fund's estimated borrowing and claims-paying capacity on January of each contract year, rather than in May and October of the contract year. The statement must also estimate a minimum 3 years of Cat Fund bonding capacity.
- Provides an effective date of July 1, 2013.



548468

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/16/2013	.	
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	.	

The Committee on Banking and Insurance (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (d) and (e) of subsection (2), paragraphs (c) and (d) of subsection (4), and paragraph (b) of subsection (5) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(d) "Losses" means all incurred losses under covered policies, including additional living expenses of up to ~~not to~~



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13 ~~exceed~~ 40 percent of the insured value of a residential
14 structure or its contents, loss adjustment expenses, and amounts
15 paid as fees on behalf of or inuring to the benefit of a
16 policyholder. The term does not include:

17 1. Losses for fair rental value, loss of rent or rental
18 income, or business interruption losses;

19 2. Losses under liability coverages;

20 3. Property losses that are proximately caused by any peril
21 other than a covered event, including, but not limited to, fire,
22 theft, flood or rising water, or windstorm that does not
23 constitute a covered event;

24 4. Amounts paid as the result of a voluntary expansion of
25 coverage by the insurer, including, but not limited to, a waiver
26 of an applicable deductible; or

27 ~~5. Amounts paid to reimburse a policyholder for condominium~~
28 ~~association or homeowners' association loss assessments or under~~
29 ~~similar coverages for contractual liabilities;~~

30 ~~6. Amounts paid as bad faith awards, punitive damage~~
31 ~~awards, or other court-imposed fines, sanctions, or penalties;~~

32 ~~7. Amounts in excess of the coverage limits under the~~
33 ~~covered policy; or~~

34 ~~8. Allocated or Unallocated loss adjustment expenses.~~

35 (e) "Retention" means the amount of losses below which an
36 insurer is not entitled to reimbursement from the fund. An
37 insurer's retention shall be calculated as follows:

38 1. The board shall calculate and report to each insurer the
39 retention multiples for each ~~that year. For the contract year.~~
40 ~~The beginning June 1, 2005, the retention multiple shall be~~
41 ~~equal to \$4.5 billion divided by the total estimated~~



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42 ~~reimbursement premium for the contract year; for subsequent~~
43 ~~years, the~~ retention multiple shall be equal to \$4.5 billion,
44 adjusted based upon the reported exposure for the contract year
45 occurring 2 years before the particular contract year to reflect
46 the percentage growth in exposure to the fund for covered
47 policies since 2004, divided by the total estimated
48 reimbursement premium for the contract year. Total reimbursement
49 ~~premium for purposes of the calculation under this subparagraph~~
50 shall be estimated using the assumption that all insurers have
51 selected the 90-percent coverage level. Effective June 1, 2014,
52 the aggregate retention level may not exceed \$5 billion.

53 2. The retention multiple as determined under subparagraph
54 1. shall be adjusted to reflect the coverage level elected by
55 the insurer. For insurers electing the 90-percent coverage
56 level, the adjusted retention multiple is 100 percent of the
57 amount determined under subparagraph 1. For insurers electing
58 the 75-percent coverage level, the retention multiple is 120
59 percent of the amount determined under subparagraph 1. For
60 insurers electing the 45-percent coverage level, the adjusted
61 retention multiple is 200 percent of the amount determined under
62 subparagraph 1.

63 3. An insurer shall determine its provisional retention by
64 multiplying its provisional reimbursement premium by the
65 applicable adjusted retention multiple and ~~shall~~ determine its
66 actual retention by multiplying its actual reimbursement premium
67 by the applicable adjusted retention multiple.

68 4. For insurers who experience multiple covered events
69 causing loss during the contract year, ~~beginning June 1, 2005,~~
70 each insurer's full retention shall be applied to each of the



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71 covered events causing the two largest losses for that insurer.
72 For each other covered event resulting in losses, the insurer's
73 retention shall be reduced to one-third of the full retention.
74 The reimbursement contract shall provide for the reimbursement
75 of losses for each covered event based on the full retention
76 with adjustments made to reflect the reduced retentions on or
77 after January 1 of the contract year provided the insurer
78 reports its losses as specified in the reimbursement contract.

79 (4) REIMBURSEMENT CONTRACTS.—

80 (c)1. The contract must ~~shall~~ also provide that the
81 obligation of the board with respect to all contracts covering a
82 particular contract year be ~~shall not exceed the actual claims-~~
83 ~~paying capacity of the fund up to a limit of \$17 billion for~~
84 ~~that contract year, unless the board determines that there is~~
85 ~~sufficient estimated claims-paying capacity to provide \$17~~
86 ~~billion of capacity for the current contract year and an~~
87 ~~additional \$17 billion of capacity for subsequent contract~~
88 ~~years. If the board makes such a determination, the estimated~~
89 ~~claims-paying capacity for the particular contract year shall be~~
90 ~~determined by adding to the \$17 billion limit one-half of the~~
91 ~~fund's estimated claims-paying capacity in excess of \$34~~
92 ~~billion. However, the dollar growth in the limit may not~~
93 ~~increase in any year by an amount greater than the dollar growth~~
94 ~~of the balance of the fund as of December 31, less any premiums~~
95 ~~or interest attributable to optional coverage, as defined by~~
96 ~~rule which occurred over the prior calendar year.~~

97 2. Each January ~~In May and October of the contract year,~~
98 the board shall publish in the Florida Administrative Register
99 ~~Weekly~~ a statement of the fund's estimated borrowing capacity



100 ~~and, the fund's estimated claims-paying capacity, and the~~
101 ~~projected balance of the fund as of December 31. Upon completing~~
102 ~~the estimation of the fund's claims-paying capacity~~ After the
103 ~~end of each calendar year,~~ the board shall notify insurers of
104 the estimated borrowing capacity, estimated claims-paying
105 capacity, and the balance of the fund as of December 31 to
106 provide insurers with data necessary to assist them in
107 determining their retention and projected payout from the fund
108 for loss reimbursement purposes. In conjunction with the
109 development of the premium formula, as provided ~~for~~ in
110 subsection (5), the board shall publish factors or multiples
111 that assist insurers in determining their retention and
112 projected payout for the next contract year. For all regulatory
113 and reinsurance purposes, an insurer may calculate its projected
114 payout from the fund as its share of the total fund premium for
115 the current contract year multiplied by the sum of the projected
116 balance of the fund as of December 31 and the estimated
117 borrowing capacity for that contract year as reported under this
118 subparagraph. The statement must include an estimate for a
119 minimum of 3 years of bonding capacity.

120 (d)1. For purposes of determining potential liability and
121 to aid in the sound administration of the fund, the contract
122 must ~~shall~~ require each insurer to report such insurer's losses
123 from each covered event on an interim basis, as directed by the
124 board. The contract must ~~shall~~ require the insurer to report to
125 the board by ~~no later than~~ December 31 of each year, and
126 quarterly thereafter, its reimbursable losses from covered
127 events for the year. The contract shall require the board to
128 determine and pay, as soon as practicable after receiving these



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129 reports of reimbursable losses, the initial amount of
130 reimbursement due and adjustments to this amount based on later
131 loss information. The adjustments to reimbursement amounts shall
132 require the board to pay, or the insurer to return, amounts
133 reflecting the most recent calculation of losses.

134 2. In determining reimbursements pursuant to this
135 subsection, the contract must ~~shall~~ provide that the board ~~shall~~
136 pay to each insurer the ~~such~~ insurer's projected payout, which
137 is the amount of reimbursement it is owed, up to an amount equal
138 to the insurer's share of the actual premium paid for that
139 contract year, multiplied by the insurer's share of the limit
140 specified in subparagraph(c)1. ~~actual-claims-paying capacity~~
141 available for that contract year.

142 3. The board may reimburse insurers for amounts up to the
143 published factors or multiples for determining each
144 participating insurer's retention and projected payout derived
145 as a result of the development of the premium formula in those
146 situations in which the total reimbursement of losses to such
147 insurers would not exceed the estimated claims-paying capacity
148 of the fund. Otherwise, the projected payout factors or
149 multiples shall be reduced uniformly among all insurers to
150 reflect the estimated claims-paying capacity.

151 4. The board shall negotiate a line of credit to reimburse
152 insurers if payments exceed available assets and bonding
153 receipts. The line of credit must be sufficient to cover
154 projected receipts from a minimum of 3 years' bonding and for
155 second-event catastrophes. The line of credit must be closed by
156 July 1, 2014.

157 (5) REIMBURSEMENT PREMIUMS.-



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158 (b) The State Board of Administration shall select an
159 independent consultant to develop a formula for determining the
160 actuarially indicated premium to be paid to the fund. The
161 formula shall specify, for each zip code or other limited
162 geographical area, the amount of premium to be paid by an
163 insurer for each \$1,000 of insured value under covered policies
164 in that zip code or other area. In establishing premiums, the
165 board shall consider the coverage elected under paragraph (4) (b)
166 and any factors that tend to enhance the actuarial
167 sophistication of ratemaking for the fund, including
168 deductibles, type of construction, type of coverage provided,
169 relative concentration of risks, and other ~~such~~ factors deemed
170 by the board to be appropriate. ~~The formula must provide for a~~
171 ~~cash build-up factor. For the 2009-2010 contract year, the~~
172 ~~factor is 5 percent. For the 2010-2011 contract year, the factor~~
173 ~~is 10 percent. For the 2011-2012 contract year, the factor is 15~~
174 ~~percent. For the 2012-2013 contract year, the factor is 20~~
175 ~~percent. For the 2013-2014 contract year and thereafter, the~~
176 ~~factor is 25 percent.~~ The formula may provide ~~for~~ a procedure
177 for determining ~~to determine~~ the premiums to be paid by new
178 insurers that begin writing covered policies after the beginning
179 of a contract year, taking into consideration when the insurer
180 starts writing covered policies, the potential exposure of the
181 insurer, the potential exposure of the fund, the administrative
182 costs to the insurer and to the fund, and any other factors
183 deemed appropriate by the board. The formula must be approved by
184 unanimous vote of the board. The board may, at any time, revise
185 the formula pursuant to the procedure provided in this
186 paragraph.



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187 Section 2. This act shall take effect July 1, 2013.

188

189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete everything before the enacting clause
192 and insert:

193 A bill to be entitled
194 An act relating to the Florida Hurricane Catastrophe
195 Fund; amending s. 215.555, F.S.; revising definitions
196 for the terms "losses" and "retention"; revising
197 requirements for reimbursement contracts; revising
198 provisions relating to times and circumstances wherein
199 the State Board of Administration publishes certain
200 statements and notices relating to the fund; requiring
201 the board to negotiate a line of credit to reimburse
202 insurers under certain circumstances; deleting a
203 requirement that the formula for determining premiums
204 to be paid to the fund include a cash build-up factor;
205 deleting obsolete provisions; providing an effective
206 date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2013	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

1 **Senate Substitute for Amendment (548468) (with title**
2 **amendment)**

3
4 Delete lines 28 - 1017
5 and insert:

6 Section 1. Effective June 1, 2013, paragraph (n) of
7 subsection (2), paragraph (c) of subsection (4), and paragraph
8 (d) of subsection (6) of section 215.555, Florida Statutes, are
9 amended to read:

10 215.555 Florida Hurricane Catastrophe Fund.—

11 (2) DEFINITIONS.—As used in this section:

12 (n) "Corporation" means the State Board of Administration



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13 ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created
14 in paragraph (6) (d).

15 (4) REIMBURSEMENT CONTRACTS.—

16 (c)~~1~~. The contract must ~~shall~~ also provide that the
17 obligation of the board with respect to all contracts covering a
18 particular contract year ~~shall~~ not exceed the actual claims-
19 paying capacity of the fund up to the limit specified in this
20 paragraph.

21 1. Fund limits are as follow:

22 a. For the 2013-2014 contract year, the limit is \$17
23 billion.

24 b. For the 2014-2015 contract year and subsequent contract
25 years, the limit is \$16 billion.

26 2. After the 2014-2015 contract year, if a limit of \$17
27 billion for that contract year, unless the board determines that
28 there is sufficient estimated claims-paying capacity to provide
29 \$16 ~~\$17~~ billion of capacity for the current contract year and an
30 additional \$16 ~~\$17~~ billion of capacity for subsequent contract
31 years. ~~If the board makes such a determination,~~ the estimated
32 claims-paying capacity for the particular contract year shall be
33 determined by adding to the \$16 ~~\$17~~ billion limit one-half of
34 the fund's estimated claims-paying capacity in excess of \$32 ~~\$34~~
35 billion. However, the dollar growth in the limit may not
36 increase in any year by an amount greater than the dollar growth
37 of the balance of the fund as of December 31, ~~less any premiums~~
38 ~~or interest attributable to optional coverage,~~ as defined by
39 rule, which occurred over the prior calendar year.

40 3.2. In May and October of the contract year, the board
41 shall publish in the Florida Administrative Register ~~Weekly~~ a



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42 statement of the fund's estimated borrowing capacity, the fund's
43 estimated claims-paying capacity, and the projected balance of
44 the fund as of December 31. After the end of each calendar year,
45 the board shall notify insurers of the estimated borrowing
46 capacity, estimated claims-paying capacity, and the balance of
47 the fund as of December 31 to provide insurers with data
48 necessary to assist them in determining their retention and
49 projected payout from the fund for loss reimbursement purposes.
50 In conjunction with the development of the premium formula, as
51 provided ~~for~~ in subsection (5), the board shall publish factors
52 or multiples that assist insurers in determining their retention
53 and projected payout for the next contract year. For all
54 regulatory and reinsurance purposes, an insurer may calculate
55 its projected payout from the fund as its share of the total
56 fund premium for the current contract year multiplied by the sum
57 of the projected balance of the fund as of December 31 and the
58 estimated borrowing capacity for that contract year as reported
59 under this subparagraph.

60 (6) REVENUE BONDS.—

61 (d) State Board of Administration ~~Florida Hurricane~~
62 ~~Catastrophe Fund Finance Corporation.~~—

63 1. In addition to the findings and declarations in
64 subsection (1), the Legislature also finds and declares that:

65 a. The public benefits corporation created under this
66 paragraph will provide a mechanism ~~necessary~~ for the cost-
67 effective and efficient issuance of bonds. This mechanism will
68 eliminate unnecessary costs in the bond issuance process,
69 thereby increasing the amounts available for ~~to pay~~
70 reimbursement for losses to property sustained as a result of



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71 hurricane damage.

72 b. The purpose of such bonds is to fund reimbursements
73 through the Florida Hurricane Catastrophe Fund ~~to pay~~ for the
74 costs of construction, reconstruction, repair, restoration, and
75 other costs associated with damage to properties of
76 policyholders of covered policies due to the occurrence of a
77 hurricane.

78 c. The efficacy of the financing mechanism will be enhanced
79 by the corporation's ownership of the assessments, by the
80 insulation of the assessments from possible bankruptcy
81 proceedings, and by covenants of the state with the
82 corporation's bondholders.

83 ~~2.a.~~ The State Board of Administration Finance Corporation
84 ~~There is created, which is a public benefits corporation and,~~
85 ~~which is an instrumentality of the state, to be known as the~~
86 ~~Florida Hurricane Catastrophe Fund Finance Corporation. The~~
87 State Board of Administration Finance Corporation is for all
88 purposes the successor to the Florida Hurricane Catastrophe Fund
89 Finance Corporation.

90 ~~a.b.~~ The corporation shall operate under a five-member
91 board of directors consisting of the Governor or a designee, the
92 Chief Financial Officer or a designee, the Attorney General or a
93 designee, the director of the Division of Bond Finance of the
94 State Board of Administration, and the Chief Operating Officer
95 ~~senior employee of the State Board of Administration responsible~~
96 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.

97 ~~b.c.~~ The corporation has all of the powers of corporations
98 under chapter 607 and under chapter 617, subject only to ~~the~~
99 ~~provisions of~~ this subsection.



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100 ~~c.d.~~ The corporation may issue bonds and engage in such
101 other financial transactions as are necessary to provide
102 sufficient funds to achieve the purposes of this section.

103 ~~d.e.~~ The corporation may invest in any of the investments
104 authorized under s. 215.47.

105 ~~e.f.~~ There is ~~shall be~~ no liability on the part of, and no
106 cause of action shall arise against, any board members or
107 employees of the corporation for any actions taken by them in
108 the performance of their duties under this paragraph.

109 3.a. In actions under chapter 75 to validate any bonds
110 issued by the corporation, the notice required by s. 75.06 must
111 ~~shall~~ be published in two newspapers of general circulation in
112 the state, and the complaint and order of the court shall be
113 served only on the State Attorney of the Second Judicial
114 Circuit.

115 b. The state hereby covenants with holders of bonds of the
116 corporation that the state will not repeal or abrogate the power
117 of the board to direct the Office of Insurance Regulation to
118 levy the assessments and to collect the proceeds of the revenues
119 pledged to the payment of such bonds as long as ~~any~~ such bonds
120 remain outstanding unless adequate provision has been made for
121 the payment of such bonds pursuant to the documents authorizing
122 the issuance of the ~~such~~ bonds.

123 ~~c.4.~~ The bonds of the corporation are not a debt of the
124 state or of any political subdivision, and neither the state nor
125 any political subdivision is liable on such bonds. The
126 corporation may not ~~does not have the power to~~ pledge the
127 credit, the revenues, or the taxing power of the state or of any
128 political subdivision. The credit, revenues, or taxing power of



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129 the state or of any political subdivision may ~~shall~~ not be
130 deemed to be pledged to the payment of any bonds of the
131 corporation.

132 ~~d.5.a.~~ The property, revenues, and other assets of the
133 corporation; the transactions and operations of the corporation
134 and the income from such transactions and operations; and all
135 bonds issued under this paragraph and interest on such bonds are
136 exempt from taxation by the state and any political subdivision,
137 including the intangibles tax under chapter 199 and the income
138 tax under chapter 220. This exemption does not apply to any tax
139 imposed by chapter 220 on interest, income, or profits on debt
140 obligations owned by corporations other than the State Board of
141 Administration ~~Florida Hurricane Catastrophe Fund Finance~~
142 Corporation.

143 ~~e.b.~~ All bonds of the corporation are ~~shall be and~~
144 ~~constitute~~ legal investments without limitation for all public
145 bodies of this state; for all banks, trust companies, savings
146 banks, savings associations, savings and loan associations, and
147 investment companies; for all administrators, executors,
148 trustees, and other fiduciaries; for all insurance companies and
149 associations and other persons carrying on an insurance
150 business; and for all other persons who are now or may hereafter
151 be authorized to invest in bonds or other obligations of the
152 state and are ~~shall be and constitute~~ eligible securities to be
153 deposited as collateral for the security of any state, county,
154 municipal, or other public funds. This sub-subparagraph shall be
155 considered ~~as~~ additional and supplemental authority and may
156 ~~shall~~ not be limited without specific reference to this sub-
157 subparagraph.



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158 ~~4.6.~~ The corporation and its corporate existence shall
159 continue until terminated by law; however, no such law shall
160 take effect as long as the corporation has bonds outstanding
161 unless adequate provision has been made for the payment of such
162 bonds pursuant to the documents authorizing the issuance of such
163 bonds. Upon termination of the existence of the corporation, all
164 of its rights and properties in excess of its obligations shall
165 pass to and be vested in the state.

166 Section 2. Except as otherwise expressly provided in this
167 act, this act shall take effect upon becoming a law.

168

169 ===== T I T L E A M E N D M E N T =====

170 And the title is amended as follows:

171 Delete lines 2 - 24

172 and insert:

173 An act relating to the Florida Hurricane Catastrophe
174 Fund; amending s. 215.555, F.S.; changing the name of
175 the Florida Hurricane Catastrophe Fund Finance
176 Corporation to the State Board of Administration
177 Finance Corporation; providing for the phase-in of
178 changes to the claims-paying capacity limits of the
179 fund; providing effective dates.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/16/2013	.	
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The Committee on Banking and Insurance (Ring) recommended the following:

1 **Senate Amendment to Substitute Amendment (588276) (with**
2 **title amendment)**

3
4 Delete lines 5 - 165
5 and insert:

6 Section 1. Paragraphs (d) and (e) of subsection (2),
7 paragraphs (c) and (d) of subsection (4), and paragraph (b) of
8 subsection (5) of section 215.555, Florida Statutes, are amended
9 to read:

10 215.555 Florida Hurricane Catastrophe Fund.—

11 (2) DEFINITIONS.—As used in this section:

12 (d) "Losses" means all incurred losses under covered



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13 policies, including additional living expenses of up to ~~not to~~
14 ~~exceed~~ 40 percent of the insured value of a residential
15 structure or its contents, loss adjustment expenses, and amounts
16 paid as fees on behalf of or inuring to the benefit of a
17 policyholder. The term does not include:

18 1. Losses for fair rental value, loss of rent or rental
19 income, or business interruption losses;

20 2. Losses under liability coverages;

21 3. Property losses that are proximately caused by any peril
22 other than a covered event, including, but not limited to, fire,
23 theft, flood or rising water, or windstorm that does not
24 constitute a covered event;

25 4. Amounts paid as the result of a voluntary expansion of
26 coverage by the insurer, including, but not limited to, a waiver
27 of an applicable deductible; or

28 5. ~~Amounts paid to reimburse a policyholder for condominium~~
29 ~~association or homeowners' association loss assessments or under~~
30 ~~similar coverages for contractual liabilities;~~

31 6. ~~Amounts paid as bad faith awards, punitive damage~~
32 ~~awards, or other court-imposed fines, sanctions, or penalties;~~

33 7. ~~Amounts in excess of the coverage limits under the~~
34 ~~covered policy; or~~

35 8. ~~Allocated or~~ Unallocated loss adjustment expenses.

36 (e) "Retention" means the amount of losses below which an
37 insurer is not entitled to reimbursement from the fund. An
38 insurer's retention shall be calculated as follows:

39 1. The board shall calculate and report to each insurer the
40 retention multiples for each ~~that year. For the contract year.~~
41 The beginning June 1, 2005, the retention multiple shall be



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42 ~~equal to \$4.5 billion divided by the total estimated~~
43 ~~reimbursement premium for the contract year; for subsequent~~
44 ~~years, the retention multiple shall be equal to \$4.5 billion,~~
45 adjusted based upon the reported exposure for the contract year
46 occurring 2 years before the particular contract year to reflect
47 the percentage growth in exposure to the fund for covered
48 policies since 2004, divided by the total estimated
49 reimbursement premium for the contract year. Total reimbursement
50 premium ~~for purposes of the calculation under this subparagraph~~
51 shall be estimated using the assumption that all insurers have
52 selected the 90-percent coverage level. Effective June 1, 2014,
53 the aggregate retention level may not exceed \$5 billion.

54 2. The retention multiple as determined under subparagraph
55 1. shall be adjusted to reflect the coverage level elected by
56 the insurer. For insurers electing the 90-percent coverage
57 level, the adjusted retention multiple is 100 percent of the
58 amount determined under subparagraph 1. For insurers electing
59 the 75-percent coverage level, the retention multiple is 120
60 percent of the amount determined under subparagraph 1. For
61 insurers electing the 45-percent coverage level, the adjusted
62 retention multiple is 200 percent of the amount determined under
63 subparagraph 1.

64 3. An insurer shall determine its provisional retention by
65 multiplying its provisional reimbursement premium by the
66 applicable adjusted retention multiple and ~~shall~~ determine its
67 actual retention by multiplying its actual reimbursement premium
68 by the applicable adjusted retention multiple.

69 4. For insurers who experience multiple covered events
70 causing loss during the contract year, ~~beginning June 1, 2005,~~



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71 each insurer's full retention shall be applied to each of the
72 covered events causing the two largest losses for that insurer.
73 For each other covered event resulting in losses, the insurer's
74 retention shall be reduced to one-third of the full retention.
75 The reimbursement contract shall provide for the reimbursement
76 of losses for each covered event based on the full retention
77 with adjustments made to reflect the reduced retentions on or
78 after January 1 of the contract year provided the insurer
79 reports its losses as specified in the reimbursement contract.

80 (4) REIMBURSEMENT CONTRACTS.-

81 (c)1. The contract must ~~shall~~ also provide that the
82 obligation of the board with respect to all contracts covering a
83 particular contract year be ~~shall not exceed the actual claims-~~
84 ~~paying capacity of the fund up to a limit of \$17 billion for~~
85 ~~that contract year, unless the board determines that there is~~
86 ~~sufficient estimated claims-paying capacity to provide \$17~~
87 ~~billion of capacity for the current contract year and an~~
88 ~~additional \$17 billion of capacity for subsequent contract~~
89 ~~years. If the board makes such a determination, the estimated~~
90 ~~claims-paying capacity for the particular contract year shall be~~
91 ~~determined by adding to the \$17 billion limit one-half of the~~
92 ~~fund's estimated claims-paying capacity in excess of \$34~~
93 ~~billion. However, the dollar growth in the limit may not~~
94 ~~increase in any year by an amount greater than the dollar growth~~
95 ~~of the balance of the fund as of December 31, less any premiums~~
96 ~~or interest attributable to optional coverage, as defined by~~
97 ~~rule which occurred over the prior calendar year.~~

98 2. Each January ~~In May and October of the contract year,~~
99 the board shall publish in the Florida Administrative Register



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100 ~~Weekly~~ a statement of the fund's estimated borrowing capacity
101 ~~and, the fund's estimated claims-paying capacity, and the~~
102 ~~projected balance of the fund as of December 31. Upon completing~~
103 ~~the estimation of the fund's claims-paying capacity~~ After the
104 ~~end of each calendar year,~~ the board shall notify insurers of
105 the estimated borrowing capacity, estimated claims-paying
106 capacity, and the balance of the fund as of December 31 to
107 provide insurers with data necessary to assist them in
108 determining their retention and projected payout from the fund
109 for loss reimbursement purposes. In conjunction with the
110 development of the premium formula, as provided ~~for~~ in
111 subsection (5), the board shall publish factors or multiples
112 that assist insurers in determining their retention and
113 projected payout for the next contract year. For all regulatory
114 and reinsurance purposes, an insurer may calculate its projected
115 payout from the fund as its share of the total fund premium for
116 the current contract year multiplied by the sum of the projected
117 balance of the fund as of December 31 and the estimated
118 borrowing capacity for that contract year as reported under this
119 subparagraph. The statement must include an estimate for a
120 minimum of 3 years of bonding capacity.

121 (d)1. For purposes of determining potential liability and
122 to aid in the sound administration of the fund, the contract
123 must ~~shall~~ require each insurer to report such insurer's losses
124 from each covered event on an interim basis, as directed by the
125 board. The contract must ~~shall~~ require the insurer to report to
126 the board by ~~no later than~~ December 31 of each year, and
127 quarterly thereafter, its reimbursable losses from covered
128 events for the year. The contract shall require the board to



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129 determine and pay, as soon as practicable after receiving these
130 reports of reimbursable losses, the initial amount of
131 reimbursement due and adjustments to this amount based on later
132 loss information. The adjustments to reimbursement amounts shall
133 require the board to pay, or the insurer to return, amounts
134 reflecting the most recent calculation of losses.

135 2. In determining reimbursements pursuant to this
136 subsection, the contract must ~~shall~~ provide that the board ~~shall~~
137 pay to each insurer the ~~such~~ insurer's projected payout, which
138 is the amount of reimbursement it is owed, up to an amount equal
139 to the insurer's share of the actual premium paid for that
140 contract year, multiplied by the insurer's share of the limit
141 specified in subparagraph(c)1. ~~actual claims-paying capacity~~
142 ~~available for that contract year.~~

143 3. The board may reimburse insurers for amounts up to the
144 published factors or multiples for determining each
145 participating insurer's retention and projected payout derived
146 as a result of the development of the premium formula in those
147 situations in which the total reimbursement of losses to such
148 insurers would not exceed the estimated claims-paying capacity
149 of the fund. Otherwise, the projected payout factors or
150 multiples shall be reduced uniformly among all insurers to
151 reflect the estimated claims-paying capacity.

152 4. The board shall negotiate a line of credit to reimburse
153 insurers if payments exceed available assets and bonding
154 receipts. The line of credit must be sufficient to cover
155 projected receipts from a minimum of 3 years' bonding and for
156 second-event catastrophes. The line of credit must be closed by
157 July 1, 2014.



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158 (5) REIMBURSEMENT PREMIUMS.—

159 (b) The State Board of Administration shall select an
160 independent consultant to develop a formula for determining the
161 actuarially indicated premium to be paid to the fund. The
162 formula shall specify, for each zip code or other limited
163 geographical area, the amount of premium to be paid by an
164 insurer for each \$1,000 of insured value under covered policies
165 in that zip code or other area. In establishing premiums, the
166 board shall consider the coverage elected under paragraph (4) (b)
167 and any factors that tend to enhance the actuarial
168 sophistication of ratemaking for the fund, including
169 deductibles, type of construction, type of coverage provided,
170 relative concentration of risks, and other ~~such~~ factors deemed
171 by the board to be appropriate. ~~The formula must provide for a~~
172 ~~cash build-up factor. For the 2009-2010 contract year, the~~
173 ~~factor is 5 percent. For the 2010-2011 contract year, the factor~~
174 ~~is 10 percent. For the 2011-2012 contract year, the factor is 15~~
175 ~~percent. For the 2012-2013 contract year, the factor is 20~~
176 ~~percent. For the 2013-2014 contract year and thereafter, the~~
177 ~~factor is 25 percent.~~ The formula may provide ~~for~~ a procedure
178 for determining ~~to determine~~ the premiums to be paid by new
179 insurers that begin writing covered policies after the beginning
180 of a contract year, taking into consideration when the insurer
181 starts writing covered policies, the potential exposure of the
182 insurer, the potential exposure of the fund, the administrative
183 costs to the insurer and to the fund, and any other factors
184 deemed appropriate by the board. The formula must be approved by
185 unanimous vote of the board. The board may, at any time, revise
186 the formula pursuant to the procedure provided in this



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187 paragraph.

188

189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete lines 173 - 179

192 and insert:

193 An act relating to the Florida Hurricane Catastrophe
194 Fund; amending s. 215.555, F.S.; revising definitions
195 for the terms "losses" and "retention"; revising
196 requirements for reimbursement contracts; revising
197 provisions relating to times and circumstances wherein
198 the State Board of Administration publishes certain
199 statements and notices relating to the fund; requiring
200 the board to negotiate a line of credit to reimburse
201 insurers under certain circumstances; deleting a
202 requirement that the formula for determining premiums
203 to be paid to the fund include a cash build-up factor;
204 deleting obsolete provisions; providing an effective
205 date.



303624

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Effective June 1, 2013, paragraph (n) of subsection (2), paragraph (c) of subsection (4), and paragraph (d) of subsection (6) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(n) "Corporation" means the State Board of Administration
~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created



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13 in paragraph (6) (d).

14 (4) REIMBURSEMENT CONTRACTS.—

15 (c)~~1~~. The contract must ~~shall~~ also provide that the
16 obligation of the board with respect to all contracts covering a
17 particular contract year ~~shall~~ not exceed the actual claims-
18 paying capacity of the fund up to the limit specified in this
19 paragraph.

20 1. Fund limits are as follow:

21 a. For the 2013-2014 contract year, the limit is \$17
22 billion.

23 b. For the 2014-2015 contract year and subsequent contract
24 years, the limit is \$16 billion.

25 2. After the 2014-2015 contract year, if a limit of \$17
26 billion for that contract year, unless the board determines that
27 there is sufficient estimated claims-paying capacity to provide
28 \$16 ~~\$17~~ billion of capacity for the current contract year and an
29 additional \$16 ~~\$17~~ billion of capacity for subsequent contract
30 years. ~~If the board makes such a determination,~~ the estimated
31 claims-paying capacity for the particular contract year shall be
32 determined by adding to the \$16 ~~\$17~~ billion limit one-half of
33 the fund's estimated claims-paying capacity in excess of \$32 ~~\$34~~
34 billion. However, the dollar growth in the limit may not
35 increase in any year by an amount greater than the dollar growth
36 of the balance of the fund as of December 31, ~~less any premiums~~
37 ~~or interest attributable to optional coverage,~~ as defined by
38 rule, which occurred over the prior calendar year.

39 3.2. In May and October of the contract year, the board
40 shall publish in the Florida Administrative Register ~~Weekly~~ a
41 statement of the fund's estimated borrowing capacity, the fund's



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42 estimated claims-paying capacity, and the projected balance of
43 the fund as of December 31. After the end of each calendar year,
44 the board shall notify insurers of the estimated borrowing
45 capacity, estimated claims-paying capacity, and the balance of
46 the fund as of December 31 to provide insurers with data
47 necessary to assist them in determining their retention and
48 projected payout from the fund for loss reimbursement purposes.
49 In conjunction with the development of the premium formula, as
50 provided ~~for~~ in subsection (5), the board shall publish factors
51 or multiples that assist insurers in determining their retention
52 and projected payout for the next contract year. For all
53 regulatory and reinsurance purposes, an insurer may calculate
54 its projected payout from the fund as its share of the total
55 fund premium for the current contract year multiplied by the sum
56 of the projected balance of the fund as of December 31 and the
57 estimated borrowing capacity for that contract year as reported
58 under this subparagraph.

59 (6) REVENUE BONDS.—

60 (d) State Board of Administration ~~Florida Hurricane~~
61 ~~Catastrophe Fund Finance Corporation.~~—

62 1. In addition to the findings and declarations in
63 subsection (1), the Legislature also finds and declares that:

64 a. The public benefits corporation created under this
65 paragraph will provide a mechanism ~~necessary~~ for the cost-
66 effective and efficient issuance of bonds. This mechanism will
67 eliminate unnecessary costs in the bond issuance process,
68 thereby increasing the amounts available for ~~to pay~~
69 reimbursement for losses to property sustained as a result of
70 hurricane damage.



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71 b. The purpose of such bonds is to fund reimbursements
72 through the Florida Hurricane Catastrophe Fund ~~to pay~~ for the
73 costs of construction, reconstruction, repair, restoration, and
74 other costs associated with damage to properties of
75 policyholders of covered policies due to the occurrence of a
76 hurricane.

77 c. The efficacy of the financing mechanism will be enhanced
78 by the corporation's ownership of the assessments, by the
79 insulation of the assessments from possible bankruptcy
80 proceedings, and by covenants of the state with the
81 corporation's bondholders.

82 ~~2.a.~~ The State Board of Administration Finance Corporation
83 ~~There is created, which is~~ a public benefits corporation ~~and,~~
84 ~~which is~~ an instrumentality of the state, ~~to be known as the~~
85 ~~Florida Hurricane Catastrophe Fund Finance Corporation.~~ The
86 State Board of Administration Finance Corporation is for all
87 purposes the successor to the Florida Hurricane Catastrophe Fund
88 Finance Corporation.

89 ~~a.b.~~ The corporation shall operate under a five-member
90 board of directors consisting of the Governor or a designee, the
91 Chief Financial Officer or a designee, the Attorney General or a
92 designee, the director of the Division of Bond Finance of the
93 State Board of Administration, and the Chief Operating Officer
94 ~~senior employee of the State Board of Administration responsible~~
95 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.

96 ~~b.e.~~ The corporation has all of the powers of corporations
97 under chapter 607 and under chapter 617, subject only to ~~the~~
98 ~~provisions of~~ this subsection.

99 ~~c.d.~~ The corporation may issue bonds and engage in such



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100 other financial transactions as are necessary to provide
101 sufficient funds to achieve the purposes of this section.

102 ~~d.e.~~ The corporation may invest in any of the investments
103 authorized under s. 215.47.

104 ~~e.f.~~ There is ~~shall be~~ no liability on the part of, and no
105 cause of action shall arise against, any board members or
106 employees of the corporation for any actions taken by them in
107 the performance of their duties under this paragraph.

108 3.a. In actions under chapter 75 to validate any bonds
109 issued by the corporation, the notice required by s. 75.06 must
110 ~~shall~~ be published in two newspapers of general circulation in
111 the state, and the complaint and order of the court shall be
112 served only on the State Attorney of the Second Judicial
113 Circuit.

114 b. The state hereby covenants with holders of bonds of the
115 corporation that the state will not repeal or abrogate the power
116 of the board to direct the Office of Insurance Regulation to
117 levy the assessments and to collect the proceeds of the revenues
118 pledged to the payment of such bonds as long as ~~any~~ such bonds
119 remain outstanding unless adequate provision has been made for
120 the payment of such bonds pursuant to the documents authorizing
121 the issuance of the ~~such~~ bonds.

122 ~~c.4.~~ The bonds of the corporation are not a debt of the
123 state or of any political subdivision, and neither the state nor
124 any political subdivision is liable on such bonds. The
125 corporation may not ~~does not have the power to~~ pledge the
126 credit, the revenues, or the taxing power of the state or of any
127 political subdivision. The credit, revenues, or taxing power of
128 the state or of any political subdivision may ~~shall~~ not be



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129 deemed to be pledged to the payment of any bonds of the
130 corporation.

131 ~~d.5.a.~~ The property, revenues, and other assets of the
132 corporation; the transactions and operations of the corporation
133 and the income from such transactions and operations; and all
134 bonds issued under this paragraph and interest on such bonds are
135 exempt from taxation by the state and any political subdivision,
136 including the intangibles tax under chapter 199 and the income
137 tax under chapter 220. This exemption does not apply to any tax
138 imposed by chapter 220 on interest, income, or profits on debt
139 obligations owned by corporations other than the State Board of
140 Administration Florida Hurricane Catastrophe Fund Finance
141 Corporation.

142 ~~e.b.~~ All bonds of the corporation are ~~shall be and~~
143 ~~constitute~~ legal investments without limitation for all public
144 bodies of this state; for all banks, trust companies, savings
145 banks, savings associations, savings and loan associations, and
146 investment companies; for all administrators, executors,
147 trustees, and other fiduciaries; for all insurance companies and
148 associations and other persons carrying on an insurance
149 business; and for all other persons who are now or may hereafter
150 be authorized to invest in bonds or other obligations of the
151 state and are ~~shall be and constitute~~ eligible securities to be
152 deposited as collateral for the security of any state, county,
153 municipal, or other public funds. This sub-subparagraph shall be
154 considered ~~as~~ additional and supplemental authority and may
155 ~~shall~~ not be limited without specific reference to this sub-
156 subparagraph.

157 ~~4.6.~~ The corporation and its corporate existence shall



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158 continue until terminated by law; however, no such law shall
159 take effect as long as the corporation has bonds outstanding
160 unless adequate provision has been made for the payment of such
161 bonds pursuant to the documents authorizing the issuance of such
162 bonds. Upon termination of the existence of the corporation, all
163 of its rights and properties in excess of its obligations shall
164 pass to and be vested in the state.

165 Section 2. Except as otherwise expressly provided in this
166 act, this act shall take effect upon becoming a law.

167

168 ===== T I T L E A M E N D M E N T =====

169 And the title is amended as follows:

170 Delete everything before the enacting clause
171 and insert:

172

A bill to be entitled

173

An act relating to the Florida Hurricane Catastrophe
174 Fund; amending s. 215.555, F.S.; changing the name of
175 the Florida Hurricane Catastrophe Fund Finance
176 Corporation to the State Board of Administration
177 Finance Corporation; providing for the phase-in of
178 changes to the claims-paying capacity limits of the
179 fund; providing effective dates.

By Senator Hays

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1 A bill to be entitled
 2 An act relating to the Florida Hurricane Catastrophe
 3 Fund; amending s. 215.555, F.S.; revising the
 4 definitions for "corporation," "covered policy," and
 5 "retention"; providing for calculation of an insurer's
 6 reimbursement premium and retention under the
 7 reimbursement contract; revising coverage levels
 8 available under the reimbursement contract; revising
 9 aggregate coverage limits; providing for the phase-in
 10 of changes to coverage levels and limits; changing the
 11 name of the Florida Hurricane Catastrophe Fund Finance
 12 Corporation to the State Board of Administration
 13 Finance Corporation; deleting obsolete provisions
 14 related to temporary emergency options for additional
 15 coverage; terminating the temporary increase in
 16 coverage limit options at the end of the 2012-2013
 17 contract year; deleting other obsolete provisions;
 18 amending s. 627.062, F.S.; deleting a provision
 19 prohibiting the recoupmnt of certain costs; amending
 20 ss. 624.424, 627.0629, 627.351, F.S.; conforming
 21 cross-references; authorizing the State Board of
 22 Administration to adopt emergency rules if necessary
 23 and providing applicability; providing an effective
 24 date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Subsection (2) of section 215.555, Florida
 29 Statutes, is reordered and amended, and paragraphs (b) and (c)

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

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30 of subsection (4), paragraph (d) of subsection (6), and
 31 subsections (16) through (18) of that section are amended, to
 32 read:

33 215.555 Florida Hurricane Catastrophe Fund.—

34 (2) DEFINITIONS.—As used in this section, the term:

35 (b)-(a) "Actuarially indicated" means, with respect to
 36 premiums paid by insurers for reimbursement provided by the
 37 fund, an amount determined according to principles of actuarial
 38 science to be adequate, but not excessive, in the aggregate, to
 39 pay current and future obligations and expenses of the fund,
 40 including additional amounts if needed to pay debt service on
 41 revenue bonds issued under this section and to provide required
 42 debt service coverage in excess of the amounts required to pay
 43 actual debt service on revenue bonds issued under subsection
 44 (6), and ~~determined according to principles of actuarial science~~
 45 to reflect each insurer's relative exposure to hurricane losses.

46 (f)-(b) "Covered event" means any one storm declared to be a
 47 hurricane by the National Hurricane Center, which storm causes
 48 insured losses in this state.

49 (g)-(e) "Covered policy" means an ~~any~~ insurance policy
 50 covering residential property in this state, including, but not
 51 limited to, a ~~any~~ homeowner's, mobile home owner's, farm
 52 owner's, condominium association, condominium unit owner's,
 53 tenant's, or apartment building policy, or any other policy
 54 covering a residential structure or its contents issued by an
 55 ~~any~~ authorized insurer, including ~~a commercial self insurance~~
 56 ~~fund holding a certificate of authority issued by the Office of~~
 57 ~~Insurance Regulation under s. 624.462,~~ the Citizens Property
 58 Insurance Corporation, and any joint underwriting association or

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59 similar entity created under law. The term ~~"covered policy"~~
 60 includes a ~~any~~ collateral protection insurance policy covering
 61 personal residences which protects both the borrower's and the
 62 lender's financial interests, in an amount at least equal to the
 63 coverage for the dwelling in place under the lapsed homeowner's
 64 policy, if such policy can be accurately reported as required in
 65 subsection (5). The term also includes ~~Additionally, covered~~
 66 ~~policies include~~ policies covering the peril of wind removed
 67 from the Florida Residential Property and Casualty Joint
 68 Underwriting Association or from ~~the~~ Citizens Property Insurance
 69 Corporation, created under s. 627.351(6), or from the Florida
 70 Windstorm Underwriting Association, created under s. 627.351(2),
 71 by an authorized insurer under the terms and conditions of an
 72 executed assumption agreement between the authorized insurer and
 73 such association or Citizens Property Insurance Corporation.
 74 Each assumption agreement ~~between the association and such~~
 75 ~~authorized insurer or Citizens Property Insurance Corporation~~
 76 must be approved by the Office of Insurance Regulation before
 77 the effective date of the assumption, and the office of
 78 ~~Insurance Regulation~~ must provide written notification to the
 79 board within 15 working days after such approval. The term
 80 ~~"Covered policy"~~ does not include any policy that excludes wind
 81 coverage or hurricane coverage or any reinsurance agreement or
 82 ~~and does not include any~~ policy otherwise meeting this
 83 definition which is issued by a surplus lines insurer or a
 84 reinsurer. All commercial residential excess policies and all
 85 deductible buy-back policies that, based on sound actuarial
 86 principles, require individual ratemaking must ~~shall~~ be excluded
 87 by rule if the actuarial soundness of the fund is not

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88 jeopardized. For this purpose, the term "excess policy" means a
 89 policy that provides insurance protection for large commercial
 90 property risks and that provides a layer of coverage above a
 91 primary layer insured by another insurer.
 92 ~~(l)(d)~~ "Losses" means all incurred losses under covered
 93 policies, including additional living expenses of up to ~~not to~~
 94 ~~exceed~~ 40 percent of the insured value of a residential
 95 structure or its contents and amounts paid as fees on behalf of
 96 or inuring to the benefit of a policyholder. The term does not
 97 include:
 98 1. Losses for fair rental value, loss of rent or rental
 99 income, or business interruption losses;
 100 2. Losses under liability coverages;
 101 3. Property losses that are proximately caused by any peril
 102 other than a covered event, including, but not limited to, fire,
 103 theft, flood or rising water, or windstorm that does not
 104 constitute a covered event;
 105 4. Amounts paid as the result of a voluntary expansion of
 106 coverage by the insurer, including, but not limited to, a waiver
 107 of an applicable deductible;
 108 5. Amounts paid to reimburse a policyholder for condominium
 109 association or homeowners' association loss assessments or under
 110 similar coverages for contractual liabilities;
 111 6. Amounts paid as bad faith awards, punitive damage
 112 awards, or other court-imposed fines, sanctions, or penalties;
 113 7. Amounts in excess of the coverage limits under the
 114 covered policy; or
 115 8. Allocated or unallocated loss adjustment expenses.
 116 ~~(n)(e)~~ "Retention" means the amount of losses below which

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117 an insurer is not entitled to reimbursement from the fund. An
 118 insurer's retention shall be calculated as follows:

119 1. The board shall calculate and report to each insurer the
 120 retention multiples for that year. For the contract year
 121 beginning June 1, 2005, the retention multiple shall be equal to
 122 \$4.5 billion divided by the total estimated reimbursement
 123 premium for the contract year; for subsequent years, the
 124 retention multiple shall be equal to \$4.5 billion, adjusted
 125 based upon the reported exposure for the contract year occurring
 126 2 years before the particular contract year to reflect the
 127 percentage growth in exposure to the fund for covered policies
 128 since 2004, divided by the total estimated reimbursement premium
 129 for the contract year. Total reimbursement premium for purposes
 130 of the calculation under this subparagraph shall be estimated
 131 using the assumption that all insurers have selected the 90-
 132 percent coverage level.

133 2. The retention multiple as determined under subparagraph
 134 1. shall be adjusted to reflect the coverage level elected by
 135 the insurer. For insurers electing the 90 percent coverage
 136 level, the adjusted retention multiple is 100 percent of the
 137 amount determined under subparagraph 1. For insurers electing
 138 the 75 percent coverage level, the retention multiple is 120
 139 percent of the amount determined under subparagraph 1. For
 140 insurers electing the 45 percent coverage level, the adjusted
 141 retention multiple is 200 percent of the amount determined under
 142 subparagraph 1.

143 3. An insurer shall determine its provisional retention by
 144 multiplying its provisional reimbursement premium by the
 145 applicable adjusted retention multiple and shall determine its

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146 actual retention by multiplying its actual reimbursement premium
 147 by the applicable adjusted retention multiple.

148 4. For insurers who experience multiple covered events
 149 causing loss during the contract year, beginning June 1, 2005,
 150 each insurer's full retention shall be applied to each of the
 151 covered events causing the two largest losses for that insurer.
 152 For each other covered event resulting in losses, the insurer's
 153 retention shall be reduced to one-third of the full retention.
 154 The reimbursement contract shall provide for the reimbursement
 155 of losses for each covered event based on the full retention
 156 with adjustments made to reflect the reduced retentions on or
 157 after January 1 of the contract year provided the insurer
 158 reports its losses as specified in the reimbursement contract.

159 (o)~~(f)~~ "Workers' compensation" includes both workers'
 160 compensation and excess workers' compensation insurance.

161 (c)~~(g)~~ "Bond" means any bond, debenture, note, or other
 162 evidence of financial indebtedness issued under this section.

163 (h) "Debt service" means the amount required in any fiscal
 164 year to pay the principal of, redemption premium, if any, and
 165 interest on revenue bonds and any amounts required by the terms
 166 of documents authorizing, securing, or providing liquidity for
 167 revenue bonds necessary to maintain in effect any such liquidity
 168 or security arrangements.

169 (i) "Debt service coverage" means the amount, if any,
 170 required by the documents under which revenue bonds are issued,
 171 which must amount is to be received in any fiscal year in excess
 172 of the amount required to pay debt service for such fiscal year.

173 (k)~~(j)~~ "Local government" means a unit of general purpose
 174 local government as defined in s. 218.31(2).

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175 ~~(m)(k)~~ "Pledged revenues" means all or any portion of
 176 revenues to be derived from reimbursement premiums under
 177 subsection (5) or from emergency assessments under paragraph
 178 (6) (b), as determined by the board.

179 ~~(j)(i)~~ "Estimated claims-paying capacity" means the sum of
 180 the projected year-end balance of the fund as of December 31 of
 181 a contract year, ~~plus~~ any reinsurance purchased by the fund, and
 182 ~~plus~~ the board's estimate of the board's borrowing capacity.

183 ~~(a)(m)~~ "Actual claims-paying capacity" means the sum of the
 184 balance of the fund as of December 31 of a contract year, ~~plus~~
 185 any reinsurance purchased by the fund, and plus the amount the
 186 board is able to raise through the issuance of revenue bonds
 187 under subsection (6).

188 ~~(e)(n)~~ "Corporation" means the State Board of
 189 Administration Florida Hurricane Catastrophe Fund Finance
 190 Corporation created in paragraph (6) (d).

191 ~~(d)(e)~~ "Contract year" means the period beginning on June 1
 192 of a specified calendar year and ending on May 31 of the
 193 following calendar year.

194 (4) REIMBURSEMENT CONTRACTS.—

195 (b)1. An insurer's retention shall be calculated as
 196 follows:

197 a. The board shall calculate and report to each insurer the
 198 retention multiples for that year. For the contract year, the
 199 retention multiple is equal to \$4.5 billion, adjusted to reflect
 200 the percentage growth in exposure to the fund for covered
 201 policies since 2004 based upon the reported exposure for the
 202 contract year occurring 2 years before the particular contract
 203 year, divided by the total estimated reimbursement premium for

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204 the contract year. Total reimbursement premium for purposes of
 205 this calculation shall be estimated using the assumption that
 206 all insurers have selected the 90-percent coverage level.

207 b. In order to implement the phase-in of reduced coverage
 208 levels as provided in subparagraph 2., total reimbursement
 209 premium for purposes of the calculation under sub-subparagraph
 210 a. shall be estimated using the following assumptions:

211 (I) For the 2013-2014 contract year, the assumption is that
 212 all insurers have selected the 85-percent coverage level.

213 (II) For the 2014-2015 contract year, the assumption is
 214 that all insurers have selected the 80-percent coverage level.

215 (III) For the 2015-2016 contract year and subsequent
 216 contract years, the assumption is that all insurers have
 217 selected the 75-percent coverage level.

218 c. The retention multiple shall be adjusted to reflect the
 219 coverage level elected by the insurer.

220 (I) For an insurer electing the maximum coverage level
 221 under subparagraph 2. for a particular contract year, the
 222 adjusted retention multiple is 100 percent of the amount
 223 determined under sub-subparagraph a.

224 (II) In order to implement the phase-in of reduced coverage
 225 levels under subparagraph 2., for an insurer electing a coverage
 226 level other than the maximum coverage level:

227 (A) For the 2013-2014 contract year, for an insurer
 228 electing the 75-percent coverage level, the retention multiple
 229 is 85/75ths of the amount determined under sub-subparagraph a.,
 230 and for an insurer electing the 45-percent coverage level, the
 231 adjusted retention multiple is 85/45ths of the amount determined
 232 under sub-subparagraph a.

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233 (B) For the 2014-2015 contract year, for an insurer
 234 electing the 75-percent coverage level, the retention multiple
 235 is 80/75ths of the amount determined under sub-subparagraph a.,
 236 and for an insurer electing the 45-percent coverage level, the
 237 retention multiple is 80/45ths of the amount determined under
 238 sub-subparagraph a.

239 (C) For the 2015-2016 contract year and subsequent contract
 240 years, for an insurer electing the 45-percent coverage level,
 241 the retention multiple is 75/45ths of the amount determined
 242 under sub-subparagraph a.

243 d. An insurer shall determine its provisional retention by
 244 multiplying its provisional reimbursement premium by the
 245 applicable adjusted retention multiple and determine its actual
 246 retention by multiplying its actual reimbursement premium by the
 247 applicable adjusted retention multiple.

248 e. For insurers who experience multiple covered events
 249 causing loss during the contract year, beginning June 1, 2005,
 250 each insurer's full retention shall be applied to each of the
 251 covered events causing the two largest losses for that insurer.
 252 For each other covered event resulting in losses, the insurer's
 253 retention shall be reduced to one-third of the full retention.
 254 The reimbursement contract must provide for the reimbursement of
 255 losses for each covered event based on the full retention with
 256 adjustments that reflect the reduced retentions on or after
 257 January 1 of the contract year if the insurer reports its losses
 258 as specified in the reimbursement contract.

259 2.1- The contract ~~must shall~~ contain a promise by the board
 260 to reimburse the insurer for a specified percentage ~~45 percent,~~
 261 ~~75 percent, or 90 percent~~ of its losses from each covered event

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262 in excess of the insurer's retention, plus 10 ~~5~~ percent of the
 263 reimbursed losses to cover loss adjustment expenses.

264 a. The available coverage levels are as follows:

265 (I) For the 2013-2014 contract year, 85 percent, 75
 266 percent, and 45 percent.

267 (II) For the 2014-2015 contract year, 80 percent, 75
 268 percent, and 45 percent.

269 (III) For the 2015-2016 contract year and subsequent
 270 contract years, 75 percent and 45 percent.

271 3.2- The insurer must elect one of the percentage coverage
 272 levels specified in subparagraph 2. ~~this paragraph~~ and may, upon
 273 renewal of a reimbursement contract, elect a lower percentage
 274 coverage level if no revenue bonds issued under subsection (6)
 275 after a covered event are outstanding, or elect a higher
 276 percentage coverage level, regardless of whether or not revenue
 277 bonds are outstanding. All members of an insurer group must
 278 elect the same percentage coverage level. ~~A Any~~ joint
 279 underwriting association, risk apportionment plan, or other
 280 entity created under s. 627.351 must elect the maximum 90-
 281 percent coverage level available under subparagraph 2.

282 4. In order to implement the phase-in of reduced coverage
 283 levels, and notwithstanding subparagraph 2., if revenue bonds
 284 issued under subsection (6) after a covered event are
 285 outstanding and the insurer has elected the maximum coverage
 286 level available under subparagraph 2., the insurer must, upon
 287 renewal of the reimbursement contract, elect the maximum
 288 coverage level for the renewal contract year.

289 5.3- The contract ~~must shall~~ provide that reimbursement
 290 amounts are ~~shall~~ not be reduced by reinsurance paid or payable

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291 to the insurer from other sources.

292 4. ~~Notwithstanding any other provision contained in this~~
 293 ~~section, the board shall make available to insurers that~~
 294 ~~purchased coverage provided by this subparagraph in 2008,~~
 295 ~~insurers qualifying as limited apportionment companies under s.~~
 296 ~~627.351(6)(c), and insurers that have been approved to~~
 297 ~~participate in the Insurance Capital Build-Up Incentive Program~~
 298 ~~pursuant to s. 215.5595 a contract or contract addendum that~~
 299 ~~provides an additional amount of reimbursement coverage of up to~~
 300 ~~\$10 million. The premium to be charged for this additional~~
 301 ~~reimbursement coverage shall be 50 percent of the additional~~
 302 ~~reimbursement coverage provided, which shall include one prepaid~~
 303 ~~reinstatement. The minimum retention level that an eligible~~
 304 ~~participating insurer must retain associated with this~~
 305 ~~additional coverage layer is 30 percent of the insurer's surplus~~
 306 ~~as of December 31, 2008, for the 2009-2010 contract year; as of~~
 307 ~~December 31, 2009, for the 2010-2011 contract year; and as of~~
 308 ~~December 31, 2010, for the 2011-2012 contract year. This~~
 309 ~~coverage shall be in addition to all other coverage that may be~~
 310 ~~provided under this section. The coverage provided by the fund~~
 311 ~~under this subparagraph shall be in addition to the claims-~~
 312 ~~paying capacity as defined in subparagraph (c)1., but only with~~
 313 ~~respect to those insurers that select the additional coverage~~
 314 ~~option and meet the requirements of this subparagraph. The~~
 315 ~~claims paying capacity with respect to all other participating~~
 316 ~~insurers and limited apportionment companies that do not select~~
 317 ~~the additional coverage option shall be limited to their~~
 318 ~~reimbursement premium's proportionate share of the actual~~
 319 ~~claims-paying capacity otherwise defined in subparagraph (c)1.~~

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320 ~~and as provided for under the terms of the reimbursement~~
 321 ~~contract. The optional coverage retention as specified shall be~~
 322 ~~accessed before the mandatory coverage under the reimbursement~~
 323 ~~contract, but once the limit of coverage selected under this~~
 324 ~~option is exhausted, the insurer's retention under the mandatory~~
 325 ~~coverage will apply. This coverage will apply and be paid~~
 326 ~~concurrently with mandatory coverage. This subparagraph expires~~
 327 ~~on May 31, 2012.~~

328 (c)1- ~~The contract must shall~~ also provide that the
 329 obligation of the board with respect to all contracts covering a
 330 particular contract year ~~shall~~ not exceed the actual claims-
 331 paying capacity of the fund up to the limit specified in this
 332 paragraph.

333 1. Fund limits are as follow:

334 a. For the 2013-2014 contract year, the limit is \$16
 335 billion.

336 b. For the 2014-2015 contract year, the limit is \$15
 337 billion.

338 c. For the 2015-2016 contract year and subsequent contract
 339 years, the limit is \$14 billion, except as provided in
 340 subparagraph 2..

341 2. For contract years after the 2015-2016 contract year, if
 342 a limit of \$17 billion for that contract year, unless the board
 343 determines that there is sufficient estimated claims-paying
 344 capacity to provide \$14 \$17 billion of capacity for the current
 345 contract year and an additional \$14 \$17 billion of capacity for
 346 subsequent contract years. If the board makes such a
 347 determination, the estimated claims-paying capacity for the
 348 particular contract year shall be determined by adding to the

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 349 ~~\$14~~ ~~\$17~~ billion limit one-half of the fund's estimated claims-
 350 paying capacity in excess of ~~\$28~~ \$34 billion. However, the
 351 dollar growth in the limit may not increase in any year by an
 352 amount greater than the dollar growth of the balance of the fund
 353 as of December 31, ~~less any premiums or interest attributable to~~
 354 ~~optional coverage~~, as defined by rule, which occurred over the
 355 prior calendar year.

356 ~~3.2-~~ In May and October of the contract year, the board
 357 shall publish in the Florida Administrative Register Weekly a
 358 statement of the fund's estimated borrowing capacity, the fund's
 359 estimated claims-paying capacity, and the projected balance of
 360 the fund as of December 31. After the end of each calendar year,
 361 the board shall notify insurers of the estimated borrowing
 362 capacity, estimated claims-paying capacity, and the balance of
 363 the fund as of December 31 to provide insurers with data
 364 necessary to assist them in determining their retention and
 365 projected payout from the fund for loss reimbursement purposes.
 366 In conjunction with the development of the premium formula, as
 367 provided ~~for~~ in subsection (5), the board shall publish factors
 368 or multiples that assist insurers in determining their retention
 369 and projected payout for the next contract year. For all
 370 regulatory and reinsurance purposes, an insurer may calculate
 371 its projected payout from the fund as its share of the total
 372 fund premium for the current contract year multiplied by the sum
 373 of the projected balance of the fund as of December 31 and the
 374 estimated borrowing capacity for that contract year as reported
 375 under this subparagraph.

376 (6) REVENUE BONDS.—

377 (d) State Board of Administration Florida Hurricane

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 378 ~~Catastrophe Fund Finance Corporation.—~~
 379 1. In addition to the findings and declarations in
 380 subsection (1), the Legislature also finds and declares that:
 381 a. The public benefits corporation created under this
 382 paragraph will provide a mechanism ~~necessary~~ for the cost-
 383 effective and efficient issuance of bonds. This mechanism will
 384 eliminate unnecessary costs in the bond issuance process,
 385 thereby increasing the amounts available for ~~to pay~~
 386 reimbursement for losses to property sustained as a result of
 387 hurricane damage.
 388 b. The purpose of such bonds is to fund reimbursements
 389 through the Florida Hurricane Catastrophe Fund ~~to pay~~ for the
 390 costs of construction, reconstruction, repair, restoration, and
 391 other costs associated with damage to properties of
 392 policyholders of covered policies due to the occurrence of a
 393 hurricane.
 394 c. The efficacy of the financing mechanism will be enhanced
 395 by the corporation's ownership of the assessments, by the
 396 insulation of the assessments from possible bankruptcy
 397 proceedings, and by covenants of the state with the
 398 corporation's bondholders.
 399 ~~2.a-~~ The State Board of Administration Finance Corporation
 400 There is created, which is a public benefits corporation and,
 401 which is an instrumentality of the state, to be known as the
 402 Florida Hurricane Catastrophe Fund Finance Corporation. The
 403 State Board of Administration Finance Corporation is for all
 404 purposes the successor to the Florida Hurricane Catastrophe Fund
 405 Finance Corporation.
 406 ~~a.b-~~ The corporation shall operate under a five-member

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407 board of directors consisting of the Governor or a designee, the
 408 Chief Financial Officer or a designee, the Attorney General or a
 409 designee, the director of the Division of Bond Finance of the
 410 State Board of Administration, and the Chief Operating Officer
 411 ~~senior employee of the State Board of Administration responsible~~
 412 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.

413 ~~b.e.~~ The corporation has all of the powers of corporations
 414 under chapter 607 and under chapter 617, subject only to ~~the~~
 415 ~~provisions of~~ this subsection.

416 ~~c.d.~~ The corporation may issue bonds and engage in such
 417 other financial transactions as are necessary to provide
 418 sufficient funds to achieve the purposes of this section.

419 ~~d.e.~~ The corporation may invest in any of the investments
 420 authorized under s. 215.47.

421 ~~e.f.~~ There ~~is shall be~~ no liability on the part of, and no
 422 cause of action shall arise against, any board members or
 423 employees of the corporation for any actions taken by them in
 424 the performance of their duties under this paragraph.

425 3.a. In actions under chapter 75 to validate any bonds
 426 issued by the corporation, the notice required by s. 75.06 must
 427 ~~shall~~ be published in two newspapers of general circulation in
 428 the state, and the complaint and order of the court shall be
 429 served only on the State Attorney of the Second Judicial
 430 Circuit.

431 b. The state hereby covenants with holders of bonds of the
 432 corporation that the state will not repeal or abrogate the power
 433 of the board to direct the Office of Insurance Regulation to
 434 levy the assessments and to collect the proceeds of the revenues
 435 pledged to the payment of such bonds as long as ~~any~~ such bonds

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436 remain outstanding unless adequate provision has been made for
 437 the payment of such bonds pursuant to the documents authorizing
 438 the issuance of ~~the such~~ bonds.

439 ~~c.4.~~ The bonds of the corporation are not a debt of the
 440 state or of any political subdivision, and neither the state nor
 441 any political subdivision is liable on such bonds. The
 442 corporation ~~may not does not have the power to~~ pledge the
 443 credit, the revenues, or the taxing power of the state or of any
 444 political subdivision. The credit, revenues, or taxing power of
 445 the state or of any political subdivision ~~may shall~~ not be
 446 deemed to be pledged to the payment of any bonds of the
 447 corporation.

448 ~~d.5.a.~~ The property, revenues, and other assets of the
 449 corporation; the transactions and operations of the corporation
 450 and the income from such transactions and operations; and all
 451 bonds issued under this paragraph and interest on such bonds are
 452 exempt from taxation by the state and any political subdivision,
 453 including the intangibles tax under chapter 199 and the income
 454 tax under chapter 220. This exemption does not apply to any tax
 455 imposed by chapter 220 on interest, income, or profits on debt
 456 obligations owned by corporations other than the State Board of
 457 Administration ~~Florida Hurricane Catastrophe Fund~~ Finance
 458 Corporation.

459 ~~e.b.~~ All bonds of the corporation ~~are shall be and~~
 460 ~~constitute~~ legal investments without limitation for all public
 461 bodies of this state; for all banks, trust companies, savings
 462 banks, savings associations, savings and loan associations, and
 463 investment companies; for all administrators, executors,
 464 trustees, and other fiduciaries; for all insurance companies and

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465 associations and other persons carrying on an insurance
 466 business; and for all other persons who are now or may hereafter
 467 be authorized to invest in bonds or other obligations of the
 468 state and are ~~shall be and constitute~~ eligible securities to be
 469 deposited as collateral for the security of any state, county,
 470 municipal, or other public funds. This sub-subparagraph shall be
 471 considered ~~as~~ additional and supplemental authority and may
 472 ~~shall~~ not be limited without specific reference to this sub-
 473 subparagraph.

474 4.6. The corporation and its corporate existence shall
 475 continue until terminated by law; however, no such law shall
 476 take effect as long as the corporation has bonds outstanding
 477 unless adequate provision has been made for the payment of such
 478 bonds pursuant to the documents authorizing the issuance of such
 479 bonds. Upon termination of the existence of the corporation, all
 480 of its rights and properties in excess of its obligations shall
 481 pass to and be vested in the state.

482 ~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.-~~

483 ~~(a) Findings and intent.-~~

484 ~~1. The Legislature finds that:~~

485 ~~a. Because of temporary disruptions in the market for~~
 486 ~~catastrophic reinsurance, many property insurers were unable to~~
 487 ~~procure reinsurance for the 2006 hurricane season with an~~
 488 ~~attachment point below the insurers' respective Florida~~
 489 ~~Hurricane Catastrophe Fund attachment points, were unable to~~
 490 ~~procure sufficient amounts of such reinsurance, or were able to~~
 491 ~~procure such reinsurance only by incurring substantially higher~~
 492 ~~costs than in prior years.~~

493 ~~b. The reinsurance market problems were responsible, at~~

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494 ~~least in part, for substantial premium increases to many~~
 495 ~~consumers and increases in the number of policies issued by the~~
 496 ~~Citizens Property Insurance Corporation.~~

497 ~~c. It is likely that the reinsurance market disruptions~~
 498 ~~will not significantly abate prior to the 2007 hurricane season.~~

499 ~~2. It is the intent of the Legislature to create a~~
 500 ~~temporary emergency program, applicable to the 2007, 2008, and~~
 501 ~~2009 hurricane seasons, to address these market disruptions and~~
 502 ~~enable insurers, at their option, to procure additional coverage~~
 503 ~~from the Florida Hurricane Catastrophe Fund.~~

504 ~~(b) Applicability of other provisions of this section. All~~
 505 ~~provisions of this section and the rules adopted under this~~
 506 ~~section apply to the program created by this subsection unless~~
 507 ~~specifically superseded by this subsection.~~

508 ~~(c) Optional coverage. For the contract year commencing~~
 509 ~~June 1, 2007, and ending May 31, 2008, the contract year~~
 510 ~~commencing June 1, 2008, and ending May 31, 2009, and the~~
 511 ~~contract year commencing June 1, 2009, and ending May 31, 2010,~~
 512 ~~the board shall offer for each of such years the optional~~
 513 ~~coverage as provided in this subsection.~~

514 ~~(d) Additional definitions. As used in this subsection, the~~
 515 ~~term:~~

516 ~~1. "TEACO options" means the temporary emergency additional~~
 517 ~~coverage options created under this subsection.~~

518 ~~2. "TEACO insurer" means an insurer that has opted to~~
 519 ~~obtain coverage under the TEACO options in addition to the~~
 520 ~~coverage provided to the insurer under its reimbursement~~
 521 ~~contract.~~

522 ~~3. "TEACO reimbursement premium" means the premium charged~~

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523 by the fund for coverage provided under the TEACO options.

524 4. "TEACO retention" means the amount of losses below which
525 a TEACO insurer is not entitled to reimbursement from the fund
526 under the TEACO option selected. A TEACO insurer's retention
527 options shall be calculated as follows:

528 a. The board shall calculate and report to each TEACO
529 insurer the TEACO retention multiples. There shall be three
530 TEACO retention multiples for defining coverage. Each multiple
531 shall be calculated by dividing \$3 billion, \$4 billion, or \$5
532 billion by the total estimated mandatory FHCF reimbursement
533 premium assuming all insurers selected the 90 percent coverage
534 level.

535 b. The TEACO retention multiples as determined under sub-
536 subparagraph a. shall be adjusted to reflect the coverage level
537 elected by the insurer. For insurers electing the 90 percent
538 coverage level, the adjusted retention multiple is 100 percent
539 of the amount determined under sub-subparagraph a. For insurers
540 electing the 75 percent coverage level, the retention multiple
541 is 120 percent of the amount determined under sub-subparagraph
542 a. For insurers electing the 45 percent coverage level, the
543 adjusted retention multiple is 200 percent of the amount
544 determined under sub-subparagraph a.

545 c. An insurer shall determine its provisional TEACO
546 retention by multiplying its estimated mandatory FHCF
547 reimbursement premium by the applicable adjusted TEACO retention
548 multiple and shall determine its actual TEACO retention by
549 multiplying its actual mandatory FHCF reimbursement premium by
550 the applicable adjusted TEACO retention multiple.

551 d. For TEACO insurers who experience multiple covered

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552 events causing loss during the contract year, the insurer's full
553 TEACO retention shall be applied to each of the covered events
554 causing the two largest losses for that insurer. For other
555 covered events resulting in losses, the TEACO option does not
556 apply and the insurer's retention shall be one-third of the full
557 retention as calculated under paragraph (2)(c).

558 5. "TEACO addendum" means an addendum to the reimbursement
559 contract reflecting the obligations of the fund and TEACO
560 insurers under the program created by this subsection.

561 6. "FHCF" means the Florida Hurricane Catastrophe Fund.

562 ~~(e) TEACO addendum.~~

563 1. The TEACO addendum shall provide for reimbursement of
564 TEACO insurers for covered events occurring during the contract
565 year, in exchange for the TEACO reimbursement premium paid into
566 the fund under paragraph (f). Any insurer writing covered
567 policies has the option of choosing to accept the TEACO addendum
568 for any of the 3 contract years that the coverage is offered.

569 2. The TEACO addendum shall contain a promise by the board
570 to reimburse the TEACO insurer for 45 percent, 75 percent, or 90
571 percent of its losses from each covered event in excess of the
572 insurer's TEACO retention, plus 5 percent of the reimbursed
573 losses to cover loss adjustment expenses. The percentage shall
574 be the same as the coverage level selected by the insurer under
575 paragraph (4)(b).

576 3. The TEACO addendum shall provide that reimbursement
577 amounts shall not be reduced by reinsurance paid or payable to
578 the insurer from other sources.

579 4. The TEACO addendum shall also provide that the
580 obligation of the board with respect to all TEACO addenda shall

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 581 ~~not exceed an amount equal to two times the difference between~~
 582 ~~the industry retention level calculated under paragraph (2) (e)~~
 583 ~~and the \$3 billion, \$4 billion, or \$5 billion industry TEACO~~
 584 ~~retention level options actually selected, but in no event may~~
 585 ~~the board's obligation exceed the actual claims-paying capacity~~
 586 ~~of the fund plus the additional capacity created in paragraph~~
 587 ~~(g). If the actual claims-paying capacity and the additional~~
 588 ~~capacity created under paragraph (g) fall short of the board's~~
 589 ~~obligations under the reimbursement contract, each insurer's~~
 590 ~~share of the fund's capacity shall be prorated based on the~~
 591 ~~premium an insurer pays for its mandatory reimbursement coverage~~
 592 ~~and the premium paid for its optional TEACO coverage as each~~
 593 ~~such premium bears to the total premiums paid to the fund times~~
 594 ~~the available capacity.~~

595 5. The priorities, schedule, and method of reimbursements
 596 under the TEACO addendum shall be the same as provided under
 597 subsection (4).

598 6. A TEACO insurer's maximum reimbursement for a single
 599 event shall be equal to the product of multiplying its mandatory
 600 FHCF premium by the difference between its FHCF retention
 601 multiple and its TEACO retention multiple under the TEACO option
 602 selected and by the coverage selected under paragraph (4) (b),
 603 plus an additional 5 percent for loss adjustment expenses. A
 604 TEACO insurer's maximum reimbursement under the TEACO option
 605 selected for a TEACO insurer's two largest events shall be twice
 606 its maximum reimbursement for a single event.

607 ~~(f) TEACO reimbursement premiums.~~

608 1. Each TEACO insurer shall pay to the fund, in the manner
 609 and at the time provided in the reimbursement contract for

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 610 ~~payment of reimbursement premiums, a TEACO reimbursement premium~~
 611 ~~calculated as specified in this paragraph.~~

612 2. ~~The insurer's TEACO reimbursement premium associated~~
 613 ~~with the \$3 billion retention option shall be equal to 85~~
 614 ~~percent of a TEACO insurer's maximum reimbursement for a single~~
 615 ~~event as calculated under subparagraph (e)6. The TEACO~~
 616 ~~reimbursement premium associated with the \$4 billion retention~~
 617 ~~option shall be equal to 80 percent of a TEACO insurer's maximum~~
 618 ~~reimbursement for a single event as calculated under~~
 619 ~~subparagraph (e)6. The TEACO premium associated with the \$5~~
 620 ~~billion retention option shall be equal to 75 percent of a TEACO~~
 621 ~~insurer's maximum reimbursement for a single event as calculated~~
 622 ~~under subparagraph (e)6.~~

623 ~~(g) Effect on claims-paying capacity of the fund. For the~~
 624 ~~contract term commencing June 1, 2007, the contract year~~
 625 ~~commencing June 1, 2008, and the contract term beginning June 1,~~
 626 ~~2009, the program created by this subsection shall increase the~~
 627 ~~claims-paying capacity of the fund as provided in subparagraph~~
 628 ~~(4) (e)1. by an amount equal to two times the difference between~~
 629 ~~the industry retention level calculated under paragraph (2) (e)~~
 630 ~~and the \$3 billion industry TEACO retention level specified in~~
 631 ~~sub-subparagraph (d)4.a. The additional capacity shall apply~~
 632 ~~only to the additional coverage provided by the TEACO option and~~
 633 ~~shall not otherwise affect any insurer's reimbursement from the~~
 634 ~~fund.~~

635 ~~(17) TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.~~

636 ~~(a) Findings and intent.~~

637 1. ~~The Legislature finds that:~~

638 a. ~~Because of temporary disruptions in the market for~~

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 639 catastrophic reinsurance, many property insurers were unable to
 640 procure sufficient amounts of reinsurance for the 2006 hurricane
 641 season or were able to procure such reinsurance only by
 642 incurring substantially higher costs than in prior years.

643 ~~b. The reinsurance market problems were responsible, at
 644 least in part, for substantial premium increases to many
 645 consumers and increases in the number of policies issued by
 646 Citizens Property Insurance Corporation.~~

647 ~~e. It is likely that the reinsurance market disruptions
 648 will not significantly abate prior to the 2007 hurricane season.~~

649 ~~2. It is the intent of the Legislature to create options
 650 for insurers to purchase a temporary increased coverage limit
 651 above the statutorily determined limit in subparagraph (4)(c)1.,
 652 applicable for the 2007, 2008, 2009, 2010, 2011, 2012, and 2013
 653 hurricane seasons, to address market disruptions and enable
 654 insurers, at their option, to procure additional coverage from
 655 the Florida Hurricane Catastrophe Fund.~~

656 ~~(b) Applicability of other provisions of this section. All
 657 provisions of this section and the rules adopted under this
 658 section apply to the coverage created by this subsection unless
 659 specifically superseded by provisions in this subsection.~~

660 ~~(c) Optional coverage. For the 2009-2010, 2010-2011, 2011-
 661 2012, 2012-2013, and 2013-2014 contract years, the board shall
 662 offer, for each of such years, the optional coverage as provided
 663 in this subsection.~~

664 ~~(d) Additional definitions. As used in this subsection, the
 665 term:~~

666 ~~1. "FHCF" means Florida Hurricane Catastrophe Fund.~~

667 ~~2. "FHCF reimbursement premium" means the premium paid by~~

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 668 an insurer for its coverage as a mandatory participant in the
 669 FHCF, but does not include additional premiums for optional
 670 coverages.

671 ~~3. "Payout multiple" means the number or multiple created
 672 by dividing the statutorily defined claims-paying capacity as
 673 determined in subparagraph (4)(c)1. by the aggregate
 674 reimbursement premiums paid by all insurers estimated or
 675 projected as of calendar year-end.~~

676 ~~4. "TICL" means the temporary increase in coverage limit.~~

677 ~~5. "TICL options" means the temporary increase in coverage
 678 options created under this subsection.~~

679 ~~6. "TICL insurer" means an insurer that has opted to obtain
 680 coverage under the TICL options addendum in addition to the
 681 coverage provided to the insurer under its FHCF reimbursement
 682 contract.~~

683 ~~7. "TICL reimbursement premium" means the premium charged
 684 by the fund for coverage provided under the TICL option.~~

685 ~~8. "TICL coverage multiple" means the coverage multiple
 686 when multiplied by an insurer's reimbursement premium that
 687 defines the temporary increase in coverage limit.~~

688 ~~9. "TICL coverage" means the coverage for an insurer's
 689 losses above the insurer's statutorily determined claims-paying
 690 capacity based on the claims-paying limit in subparagraph
 691 (4)(c)1., which an insurer selects as its temporary increase in
 692 coverage from the fund under the TICL options selected. A TICL
 693 insurer's increased coverage limit options shall be calculated
 694 as follows:~~

695 ~~a. The board shall calculate and report to each TICL
 696 insurer the TICL coverage multiples based on 12 options for~~

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 697 increasing the insurer's FHCF coverage limit. Each TIGL coverage
 698 multiple shall be calculated by dividing \$1 billion, \$2 billion,
 699 \$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8
 700 billion, \$9 billion, \$10 billion, \$11 billion, or \$12 billion by
 701 the total estimated aggregate FHCF reimbursement premiums for
 702 the 2007-2008 contract year, and the 2008-2009 contract year.

b. For the 2009-2010 contract year, the board shall
 704 calculate and report to each TIGL insurer the TIGL coverage
 705 multiples based on 10 options for increasing the insurer's FHCF
 706 coverage limit. Each TIGL coverage multiple shall be calculated
 707 by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5
 708 billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10
 709 billion by the total estimated aggregate FHCF reimbursement
 710 premiums for the 2009-2010 contract year.

c. For the 2010-2011 contract year, the board shall
 712 calculate and report to each TIGL insurer the TIGL coverage
 713 multiples based on eight options for increasing the insurer's
 714 FHCF coverage limit. Each TIGL coverage multiple shall be
 715 calculated by dividing \$1 billion, \$2 billion, \$3 billion, \$4
 716 billion, \$5 billion, \$6 billion, \$7 billion, and \$8 billion by
 717 the total estimated aggregate FHCF reimbursement premiums for
 718 the contract year.

d. For the 2011-2012 contract year, the board shall
 720 calculate and report to each TIGL insurer the TIGL coverage
 721 multiples based on six options for increasing the insurer's FHCF
 722 coverage limit. Each TIGL coverage multiple shall be calculated
 723 by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5
 724 billion, and \$6 billion by the total estimated aggregate FHCF
 725 reimbursement premiums for the 2011-2012 contract year.

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 726 e. For the 2012-2013 contract year, the board shall
 727 calculate and report to each TIGL insurer the TIGL coverage
 728 multiples based on four options for increasing the insurer's
 729 FHCF coverage limit. Each TIGL coverage multiple shall be
 730 calculated by dividing \$1 billion, \$2 billion, \$3 billion, and
 731 \$4 billion by the total estimated aggregate FHCF reimbursement
 732 premiums for the 2012-2013 contract year.

f. For the 2013-2014 contract year, the board shall
 734 calculate and report to each TIGL insurer the TIGL coverage
 735 multiples based on two options for increasing the insurer's FHCF
 736 coverage limit. Each TIGL coverage multiple shall be calculated
 737 by dividing \$1 billion and \$2 billion by the total estimated
 738 aggregate FHCF reimbursement premiums for the 2013-2014 contract
 739 year.

g. The TIGL insurer's increased coverage shall be the FHCF
 741 reimbursement premium multiplied by the TIGL coverage multiple.
 742 In order to determine an insurer's total limit of coverage, an
 743 insurer shall add its TIGL coverage multiple to its payout
 744 multiple. The total shall represent a number that, when
 745 multiplied by an insurer's FHCF reimbursement premium for a
 746 given reimbursement contract year, defines an insurer's total
 747 limit of FHCF reimbursement coverage for that reimbursement
 748 contract year.

10. "TIGL options addendum" means an addendum to the
 750 reimbursement contract reflecting the obligations of the fund
 751 and insurers selecting an option to increase an insurer's FHCF
 752 coverage limit.

~~(c) TIGL options addendum.~~

1. The TIGL options addendum shall provide for

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 755 reimbursement of TIGL insurers for covered events occurring
 756 during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-
 757 2014 contract years in exchange for the TIGL reimbursement
 758 premium paid into the fund under paragraph (f) based on the TIGL
 759 coverage available and selected for each respective contract
 760 year. Any insurer writing covered policies has the option of
 761 selecting an increased limit of coverage under the TIGL options
 762 addendum and shall select such coverage at the time that it
 763 executes the FHCFF reimbursement contract.

764 2. The TIGL addendum shall contain a promise by the board
 765 to reimburse the TIGL insurer for 45 percent, 75 percent, or 90
 766 percent of its losses from each covered event in excess of the
 767 insurer's retention, plus 5 percent of the reimbursed losses to
 768 cover loss adjustment expenses. The percentage shall be the same
 769 as the coverage level selected by the insurer under paragraph
 770 (4) (b).

771 3. The TIGL addendum shall provide that reimbursement
 772 amounts shall not be reduced by reinsurance paid or payable to
 773 the insurer from other sources.

774 4. The priorities, schedule, and method of reimbursements
 775 under the TIGL addendum shall be the same as provided under
 776 subsection (4).

777 ~~(f) TIGL reimbursement premiums. Each TIGL insurer shall~~
 778 ~~pay to the fund, in the manner and at the time provided in the~~
 779 ~~reimbursement contract for payment of reimbursement premiums, a~~
 780 ~~TIGL reimbursement premium determined as specified in subsection~~
 781 ~~(5), except that a cash build-up factor does not apply to the~~
 782 ~~TIGL reimbursement premiums. However, the TIGL reimbursement~~
 783 ~~premium shall be increased in the 2009-2010 contract year by a~~

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 784 factor of two, in the 2010-2011 contract year by a factor of
 785 three, in the 2011-2012 contract year by a factor of four, in
 786 the 2012-2013 contract year by a factor of five, and in the
 787 2013-2014 contract year by a factor of six.

788 ~~(g) Effect on claims-paying capacity of the fund. For the~~
 789 ~~2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014~~
 790 ~~contract years, the program created by this subsection shall~~
 791 ~~increase the claims-paying capacity of the fund as provided in~~
 792 ~~subparagraph (4) (c) 1. by an amount not to exceed \$12 billion and~~
 793 ~~shall depend on the TIGL coverage options available and selected~~
 794 ~~for the specified contract year and the number of insurers that~~
 795 ~~select the TIGL optional coverage. The additional capacity shall~~
 796 ~~apply only to the additional coverage provided under the TIGL~~
 797 ~~options and shall not otherwise affect any insurer's~~
 798 ~~reimbursement from the fund if the insurer chooses not to select~~
 799 ~~the temporary option to increase its limit of coverage under the~~
 800 ~~FHCFF.~~

801 ~~(16)(18) FACILITATION OF INSURERS' PRIVATE CONTRACT~~
 802 ~~NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.-~~

803 (a) In addition to the legislative findings and intent
 804 provided elsewhere in this section:

805 1. The Legislature finds that:

806 ~~1.a.~~ Because a regular session of the Legislature begins
 807 approximately 3 months before the start of a contract year and
 808 ends approximately 1 month before the start of a contract year,
 809 participants in the fund always face the possibility that
 810 legislative actions will change the coverage provided or offered
 811 by the fund with only a few days or weeks of advance notice.

812 b. The timing issues described in sub-subparagraph a. can

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813 create uncertainties and disadvantages for the residential
814 property insurers that are required to participate in the fund
815 when such insurers negotiate for the procurement of private
816 reinsurance or other sources of capital.

817 c. Providing participating insurers with a greater degree
818 of certainty regarding the coverage provided or offered by the
819 fund and more time to negotiate for the procurement of private
820 reinsurance or other sources of capital will enable the
821 residential property insurance market to operate with greater
822 stability.

823 d. Increased stability in the residential property
824 insurance market serves a primary purpose of the fund and
825 benefits state Florida consumers by enabling insurers to operate
826 more economically. In years when reinsurance and capital markets
827 are experiencing a capital shortage, the last-minute rush by
828 insurers only weeks before the start of the hurricane season to
829 procure adequate coverage in order to meet their capital
830 requirements can result in higher costs that are passed on to
831 ~~Florida~~ consumers. However, if more time is available,
832 residential property insurers should experience greater
833 competition for their business with a corresponding beneficial
834 effect for ~~Florida~~ consumers.

835 2. It is the intent of the Legislature:

836 a. To provide insurers with the terms and conditions of the
837 reimbursement contract well in advance of the insurers' need to
838 finalize their procurement of private reinsurance or other
839 sources of capital, and thereby improve insurers' negotiating
840 position with reinsurers and other sources of capital.

841 ~~b.3. It is also the intent of the Legislature That the~~

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842 board publish the fund's maximum statutory limit of coverage and
843 the fund's total retention early enough for ~~that~~ residential
844 property insurers ~~to~~ can have the opportunity to better estimate
845 their coverage from the fund.

846 (b) The board shall adopt the reimbursement contract for a
847 particular contract year by February 1 of the immediately
848 preceding contract year. ~~However, the reimbursement contract~~
849 ~~shall be adopted as soon as possible in advance of the 2010-2011~~
850 ~~contract year.~~

851 (c) Insurers writing covered policies shall execute the
852 reimbursement contract by March 1 of the immediately preceding
853 contract year, and the contract shall have an effective date as
854 of the beginning of the contract year defined in paragraph
855 ~~(2)(e).~~

856 (d) The board shall publish in the Florida Administrative
857 Register ~~Weekly~~ the maximum statutory adjusted capacity for the
858 mandatory coverage for a particular contract year, the maximum
859 statutory coverage for any optional coverage for the particular
860 contract year, and the aggregate fund retention used to
861 calculate individual insurer's retention multiples for the
862 particular contract year ~~by no later than~~ January 1 of the
863 immediately preceding contract year.

864 Section 2. Subsection (5) of section 627.062, Florida
865 Statutes, is amended to read:

866 627.062 Rate standards.—

867 (5) With respect to a rate filing involving coverage of the
868 type for which the insurer is required to pay a reimbursement
869 premium to the Florida Hurricane Catastrophe Fund, the insurer
870 may fully recoup in its property insurance premiums any

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871 reimbursement premiums paid to the fund, together with
 872 reasonable costs of other reinsurance; ~~however, except as~~
 873 ~~otherwise provided in this section, the insurer may not recoup~~
 874 ~~reinsurance costs that duplicate coverage provided by the fund.~~
 875 An insurer may not recoup more than 1 year of reimbursement
 876 premium at a time. Any under-recoupment from the prior year may
 877 be added to the following year's reimbursement premium, and any
 878 over-recoupment must be subtracted from the following year's
 879 reimbursement premium.

880 Section 3. Subsection (10) of section 624.424, Florida
 881 Statutes, is amended to read:

882 624.424 Annual statement and other information.—

883 (10) Each insurer or insurer group doing business in this
 884 state shall file, on a quarterly basis, in conjunction with
 885 financial reports required by paragraph (1)(a), a supplemental
 886 report on an individual and group basis on a form prescribed by
 887 the commission with information on personal lines and commercial
 888 lines residential property insurance policies in this state. The
 889 supplemental report must ~~shall~~ include separate information for
 890 personal lines property policies and for commercial lines
 891 property policies and totals for each item specified, including
 892 premiums written for each of the property lines of business as
 893 described in ss. 215.555(2)(g) ~~215.555(2)(e)~~ and 627.351(6)(a).
 894 The report must ~~shall~~ include the following information for each
 895 county on a monthly basis:

896 (a) Total number of policies in force at the end of each
 897 month.

898 (b) Total number of policies canceled.

899 (c) Total number of policies nonrenewed.

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900 (d) Number of policies canceled due to hurricane risk.
 901 (e) Number of policies nonrenewed due to hurricane risk.
 902 (f) Number of new policies written.
 903 (g) Total dollar value of structure exposure under policies
 904 that include wind coverage.
 905 (h) Number of policies that exclude wind coverage.

906 Section 4. Subsection (5) of section 627.0629, Florida
 907 Statutes, is amended to read:

908 627.0629 Residential property insurance; rate filings.—

909 (5) In order to provide an appropriate transition period,
 910 an insurer may implement an approved rate filing for residential
 911 property insurance over a period of years. Such insurer must
 912 provide an informational notice to the office setting out its
 913 schedule for implementation of the phased-in rate filing. The
 914 insurer may include in its rate the actual cost of private
 915 market reinsurance that corresponds to available coverage of the
 916 Temporary Increase in Coverage Limits, TICL, from the Florida
 917 Hurricane Catastrophe Fund. ~~The insurer may also include the~~
 918 ~~cost of reinsurance to replace the TICL reduction implemented~~
 919 ~~pursuant to s. 215.555(17)(d)9.~~ However, this cost for
 920 reinsurance may not include any expense or profit load or result
 921 in a total annual base rate increase in excess of 10 percent.

922 Section 5. Paragraph (v) of subsection (6) of section
 923 627.351, Florida Statutes, is amended to read:

924 627.351 Insurance risk apportionment plans.—

925 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

926 (v)1. Effective July 1, 2002, policies of the Residential
 927 Property and Casualty Joint Underwriting Association become
 928 policies of the corporation. All obligations, rights, assets and

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 929 liabilities of the association, including bonds, note and debt
 930 obligations, and the financing documents pertaining to them
 931 become those of the corporation as of July 1, 2002. The
 932 corporation is not required to issue endorsements or
 933 certificates of assumption to insureds during the remaining term
 934 of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida
 936 Windstorm Underwriting Association are transferred to the
 937 corporation and become policies of the corporation. All
 938 obligations, rights, assets, and liabilities of the association,
 939 including bonds, note and debt obligations, and the financing
 940 documents pertaining to them are transferred to and assumed by
 941 the corporation on July 1, 2002. The corporation is not required
 942 to issue endorsements or certificates of assumption to insureds
 943 during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the
 945 Residential Property and Casualty Joint Underwriting Association
 946 shall take all actions necessary to further evidence the
 947 transfers and provide the documents and instruments of further
 948 assurance as may reasonably be requested by the corporation for
 949 that purpose. The corporation shall execute assumptions and
 950 instruments as the trustees or other parties to the financing
 951 documents of the associations ~~Florida Windstorm Underwriting~~
 952 ~~Association or the Residential Property and Casualty Joint~~
 953 ~~Underwriting Association~~ may reasonably request to further
 954 evidence the transfers and assumptions, which transfers and
 955 assumptions, however, are effective on the date provided under
 956 this paragraph ~~whether or not, and~~ regardless of the date on
 957 which, the assumptions or instruments are executed by the

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 958 corporation. Subject to the relevant financing documents
 959 pertaining to their outstanding bonds, notes, indebtedness, or
 960 other financing obligations, the moneys, investments,
 961 receivables, choses in action, and other intangibles of the
 962 Florida Windstorm Underwriting Association shall be credited to
 963 the coastal account of the corporation, and those of the
 964 personal lines residential coverage account and the commercial
 965 lines residential coverage account of the Residential Property
 966 and Casualty Joint Underwriting Association shall be credited to
 967 the personal lines account and the commercial lines account,
 968 respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property
 970 insurance coverage who would otherwise have been eligible for
 971 coverage in the Florida Windstorm Underwriting Association is
 972 eligible for coverage from the corporation as provided in this
 973 subsection.

5. The transfer of all policies, obligations, rights,
 975 assets, and liabilities from the Florida Windstorm Underwriting
 976 Association to the corporation and the renaming of the
 977 Residential Property and Casualty Joint Underwriting Association
 978 as the corporation does not affect ~~the~~ coverage with respect to
 979 a covered policy ~~policies~~ as defined in s. 215.555(2) ~~(e)~~
 980 provided to these entities by the Florida Hurricane Catastrophe
 981 Fund. The coverage provided by the fund to the Florida Windstorm
 982 Underwriting Association based on its exposures as of June 30,
 983 2002, and each June 30 thereafter shall be redesignated as
 984 coverage for the coastal account of the corporation.
 985 Notwithstanding any other provision of law, the coverage
 986 provided by the fund to the Residential Property and Casualty

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 987 Joint Underwriting Association based on its exposures as of June
 988 30, 2002, and each June 30 thereafter shall be transferred to
 989 the personal lines account and the commercial lines account of
 990 the corporation. Notwithstanding any other provision of law, the
 991 coastal account shall be treated, for all Florida Hurricane
 992 Catastrophe Fund purposes, as if it were a separate
 993 participating insurer with its own exposures, reimbursement
 994 premium, and loss reimbursement. Likewise, the personal lines
 995 and commercial lines accounts shall ~~be viewed together~~, for all
 996 fund purposes, be viewed together as if the two accounts were
 997 one and represent a single, separate participating insurer with
 998 its own exposures, reimbursement premium, and loss
 999 reimbursement. The coverage provided by the fund to the
 1000 corporation shall constitute and operate as a full transfer of
 1001 coverage from the Florida Windstorm Underwriting Association and
 1002 Residential Property and Casualty Joint Underwriting Association
 1003 to the corporation.

1004 Section 6. Transitional provisions.-In order to implement
 1005 the revisions to section 215.555, Florida Statutes, as provided
 1006 in section 1 of this act, the State Board of Administration
 1007 shall adopt such revised or amended rules and forms, or addenda
 1008 thereto, as necessary to ensure that these statutory changes
 1009 apply to each participating insurer's Florida Hurricane
 1010 Catastrophe Fund reimbursement contract for the contract year
 1011 commencing on June 1, 2013. The board may use the emergency
 1012 rulemaking process as needed to assure timely adoption of these
 1013 rules, forms, and addenda. Such rules, forms, and addenda
 1014 adopted under the authority of this section supersede previously
 1015 adopted rules, forms, and addenda applicable to the 2013-2014

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 1016 contract year to the extent of any conflict therewith.
 1017 Section 7. This act shall take effect July 1, 2013.

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: SPB 7152

INTRODUCER: For consideration by the Committee on Banking and Insurance

SUBJECT: Motor Vehicle Liability Insurance

DATE: April 16, 2013

REVISED: 4/17/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u></u>	<u>Submitted as Committee Bill</u>
2.	<u></u>	<u></u>	<u></u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

SPB 7152 revises the financial responsibility and security requirements that apply to every owner or operator of a motor vehicle registered in Florida. Under the bill, each registrant must comply with the requirement to maintain bodily injury liability (BI) coverage. The bill requires a driver to maintain the ability to respond in damages for the driver's liability from a motor vehicle accident in the following amounts:

- Property Damage – At least \$10,000 in any one crash.
- Bodily Injury - \$25,000 for bodily injury or death in any one crash and \$50,000 for bodily injury or death of two or more persons in any one crash (subject to the \$25,000 limit on an individual).

SPB 7152 repeals the Florida Motor Vehicle No-Fault Law, effective January 1, 2014, at which point personal injury protection coverage will no longer be required. Motor vehicle insurance policies issued or renewed on or after January 1, 2014, may not include PIP. A policy issued prior to January 1, 2014, that provides PIP coverage but lacks the required BI coverage is deemed to meet the financial responsibility and security requirements until the policy is renewed or cancelled. Such policies will provide PIP benefits to the insured. Insurers must allow each insured to change his or her policy to add the required bodily injury coverage and eliminate PIP coverage on or after January 1, 2014.

Other provisions of the bill include:

- Provides that a policy with at least \$60,000 in combined property damage and bodily injury liability coverage satisfies the financial responsibility requirements;
- Requires a deposit of \$60,000 in cash, securities, or trust funds with the DHSMV in order to obtain a certificate of deposit from the department that satisfies proof of financial responsibility requirements.
- Authorizing electronic proof of insurance and specifying that presenting an electronic device to law enforcement does not constitute consent to otherwise search the device;
- Requiring insurers to report to the Department of Highway Safety and Motor Vehicles (DHSMV) the issuance of a new BI or PD motor vehicle policy within 10 days;
- Increases license and registration reinstatement fees;
- Eliminates the ability of an owner or operator of a motor vehicle (other than a for-hire transportation vehicle) to meet financial responsibility requirements by posting a surety bond with the DHSMV;
- Revises the option to prove financial responsibility by furnishing a certificate of self-insurance showing a deposit of cash or securities;
- Revises the requirements for qualifying as a self-insurer for purposes of satisfying financial responsibility;
- Require motorcycles to comply with financial responsibility requirements; and
- Specifies that all suspensions for failure to maintain required security as required by law prior to January 1, 2014, remain in full force and effect after that date.

The effective date of the bill is January 1, 2014, except as otherwise specified.

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.071, 324.161, 324.171, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 626.9895, 627.06501, 627.0652, 627.0653, 627.4132, 627.6482, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.732, 627.733, 627.734, 627.7401, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

The bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.736, 627.737, 627.739, 627.7403, 627.7405, 627.7407

The bill creates the following section of the Florida Statutes: 627.7355

II. Present Situation:

Florida Motor Vehicle No-Fault Law

Under the Florida Motor Vehicle No-Fault Law (No-Fault law)¹, owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.² Policyholders are indemnified by their own

¹ Sections 627.730-627.7405, F.S.

² Section 627.733, F.S.

insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.³ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.⁴ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.⁵ The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider determines an emergency medical condition did not exist.⁶ Personal injury protection coverage provides reimbursement for 80 percent of reasonable medical expenses,⁷ 60 percent of loss of income,⁸ 100 percent of replacement services,⁹ for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.¹⁰

PIP Medical Benefits

The 2012 Legislature revised the provision of Personal Injury Protection medical benefits under the Florida Motor Vehicle No-Fault Law, effective January 1, 2013.¹¹ To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.¹² Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider.¹³ Follow up services and care requires a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.¹⁴

Personal Injury Protection medical benefits now have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.¹⁵ An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of

³ See s. 627.731, F.S.

⁴ Section 627.737, F.S.

⁵ See sections 324.022, F.S. and 627.733, F.S.

⁶ Section 627.736(1), F.S.

⁷ Section 627.736(1)(a), F.S.

⁸ Section 627.736(1)(b), F.S.

⁹ Id.

¹⁰ Section 627.736(1)(c), F.S.

¹¹ Chapter 2012-197, L.O.F. (CS/CS/HB 119)

¹² Section 627.736(1)(a), F.S.

¹³ Section 627.736(1)(a)1., F.S.

¹⁴ Section 627.736(1)(a)2., F.S.

¹⁵ Section 627.736(a)(a)3., F.S.

immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.¹⁶ If a provider who rendered treatment or services determines that the insured did not have an emergency medical condition, the PIP medical benefit limit is \$2,500.¹⁷ Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.¹⁸

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

Medical Fee Limits for PIP Reimbursement

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For services supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of Medicare Part B;
- For durable medical equipment, 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B;
- For all other medical services, supplies, and care, 200 percent of the participating physicians fee schedule of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.¹⁹ Also, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.²⁰

¹⁶ Section 627.732(16), F.S.

¹⁷ Section 627.736(1)(a)4., F.S.

¹⁸ Section 627.736(a)(a)5., F.S.

¹⁹ Section 627.736(5)(a)3., F.S.

²⁰ Section 627.736(5)(a)4., F.S.

CS/CS/HB 119 revised the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The bill clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The bill also provided that Medicare fee schedule in effect on March 1 is applicable for the remainder of that year.²¹ Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit.²² The bill also requires insurers to include notice of the fee schedule in their policies.²³

Attorney Fees

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.²⁴ CS/CS/HB 119 amended provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers.²⁵ The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.²⁶ The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.²⁷

Mandatory Rate Filings and Data Call

CS/CS/HB 119 required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.²⁸ The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.²⁹ The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from CS/CS/HB 119 against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile personal injury protection insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. According to information provided by the OIR, 10 of the 25 largest motor vehicle insurers achieved a 10 percent reduction in PIP premiums. The weighted average of the PIP premium reduction of these carriers was approximately 2 percent.

²¹ Section 627.736(5)(a)2., F.S.

²² Section 627.736(5)(a)3., F.S.

²³ Section 627.736(5)(a)5., F.S.

²⁴ Section 627.736(8), F.S.

²⁵ See id.

²⁶ See id.

²⁷ See id.

²⁸ Section 15, Ch. 2012-197, L.O.F.

²⁹ Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012).

A second rate filing must be made by January 1, 2014, that provides at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explain in detail its reasons for failing to achieve those savings. The Office of Insurance Regulation must order an insurer to stop writing new PIP policies if the insurer requests a rate in excess of the statutorily required rate reduction and fails to provide a detailed explanation for that failure. The Office of Insurance Regulation must perform a comprehensive PIP data call and publish the results by January 1, 2015.³⁰ The data call will analyze the impact of the act's reforms on the PIP insurance market.

Motor Vehicle Insurance Fraud

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That three-year amount was nearly doubled by the 7,748 PIP fraud referrals received by the division during the 2011/2012 fiscal year. Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

"Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.³¹ All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.³² The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

³⁰ Section 16, Ch. 2012-197, L.O.F.

³¹ Section 627.736(4)(i), F.S.

³² Section 627.736(5)(h), F.S.

Financial Responsibility Law

Florida's financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.³³ The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.³⁴ At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.³⁵ The driver's license and registration driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.³⁶ A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.³⁷

Review of Auto Insurance Systems

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in the accident.³⁸ Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as "add-on" states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.³⁹ Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.⁴⁰ All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims and the use of fee schedules or treatment protocols, vary widely among these entities. Each state has either a "verbal" or "monetary" threshold regarding the seriousness of a person's injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory

³³ See Chapter 324, F.S.

³⁴ Section 324.011, F.S.

³⁵ Section 324.022, F.S.

³⁶ Section 324.0221(2), F.S.

³⁷ Section 324.0221(3), F.S.

³⁸ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

³⁹ Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

⁴⁰ Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage or traditional tort liability coverage which does not include PIP benefits.

Auto Coverage Requirements

Forty-eight states require car owners to buy a minimum amount of bodily injury liability (BI) and property damage liability (PD) insurance coverage before they can legally drive their vehicles.⁴¹ Further, all states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states. Florida has a requirement for bodily injury liability coverage for persons subject to the Financial Responsibility Law of \$10,000 per person, \$20,000 per accident, and \$10,000 in the event of damage to property of others, or a \$30,000 combined (BI/PD) single limit. A Florida driver is not required to maintain BI coverage until he or she is involved in a crash or convicted of certain traffic offenses

Tort-Based Motor Vehicle Insurance Jurisdictions

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

If Florida repeals PIP and mandates BI coverage, it will be important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party’s BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. If the at-fault party is uninsured (or underinsured), the not at-fault party would utilize his/her UM coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party’s PD coverage would compensate for physical damages to the not at-fault driver’s vehicle. If the not-at-fault party has Med Pay coverage, it can be used to cover his or her own medical expenses, which could then be subrogated into the BI claim by the not at-fault driver’s insurer.

With respect to the at-fault party, that driver’s own health insurance, if available, would cover his or her own expenses. Med Pay coverage, if purchased, would pay for his/her medical expenses up to the Med Pay limits, at which point health insurance would apply. In the event the at-fault party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider.

⁴¹ New Hampshire does not require auto insurance if the driver complies with alternative financial responsibility requirements. Florida only requires BI coverage after a driver is involved in a crash.

For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion due to the fact that only non-family occupants can pursue a tort claim. Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

III. Effect of Proposed Changes:

Motor Vehicle Financial Responsibility Law

Section 1. Amends s. 316.646, F.S., to authorize electronic proof of insurance and specify that presenting an electronic device to law enforcement does not constitute consent to otherwise search the device. The officer is not responsible for any damage to the device. DHSMV must adopt rules to administer the proof of insurance requirements.

Section 2. Amends s. 324.011, F.S., to revise the purpose of the motor vehicle financial responsibility law.

Section 3. Amends s. 324.021, F.S., to amend the definition of "proof of financial responsibility" to mean the ability to respond in damages for liability in the amount of \$25,000 for bodily injury or death to another and, subject to the \$25,000 limit for one person, in the amount of \$50,000 for bodily injury or death of two or more people in one crash.

Section 4. Amends s. 324.022, F.S., to revise the financial responsibility requirements that apply to every owner or operator of a motor vehicle registered in Florida. Under the bill, each registrant of a motor vehicle must maintain BI coverage and PD coverage. The bill deletes the exemption from financial responsibility requirements of self-propelled motor vehicles with less than four wheels such as motorcycles. Under current law, BI coverage is required once the operator of a motor vehicle is involved in a crash or convicted of certain traffic offenses (such as driving under the influence). The bill requires a driver to maintain the ability to respond in damages for the driver's liability from a motor vehicle accident in the following amounts:

- Property Damage – At least \$10,000 in any one crash.
- Bodily Injury - \$25,000 for bodily injury or death in any one crash and \$50,000 for bodily injury or death of two or more persons in any one crash (subject to the \$25,000 limit on an individual).

The financial responsibility requirements may be met by maintaining an insurance policy providing coverage in at least the minimum mandatory amounts for property damage coverage and bodily injury liability coverage. A policy that provides at least \$60,000 for combined property damage and bodily injury liability also satisfies the financial responsibility requirements.

Under current law, all owners and operators of private passenger motor vehicles are required to maintain:

- Property Damage – At least \$10,000 in any one crash.
- Personal Injury Protection – At least \$10,000 for a first-party insured and \$20,000 for two or more first-party insureds (subject to the \$10,000 limit on an individual).
- The operator of a motor vehicle who is involved in a crash must subsequently show proof of financial responsibility to pay for bodily injury damages in future crashes in at least \$10,000 for bodily injury or death in one crash and \$20,000 for bodily injury or death of two or more persons in one crash (subject to the \$10,000) limit on liability.

The financial responsibility requirements may be met by maintaining an insurance policy providing coverage in at least the minimum mandatory amounts. A policy providing at least \$30,000 in combined property damage and bodily injury liability coverage meets the requirement for property damage liability coverage.

Section 5. Amends s. 324.0221, F.S., to require insurers to report to the DHSMV the issuance of a new BI or PD motor vehicle policy within 10 days. Under current law, the insurer has 30 days to report a new PIP or PD policy to the department.

Section 6. Amends s. 324.023, F.S., regarding the financial responsibility requirements for owners or operators who commit a DUI, to conform to the elimination of posting a bond as a means of complying with the financial responsibility laws.

Section 7. Amends s. 324.031, F.S., to eliminate the ability of an owner or operator of a motor vehicle (other than a for-hire transportation vehicle) to meet financial responsibility requirements by posting a surety bond with the DHSMV. Representatives from the DHSMV recommend the deletion of this option because it is not currently used.

This section also revises the option to prove financial responsibility by furnishing a certificate of self-insurance showing a deposit of cash or securities, by requiring a deposit of \$60,000 for each vehicle owned, up to a maximum of \$240,000. Current law requires a deposit of \$30,000 for each vehicle owned, up to a maximum of \$120,000. Increasing the deposit requirements reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

Section 8. Amends s. 324.071, F.S., to revise the amount of license or registration reinstatement fees, from \$15 to the amounts specified in s. 324.0221, F.S., (\$150 for the first reinstatement, \$250 for the second, and \$500 for any subsequent reinstatement).

Section 9. Amends s. 324.161, F.S., to require a deposit of \$60,000 in cash, securities, or trust funds with the DHSMV in order to obtain a certificate of deposit from the department that satisfies proof of financial responsibility requirements. Current law requires a \$30,000 deposit. Increasing the deposit requirements reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

Section 10. Amends s. 324.171, F.S., to revise the requirements for qualifying as a self-insurer for purposes of satisfying financial responsibility. A private individual with private passenger vehicles must have a net unencumbered worth of at least \$60,000. Current law requires an unencumbered net worth of \$40,000. A person such as a firm, partnership, association, corporation who is not a natural person must possess a net unencumbered worth of at least \$60,000 for the first motor vehicle (\$40,000 in current law) and \$30,000 for each additional motor vehicle (\$20,000 in current law) or maintain sufficient net worth, as determined by the DHSMV, to be financially responsible for losses. Increasing the net worth requirement reflects the \$25,000/\$50,000 BI requirement imposed by the bill, which is higher than \$10,000/\$20,000 PIP requirement under current law.

Repeal of the Florida Motor Vehicle No-Fault Law and Revision of Security Requirements

Section 11. Repeals s. 627.730, F.S., which names ss. 627.730-627.7405, F.S., the “Florida Motor Vehicle No-Fault Law.”

Section 12. Repeals s. 627.731, F.S., which provides the purpose of the Florida Motor Vehicle No-Fault Law.

Section 13. Repeals s. 627.7311, F.S., which includes the provisions of the Florida Motor Vehicle No-Fault Law in all motor vehicle insurance policies, regardless of their express inclusion.

Section 14. Amends s. 627.732, F.S., to repeal definitions unique to provisions of the Florida Motor Vehicle No-Fault law that govern personal injury protection coverage. The bill retains definitions for terms used in ss. 627.733 – 627.7355, F.S., relating to the security requirements placed on owners and registrants of motor vehicles.

The definition of “motor vehicle” is retained and amended to delete language limiting the term to self-propelled vehicles with four or more wheels. The revision of this definition will require motorcycles to comply with security requirements, likely by obtaining an insurance policy that provides bodily injury and property damage liability coverages in at least the limits required by s. 324.022, F.S. The bill retains definitions of “private passenger motor vehicle,” “commercial motor vehicle,” “owner,” and “knowingly.”

Section 15. Amends s. 627.733, F.S., to revise the required security that each owner or registrant of a motor vehicle (other than a school bus or limousine) must maintain. The owner or registrant must maintain the security required by s. 324.022, F.S., which is the ability to respond in damages for at least \$10,000 for property damage and \$25,000 for bodily injury incurred by one person and subject to the individual BI limit, \$50,000 for bodily injury incurred by more than one person. The section eliminates the requirement that drivers must maintain personal injury protection.

Section 16. Amends s. 627.734, F.S., to conform the proof of security requirements to the repeal of the Florida Motor Vehicle No-Fault Law and the requirement to maintain bodily injury liability coverage.

Section 17. Amends s. 627.7401, F.S., and renumbers it as s. 627.7341, F.S., to require the Financial Services Commission to adopt a form to notify insureds of the security requirements of s. 627.733, F.S., and the proof of security requirement under s. 627.734. The notice must describe the benefits provided by bodily injury liability coverage and property damage liability coverage. Under current law, the notice serves to notify insureds of their right to receive PIP benefits.

Section 18. Creates s. 627.7355, F.S., which requires all claims arising out of the plaintiff's injuries in any action for which security has been provided as required (PD coverage with limits of at \$10,000 and BI coverage with limits of at least \$25,000/\$50,000) to be brought together. This is currently required for actions brought under the No-Fault law in s. 627.736(15), F.S.

Section 19. Repeals s. 627.736, F.S., which sets forth the benefits provided by personal injury protection coverage, the procedure for payment of PIP benefits, the PIP fee schedule, discovery of facts about an injured person under PIP, mental and physical examinations, attorney fees, demand letters and other provisions.

Section 20. Repeals s. 627.737, F.S., which contains the tort exemption for damages payable by PIP and the "verbal threshold" that limits the ability of a plaintiff to recover tort damages for pain and suffering.

Under the current No-Fault law, an at-fault driver is not liable for the bodily injury or death of another person up to the \$10,000 PIP policy limit. The at-fault driver is responsible for damages in excess of the PIP policy limit. Current law also prohibits recovery of pain and suffering damages unless the injury or disease caused by the at-fault driver results in death, significant and permanent loss of an important body function, permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement), or significant and permanent scarring or disfigurement.

Section 21. Repeals s. 627.739, F.S., which governs the deductibles that may apply to personal injury protection and how the deductible is applied. Current law requires insurers to offer deductibles of \$200, \$500, and \$1,000.

Section 22. Repeals s. 627.7403, F.S., which requires mandatory joinder of derivative claims. A similar provision is created in s. 627.7355, F.S., by Section 26 of the bill.

Section 23. Repeals s. 627.7405, F.S., which details insurers' right of reimbursement under the Florida Motor Vehicle No-Fault Law.

Section 24. Repeals s. 627.7407, F.S., which specifies how to apply Florida Motor Vehicle No-Fault Law in the aftermath of the re-enactment of the law on January 1, 2008.

Section 25. Repeals s. 15 and s. 16 of chapter 2012-197, Laws of Florida. Section 15 requires insurers to make rate filings that provide specified premium reductions or provide a detailed explanation why the premium reduction cannot be provided. Section 16 requires the Office of Insurance Regulation to perform a PIP data call and publish the results by January 1, 2015.

Technical Changes

Sections 26-57. Makes technical and conforming changes to the following statutes: 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 626.9895, 627.06501, 627.0652, 627.0653, 627.4132, 627.6482, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234, F.S.

Application of Bill

Section 58. Specifies how the provisions of the bill will be applied and requires insurers to provide notice to policyholders regarding the repeal of the Florida Motor Vehicle No-Fault Law and the requirement to maintain security for bodily injury liability. The bill will be applied as follows:

- Effective January 1, 2014, any person subject to the financial responsibility requirements of s. 324.022, F.S., and the security requirements of s. 627.733, F.S., must maintain “minimum security requirements” of at least:
 - \$10,000 related to property damage of others caused by an insured.
 - \$25,000 related to bodily injury of one person caused by an insured.
 - \$50,000 related to bodily injury of more than one person caused by the insured, subject to the \$25,000 limit on an individual.
- Effective January 1, 2014, all new and renewal motor vehicle policies must provide property damage coverage with limits of at least \$10,000 and bodily injury coverage with limits of at least \$25,000/\$50,000.
- On or after January 1, 2014, an existing motor vehicle policy issued prior to that date that provides PIP and PD coverage that met the requirements of s. 324.022, F.S., and s. 627.733, F.S., on December 31, 2013, but subsequently will not meet minimum security requirements (because it lacks the necessary BI coverage) shall be deemed to meet the security requirements of s. 627.022, F.S., and s. 627.733, F.S., until the policy is renewed, nonrenewed, or cancelled on or after January 1, 2014.
- Each insurer must allow each insured to change his or her policy to add the required bodily injury coverage and eliminate PIP coverage. The insurer may not charge an additional fee to the policyholder that is applicable solely to a change in coverage, however, this may not be interpreted to prevent the insurer from charging an appropriate additional premium.
- All motor vehicle insurance policies issued or renewed on or after January 1, 2014, may not include PIP.
- No later than September 1, 2013, each motor vehicle insurer must provide notice of the provisions of this section to each insured.

This section is effective upon the act becoming law.

Existing Suspensions for Failure to Maintain Security

Section 59. Specifies that all suspensions for failure to maintain required security as required by law prior to January 1, 2014, remain in full force and effect after that date.

Effective Date

Section 60. Except as otherwise provided, the act is effective January 1, 2014.

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:

In *Myers v. McCarty*, Case No. 2013-CA-73 (Fla. 2nd Cir.), the Court granted a temporary injunction against the provisions of chapter 2012-197, L.O.F., which require a finding of an emergency medical condition as a prerequisite for the payment of PIP benefits or that prohibit the payment of benefits for services provided by acupuncturists, chiropractors, and massage therapists. In the Order Granting in Part Motion for Temporary Injunction, the Court found that the No-Fault law likely violates the constitutional right of access to the courts found in Article I, Section 21 of the Florida Constitution. The Court noted that the No-Fault law limits the right of a person injured in a motor vehicle accident to seek redress in the courts, but had been previously found by the Florida Supreme Court to be a “reasonable alternative” to the common law tort system.⁴² The injunction was granted because the Court determined that the provisions requiring determination of an emergency medical condition prior to receiving PIP benefits and prohibiting reimbursement of certain types of treatment resulted in a No-Fault system that does not provide a reasonable alternative to the remedies available under common law. A Notice of Appeal of the temporary injunction was filed with the Court on March 21, 2013, which constitutes an automatic stay of the circuit court’s order pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure.

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

The SPB increases the fees for reinstatement of driver’s licenses and motor vehicle registrations. Under current law, a \$15 fee must be paid to during reinstatement. Under the SPB, the fees are \$150 for the first reinstatement, \$250 for the second, and \$500 for any subsequent reinstatement.

⁴² *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974).

B. Private Sector Impact:

Repealing No-Fault and returning to a tort system eliminates the requirement that motorists purchase PIP and that insurers provide this coverage, replacing it with a requirement to purchase bodily injury coverage. Insureds who currently have BI coverage with limits of at least \$25,000/\$50,000 should pay a lower premium due to the removal of PIP coverage from the policy.

Representatives from the OIR have provided the Banking and Insurance Committee with calculations of the premium impact of repealing No-Fault and mandating \$25,000/\$50,000 in BI liability coverage for various types of drivers with five sample insurance companies⁴³ in seven locations⁴⁴ of the state.⁴⁵ The OIR calculations that policyholders that currently have “full coverage”⁴⁶ including BI coverage of at least \$25,000/\$50,000 should see a premium reduction ranging from approximately 3.2 percent to 11.2 percent.

Insureds who currently purchase the minimum required PIP and PD coverages but do not have BI coverage generally will incur increases through the bill, though drivers in densely populated locations that have high amounts of PIP-related fraud may pay lower premiums. A review of the OIR calculations shows that the highest PIP premiums are in densely populated areas that have historically experienced high levels of PIP-related fraud such as Central Tampa and Central Miami. Representatives from the OIR indicate that approximately 90 percent of Florida insureds have BI coverage.

Another effect of switching to a tort system is that loss costs currently attributable to PIP will be absorbed by other coverages. A 2007 study by Pinnacle Actuarial Services (Pinnacle) estimated that 79.5 percent of prior PIP losses would be transferred to other coverages within the auto insurance system, losses shifting into the health care system would be 16.4 percent, while 4.1 percent of losses would not be covered by any type of insurance.

C. Government Sector Impact:

The DHSMV asserts that the bill results in a negative fiscal impact of approximately \$25 million related to the January 1, 2014, effective date for repealing the No-Fault Law and mandating BI coverage. The Department does not have a system in place to process suspensions for failure to carry BI insurance and is indicating it could not modify its systems to process BI suspensions until July 1, 2014. Accordingly, the DHSMV intends to stop enforcing the financial responsibility laws until July 1, 2014. The department’s anticipated decision to stop enforcing the financial responsibility requirements would lead to the following losses in revenue to the Highway Safety Operating Trust Fund due to the inability to collect reinstatement fees from January 1, 2014 to July 1, 2014:

⁴³ Allstate Fire & Casualty, Direct General, GEICO General, Progressive American, and State Farm.

⁴⁴ Central Fort Lauderdale, Central Jacksonville, Pensacola, Central Tampa, Tallahassee, Central Miami, and Central Florida.

⁴⁵ Office of Insurance Regulation, *OIR Presentation on Personal Injury Protection*, (April 2, 2013). On file with the Banking and Insurance Committee.

⁴⁶ Full coverage includes PIP, BI, PD, Uninsured Motorist, Medical Payments, Collision, and Comprehensive coverages.

- Fiscal Year 2013-2014: a loss of \$16,613,005
- Fiscal Year 2014-2015: a loss of \$8,081,665
- Fiscal Year 2015-2016: a loss of \$476,670

The OIR will likely experience an increase in its workload related to motor vehicle insurance form and rate filings due to the repeal of PIP and the creation of a BI mandate. Eliminating the comprehensive PIP data call and report that the OIR must publish by January 1, 2015, may reduce the workload of the office.

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.



818684

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/16/2013	.	
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	.	
	.	

The Committee on Banking and Insurance (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 19
and insert:

(1) The following information regarding personal injury protection, bodily injury liability, and property damage liability insurance policies held by the department is

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 5 - 6
and insert:



818684

13

liability insurance;



357706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Simmons) recommended the following:

Senate Amendment

Delete line 199
and insert:
~~has four or more wheels and that is of a type~~ designed and

FOR CONSIDERATION By the Committee on Banking and Insurance

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20137152__

A bill to be entitled

An act relating to motor vehicle liability insurance; amending s. 316.646, F.S.; authorizing the use of an electronic device to provide proof of insurance; authorizing the Department of Highway Safety and Motor Vehicles to adopt rules; amending s. 324.011, F.S.; revising legislative intent with respect to financial responsibility for the damages caused by the operation of a motor vehicle; amending ss. 324.021 and 324.022, F.S.; increasing financial responsibility limits with respect to bodily injury or death; conforming provisions to changes made by the act; amending s. 324.0221, F.S.; requiring insurers to submit information to the Department of Highway Safety and Motor Vehicles and to notify insureds about bodily injury insurance rather than personal injury protection coverage; amending s. 324.023, F.S.; conforming a cross-reference; amending s. 324.031, F.S.; deleting the requirement that the owner of a for-hire vehicle post a bond to prove financial responsibility; increasing the financial responsibility limits for motor vehicle liability; amending s. 324.071, F.S.; conforming provisions to changes made by the act; amending s. 324.161, F.S.; increasing the amount required for a surety bond or deposit; amending s. 324.171, F.S.; revising the required threshold limit for self-insurers; repealing s. 627.730, F.S., providing citation to the Florida

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

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Motor Vehicle No-Fault Law; repealing s. 627.731, F.S., relating to the purpose of the No-Fault Law; repealing s. 627.7311, F.S., relating to the effect of law on personal injury protection policies; amending s. 627.732, F.S.; deleting definitions relating to the no-fault law; amending s. 627.733, F.S.; deleting security requirements with respect to no-fault coverage to substitute security requirements under ch. 324, F.S.; amending s. 627.734, F.S.; conforming cross-references; renumbering and amending s. 627.7401, F.S.; applying notice requirements to bodily injury and property damage liability security instead of personal injury protection; creating s. 627.7355, F.S.; requiring all claims relating to personal injury to be brought in a single action; repealing s. 627.736, F.S., relating to personal injury protection benefits; repealing s. 627.737, F.S., relating to exemption from tort liability for persons maintaining personal injury protection coverage; repealing s. 627.739, F.S., relating to personal injury protection deductibles; repealing s. 627.7403, F.S., relating to the mandatory joinder of derivative claims; repealing s. 627.7405, F.S., relating to the insurers' right of reimbursement; repealing s. 627.7407, F.S., relating to the application of the No-Fault Law; repealing ss. 15 and 16 of chapter 2012-197, Laws of Florida, requiring the Office of Insurance Regulation to contract for a study and perform a data call relating to changes made to the No-Fault Law in 2012; amending

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

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59 ss. 318.18, 320.02, 320.0609, 320.27, 320.771,
60 322.251, 400.9905, 400.991, 400.9935, 409.901,
61 409.910, 456.057, 456.072, 626.9541, 626.989,
62 626.9895, 627.06501, 627.0652, 627.0653, 627.4132,
63 627.6482, 627.7263, 627.727, 627.7275, 627.728,
64 627.7295, 627.8405, 627.915, 628.909, 705.184, 713.78,
65 and 817.234 F.S.; conforming provisions to changes
66 made by the act by removing references to personal
67 injury protection and the Florida Motor Vehicle No-
68 Fault Law; making technical changes; conforming cross-
69 references; providing for the termination of personal
70 injury protection policies and the requirement for
71 maintaining minimum security requirements that allow a
72 person to respond to property damage and bodily injury
73 by a certain date; requiring the insurer to notify the
74 insured about such changes by a certain date;
75 providing for applicability of suspensions for failure
76 to maintain security; providing effective dates.

77
78 Be It Enacted by the Legislature of the State of Florida:

79
80 Section 1. Subsection (1) of section 316.646, Florida
81 Statutes, is amended, and subsection (5) is added to that
82 section, to read:

83 316.646 Security required; proof of security and display
84 thereof; dismissal of cases.—

85 (1) Any person required by s. 324.022 to maintain property
86 damage liability security and, ~~required by s. 324.023 to~~
87 ~~maintain~~ liability security for bodily injury or death must, ~~or~~

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88 ~~required by s. 627.733 to maintain personal injury protection~~
89 ~~security on a motor vehicle shall~~ have in his or her immediate
90 possession at all times while operating ~~a such~~ motor vehicle
91 proper proof of maintenance of the required security.

92 (a) Such proof must ~~shall~~ be in a uniform paper or
93 electronic format, as ~~proof of insurance card in a form~~
94 prescribed by the department, or a valid insurance policy, an
95 insurance policy binder, a certificate of insurance, or such
96 other proof as may be prescribed by the department.

97 (b) The act of presenting to a law enforcement officer an
98 electronic device that displays proof of insurance in an
99 electronic format does not constitute consent for the officer to
100 access any other information on the device. The person who
101 presents the device to the officer assumes liability for any
102 resulting damage to the device.

103 (5) The department shall adopt rules to administer this
104 section.

105 Section 2. Section 324.011, Florida Statutes, is amended to
106 read:

107 324.011 Legislative intent and purpose of ~~chapter~~.—It is
108 the intent of this chapter that the privilege of owning and
109 operating a motor vehicle be exercised ~~to recognize the existing~~
110 privilege to own or operate a motor vehicle on the public
111 streets and highways of this state when such vehicles are used
112 with due consideration for others and their property in order,
113 and to promote safety and provide financial security
114 requirements for ~~such~~ owners or operators whose responsibility
115 it is to recompense others for injury to person or property
116 caused by the operation of a motor vehicle. Therefore, this

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117 ~~chapter requires it is required herein~~ that the owner or
 118 operator of a motor vehicle establish and maintain the ability
 119 ~~to involved in a crash or convicted of certain traffic offenses~~
 120 ~~meeting the operative provisions of s. 324.051(2) shall~~ respond
 121 ~~in for such~~ damages and show proof of financial ability to
 122 respond for damages arising out of the use of a motor vehicle in
 123 ~~future accidents~~ as a requisite to his or her ~~future~~ exercise of
 124 such privileges.

125 Section 3. Subsections (1) and (7) of section 324.021,
 126 Florida Statutes, are amended to read:

127 324.021 Definitions; minimum insurance required.—The
 128 following words and phrases when used in this chapter shall, for
 129 the purpose of this chapter, have the meanings respectively
 130 ascribed to them in this section, except in those instances
 131 where the context clearly indicates a different meaning:

132 (1) MOTOR VEHICLE.—A Every self-propelled vehicle that
 133 ~~which~~ is designed and required to be licensed for use upon a
 134 highway, including trailers and semitrailers designed for use
 135 with such vehicles, except for traction engines, road rollers,
 136 farm tractors, power shovels, and well drillers, and a every
 137 vehicle that which is propelled by electric power obtained from
 138 overhead wires but not operated upon rails, but not including a
 139 ~~any~~ bicycle or moped. ~~However, the term "motor vehicle" shall~~
 140 ~~not include any motor vehicle as defined in s. 627.732(3) when~~
 141 ~~the owner of such vehicle has complied with the requirements of~~
 142 ~~ss. 627.730-627.7405, inclusive, unless the provisions of s.~~
 143 ~~324.051 apply; and, in such case, the applicable proof of~~
 144 ~~insurance provisions of s. 320.02 apply.~~

145 (7) PROOF OF FINANCIAL RESPONSIBILITY.—~~That~~ Proof of

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146 ability to respond in damages for liability on account of
 147 crashes arising out of the use of a motor vehicle:

148 (a) In the amount of \$25,000 for \$10,000 ~~because of~~ bodily
 149 injury to, or the death of, one person in any one crash;

150 (b) Subject to the such limits for one person under
 151 paragraph (a), in the amount of \$50,000 for \$20,000 ~~because of~~
 152 bodily injury to, or the death of, two or more persons in any
 153 one crash;

154 (c) In the amount of \$10,000 for damage ~~because of injury~~
 155 to, or destruction of, the property of others in any one crash;
 156 and

157 (d) With respect to commercial motor vehicles and nonpublic
 158 sector buses, in the amounts specified in ss. 627.7415 and
 159 627.742, respectively.

160 Section 4. Section 324.022, Florida Statutes, is amended to
 161 read:

162 324.022 Financial responsibility requirements ~~for property~~
 163 ~~damage.~~—

164 (1) (a) The Every owner or operator of a motor vehicle
 165 required to be registered in this state shall establish and
 166 maintain the ability to respond in damages for liability on
 167 account of accidents arising out of the use of the motor vehicle
 168 in the amount of:

169 1. Ten thousand dollars for \$10,000 ~~because of~~ damage to,
 170 or destruction of, property of others in any one crash.

171 2. Twenty-five thousand dollar for bodily injury to, or the
 172 death of, one person in any one crash and, subject to such
 173 limits for one person, in the amount of \$50,000 for bodily
 174 injury to, or the death of, two or more persons in any one

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175 crash.

176 (b) The requirements of this section may be met by one of
 177 the methods established in s. 324.031; by self-insuring as
 178 authorized by s. 768.28(16); or by maintaining an insurance
 179 policy providing coverage in at least the amounts for bodily
 180 injury liability coverage and property damage coverage specified
 181 in paragraph (a) for property damage liability in the amount of
 182 at least \$10,000 because of damage to, or destruction of,
 183 property of others in any one accident arising out of the use of
 184 the motor vehicle. The requirements of this section may also be
 185 met by having a policy that ~~which~~ provides coverage in the
 186 amount of at least \$60,000 ~~\$30,000~~ for combined property damage
 187 liability and bodily injury liability for any one crash arising
 188 out of the use of the motor vehicle.

189 (c) The policy, with respect to coverage for property
 190 damage liability and bodily injury liability, must meet the
 191 applicable requirements of s. 324.151, subject to the usual
 192 policy exclusions that have been approved in policy forms by the
 193 Office of Insurance Regulation.

194 (d) ~~An~~ ~~no~~ insurer ~~does not~~ ~~shall~~ have a ~~any~~ duty to defend
 195 uncovered claims regardless ~~irrespective~~ of their joinder with
 196 covered claims.

197 (2) As used in this section, the term:

198 (a) "Motor vehicle" means a ~~any~~ self-propelled vehicle that
 199 has four or more wheels and ~~that~~ is of a type designed and
 200 required to be licensed for use on the highways of this state,
 201 and any trailer or semitrailer designed for use with such
 202 vehicle. The term does not include:

203 1. A mobile home.

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204 2. A motor vehicle that is used in mass transit and
 205 designed to transport more than five passengers, exclusive of
 206 the operator of the motor vehicle, and that is owned by a
 207 municipality, transit authority, or political subdivision of the
 208 state.

209 3. A school bus as defined in s. 1006.25.

210 4. A vehicle providing for-hire transportation that is
 211 subject to ~~the provisions of~~ s. 324.031. The owner of a taxicab
 212 shall maintain security as required under s. 324.032(1).

213 (b) "Owner" means the person who holds legal title to a
 214 motor vehicle or the debtor or lessee who has the right to
 215 possession of a motor vehicle that is the subject of a security
 216 agreement or lease with an option to purchase.

217 (3) Each nonresident owner or registrant of a motor vehicle
 218 that, whether operated or not, has been physically present
 219 within this state for more than 90 days during the preceding 365
 220 days shall maintain security as required by subsection (1) which
 221 ~~that~~ is in effect continuously throughout the period the motor
 222 vehicle remains within this state.

223 (4) An ~~The~~ owner or registrant of a motor vehicle who is
 224 ~~exempt from the requirements of this section if she or he is a~~
 225 member of the United States Armed Forces and is called to or on
 226 active duty outside the United States in an emergency situation
 227 is exempt from this section. The exemption ~~provided by this~~
 228 ~~subsection~~ applies only as long as the member of the armed
 229 forces is on ~~such~~ active duty outside the United States and
 230 applies only while the vehicle covered by the security is not
 231 operated by any person. Upon receipt of a written request by the
 232 insured to whom the exemption ~~provided in this subsection~~

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233 applies, the insurer shall cancel the coverages and return any
 234 unearned premium or suspend the security required by this
 235 section. Notwithstanding s. 324.0221(2) ~~324.0221(3)~~, the
 236 department may not suspend the registration or operator's
 237 license of ~~an any~~ owner or registrant of a motor vehicle during
 238 the time she or he qualifies for ~~the an exemption under this~~
 239 ~~subsection. An Any~~ owner or registrant of a motor vehicle who
 240 qualifies for ~~the an exemption under this subsection~~ shall
 241 immediately notify the department ~~before prior to~~ and at the end
 242 of the expiration of the exemption.

243 Section 5. Subsections (1) and (2) of section 324.0221,
 244 Florida Statutes, are amended to read:

245 324.0221 Reports by insurers to the department; suspension
 246 of driver's license and vehicle registrations; reinstatement.—

247 (1) (a) Each insurer that has issued a policy providing
 248 bodily injury liability ~~personal injury protection~~ coverage or
 249 property damage liability coverage shall report the renewal,
 250 cancellation, or nonrenewal thereof to the department within 45
 251 days after the effective date of each renewal, cancellation, or
 252 nonrenewal. Upon the issuance of a policy providing bodily
 253 injury liability ~~personal injury protection coverage~~ or property
 254 damage liability coverage to a named insured not previously
 255 insured by the insurer during that calendar year, the insurer
 256 shall report the issuance of the new policy to the department
 257 within 10 ~~30~~ days. The report ~~must shall~~ be in the form ~~and~~
 258 ~~format~~ and contain any information required by the department
 259 and must be provided in a format that is compatible with the
 260 data processing capabilities of the department. The department
 261 may adopt rules regarding the form and documentation required.

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262 Failure by an insurer to file proper reports with the department
 263 as required by this subsection or related rules ~~adopted with~~
 264 ~~respect to the requirements of this subsection~~ constitutes a
 265 violation of the Florida Insurance Code. These records shall be
 266 used by the department only for enforcement and regulatory
 267 purposes, including the generation by the department of data
 268 regarding compliance by owners of motor vehicles with the
 269 requirements for financial responsibility coverage.

270 (b) With respect to an insurance policy that provides
 271 providing bodily injury liability ~~personal injury protection~~
 272 ~~coverage~~ or property damage liability coverage, each insurer
 273 shall notify the named insured, or the first-named insured in
 274 the case of a commercial fleet policy, in writing that any
 275 cancellation or nonrenewal of the policy will be reported by the
 276 insurer to the department. The notice must also inform the named
 277 insured that failure to maintain bodily injury liability
 278 ~~personal injury protection coverage~~ and property damage
 279 liability coverage on a motor vehicle when required by law may
 280 result in the loss of registration and driving privileges in
 281 this state and inform the named insured of the amount of the
 282 reinstatement fees required by this section. This notice is for
 283 informational purposes only, and an insurer is not civilly
 284 liable for failing to provide this notice.

285 (2) The department shall suspend, after due notice and an
 286 opportunity to be heard, the registration and ~~driver driver's~~
 287 license of any owner or registrant of a motor vehicle with
 288 respect to which security is required under ss. 324.022 and
 289 627.733 upon:

290 (a) The department's records showing that the owner or

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291 registrant of such motor vehicle did not have the in full force
 292 ~~and effect when required security in full force and effect that~~
 293 ~~complies with the requirements of ss. 324.022 and 627.733;~~ or

294 (b) Notification by the insurer to the department, in a
 295 form approved by the department, of cancellation or termination
 296 of the required security.

297 Section 6. Section 324.023, Florida Statutes, is amended to
 298 read:

299 324.023 Financial responsibility for bodily injury or
 300 death.—In addition to any other financial responsibility
 301 required by law, every owner or operator of a motor vehicle that
 302 is required to be registered in this state, or that is located
 303 within this state, and who, regardless of adjudication of guilt,
 304 has been found guilty of or entered a plea of guilty or nolo
 305 contendere to a charge of driving under the influence under s.
 306 316.193 after October 1, 2007, shall, by one of the methods
 307 established in s. 324.031(1) or (2), ~~or (3),~~ establish and
 308 maintain the ability to respond in damages for liability on
 309 account of accidents arising out of the use of a motor vehicle
 310 in the amount of \$100,000 because of bodily injury to, or death
 311 of, one person in any one crash and, subject to such limits for
 312 one person, in the amount of \$300,000 because of bodily injury
 313 to, or death of, two or more persons in any one crash and in the
 314 amount of \$50,000 because of property damage in any one crash.
 315 If the owner or operator chooses to establish and maintain such
 316 ability by ~~posting a bond or~~ furnishing a certificate of deposit
 317 pursuant to s. 324.031(2) ~~or (3),~~ such ~~bond or~~ certificate of
 318 deposit must be in an amount not less than \$350,000. Such higher
 319 limits must be carried for a minimum period of 3 years. If the

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320 owner or operator has not been convicted of driving under the
 321 influence or a felony traffic offense for ~~a period of~~ 3 years
 322 from the date of reinstatement of driving privileges for a
 323 violation of s. 316.193, the owner or operator is ~~shall be~~
 324 exempt from this section.

325 Section 7. Section 324.031, Florida Statutes, is amended to
 326 read:

327 324.031 Manner of proving financial responsibility.—The
 328 owner or operator of a taxicab, limousine, jitney, or any other
 329 for-hire passenger transportation vehicle may prove financial
 330 responsibility by providing satisfactory evidence of holding a
 331 motor vehicle liability policy as defined in s. 324.021(8) or s.
 332 324.151, which ~~policy~~ is issued by an insurance carrier that
 333 ~~which~~ is a member of the Florida Insurance Guaranty Association.
 334 The operator or owner of any other vehicle may prove his or her
 335 financial responsibility by:

336 (1) Furnishing satisfactory evidence of holding such a
 337 motor vehicle liability policy ~~as defined in ss. 324.021(8) and~~
 338 ~~324.151;~~

339 ~~(2) Posting with the department a satisfactory bond of a~~
 340 ~~surety company authorized to do business in this state,~~
 341 ~~conditioned for payment of the amount specified in s.~~
 342 ~~324.021(7);~~

343 ~~(2)(3)~~ Furnishing a certificate of self insurance ~~the~~
 344 ~~department~~ showing a deposit of cash or securities in accordance
 345 with s. 324.161; or

346 ~~(3)(4)~~ Furnishing a certificate of self-insurance issued by
 347 the department in accordance with s. 324.171.

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349 Any person, including a ~~any~~ firm, partnership, association,
 350 corporation, or other person, other than a natural person,
 351 electing to use the method of proof specified in subsection (2)
 352 or subsection (3) shall post a bond or deposit equal to the
 353 number of vehicles owned times ~~\$60,000~~ ~~\$30,000~~, up to a maximum
 354 of ~~\$240,000~~. ~~\$120,000~~. In addition, any such person, other than
 355 a natural person, shall maintain insurance providing coverage in
 356 excess of limits of ~~\$25,000/50,000/10,000~~ ~~\$10,000/20,000/10,000~~
 357 or ~~\$60,000~~ ~~\$30,000~~ combined single limits, and such excess
 358 insurance ~~must~~ ~~shall~~ provide minimum limits of
 359 \$125,000/250,000/50,000 or \$300,000 combined single limits.
 360 These increased limits ~~do~~ ~~shall~~ not affect the requirements for
 361 proving financial responsibility under s. 324.032(1).

362 Section 8. Section 324.071, Florida Statutes, is amended to
 363 read:

364 324.071 Reinstatement; renewal of license; reinstatement
 365 fee.—~~An~~ ~~Any~~ operator or owner whose license or registration has
 366 been suspended pursuant to s. 324.051(2), s. 324.072, s.
 367 324.081, or s. 324.121 may effect its reinstatement upon
 368 compliance with ~~the provisions of~~ s. 324.051(2) (a)3. or 4., or
 369 s. 324.081(2) and (3), as the case may be, and with one of the
 370 provisions of s. 324.031 and upon payment to the department of a
 371 nonrefundable reinstatement fee as specified in s. 324.0221 ~~of~~
 372 ~~\$15~~. Only one such fee shall be paid by any one person
 373 regardless irrespective of the number of licenses and
 374 registrations to be ~~then~~ reinstated or issued to such person.
 375 All such fees shall be deposited to a department trust fund. If
 376 ~~When~~ the reinstatement of any license or registration is
 377 effected by compliance with s. 324.051(2) (a)3. or 4., the

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378 department may ~~shall~~ not renew the license or registration
 379 within ~~a period of~~ 3 years after ~~from~~ such reinstatement, nor
 380 may ~~shall~~ any other license or registration be issued in the
 381 name of such person, unless the operator continues ~~is continuing~~
 382 to comply with one of the provisions of s. 324.031.

383 Section 9. Section 324.161, Florida Statutes, is amended to
 384 read:

385 324.161 Proof of financial responsibility; surety bond or
 386 deposit.—~~A~~ The certificate of ~~the department of a~~ deposit issued
 387 by the department may be obtained by depositing \$60,000 ~~in with~~
 388 ~~it~~ ~~\$30,000~~ cash or in securities that ~~such as~~ may be legally
 389 purchased by savings banks or for trust funds which have, ~~of~~ a
 390 market value of \$60,000 ~~\$30,000~~ and which deposit shall be held
 391 by the department to satisfy, in accordance with ~~the provisions~~
 392 ~~of~~ this chapter, any execution on a judgment issued against such
 393 person making the deposit, for damages ~~for~~ ~~because of~~ bodily
 394 injury to or death of any person or for damages or ~~because of~~
 395 injury to, or destruction of, property resulting from the use or
 396 operation of any motor vehicle occurring after such deposit was
 397 made. Money or securities so deposited are ~~shall~~ ~~not be~~ subject
 398 to attachment or execution unless such attachment or execution
 399 arises ~~shall arise~~ out of a suit for such damages ~~as aforesaid~~.

400 Section 10. Subsections (1) and (2) of section 324.171,
 401 Florida Statutes, are amended to read:

402 324.171 Self-insurer.—

403 (1) A ~~Any~~ person may qualify as a self-insurer by obtaining
 404 a certificate of self-insurance from the department, which may,
 405 in its discretion ~~and~~ Upon application of such a person, the
 406 department may issue a ~~said~~ certificate if the applicant ~~of~~

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407 ~~self insurance when such person~~ has satisfied the requirements
408 of this section ~~to qualify as a self insurer under this section:~~

409 (a) A private individual with private passenger vehicles
410 ~~must shall~~ possess a net unencumbered worth of at least \$60,000
411 ~~\$40,000~~.

412 (b) A person, including any firm, partnership, association,
413 corporation, or other person, other than a natural person, must
414 ~~shall~~:

415 1. Possess a net unencumbered worth of at least \$60,000
416 ~~\$40,000~~ for the first motor vehicle and \$30,000 ~~\$20,000~~ for each
417 additional motor vehicle; or

418 2. Maintain sufficient net worth, as determined annually by
419 the department, pursuant to rules adopted ~~promulgated~~ by the
420 department, with the assistance of the Office of Insurance
421 Regulation of the Financial Services Commission, to be
422 financially responsible for potential losses. The rules must
423 ~~consider any shall take into consideration~~ excess insurance
424 carried by the applicant. The department's determination shall
425 be based upon reasonable actuarial principles considering the
426 frequency, severity, and loss development of claims incurred by
427 casualty insurers writing coverage on the type of motor vehicles
428 for which a certificate of self-insurance is desired.

429 (c) The owner of a commercial motor vehicle, as defined in
430 s. 207.002(2) or s. 320.01, may qualify as a self-insurer
431 subject to the standards provided ~~for~~ in subparagraph (b)2.

432 (2) The self-insurance certificate must shall provide
433 limits of liability insurance in the amounts specified under s.
434 324.021(7) or s. 627.7415 ~~and shall provide personal injury~~
435 ~~protection coverage under s. 627.733(3)(b).~~

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436 Section 11. Section 627.730, Florida Statutes, is repealed.

437 Section 12. Section 627.731, Florida Statutes, is repealed.

438 Section 13. Section 627.7311, Florida Statutes, is
439 repealed.

440 Section 14. Section 627.732, Florida Statutes, is reordered
441 and amended to read:

442 627.732 Definitions.—As used in ss. 627.733-627.7355
443 ~~627.730-627.7405~~, the term:

444 ~~(1) "Broker" means any person not possessing a license~~
445 ~~under chapter 395, chapter 400, chapter 429, chapter 458,~~
446 ~~chapter 459, chapter 460, chapter 461, or chapter 641 who~~
447 ~~charges or receives compensation for any use of medical~~
448 ~~equipment and is not the 100 percent owner or the 100 percent~~
449 ~~lessee of such equipment. For purposes of this section, such~~
450 ~~owner or lessee may be an individual, a corporation, a~~
451 ~~partnership, or any other entity and any of its 100 percent-~~
452 ~~owned affiliates and subsidiaries. For purposes of this~~
453 ~~subsection, the term "lessee" means a long term lessee under a~~
454 ~~capital or operating lease, but does not include a part time~~
455 ~~lessee. The term "broker" does not include a hospital or~~
456 ~~physician management company whose medical equipment is~~
457 ~~ancillary to the practices managed, a debt collection agency, or~~
458 ~~an entity that has contracted with the insurer to obtain a~~
459 ~~discounted rate for such services; nor does the term include a~~
460 ~~management company that has contracted to provide general~~
461 ~~management services for a licensed physician or health care~~
462 ~~facility and whose compensation is not materially affected by~~
463 ~~the usage or frequency of usage of medical equipment or an~~
464 ~~entity that is 100 percent owned by one or more hospitals or~~

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465 physicians. The term "broker" does not include a person or
 466 entity that certifies, upon request of an insurer, that:
 467 ~~(a) It is a clinic licensed under ss. 400.990-400.995;~~
 468 ~~(b) It is a 100 percent owner of medical equipment; and~~
 469 ~~(c) The owner's only part time lease of medical equipment~~
 470 ~~for personal injury protection patients is on a temporary basis~~
 471 ~~not to exceed 30 days in a 12-month period, and such lease is~~
 472 ~~solely for the purposes of necessary repair or maintenance of~~
 473 ~~the 100 percent owned medical equipment or pending the arrival~~
 474 ~~and installation of the newly purchased or a replacement for the~~
 475 ~~100 percent owned medical equipment, or for patients for whom,~~
 476 ~~because of physical size or claustrophobia, it is determined by~~
 477 ~~the medical director or clinical director to be medically~~
 478 ~~necessary that the test be performed in medical equipment that~~
 479 ~~is open style. The leased medical equipment cannot be used by~~
 480 ~~patients who are not patients of the registered clinic for~~
 481 ~~medical treatment of services. Any person or entity making a~~
 482 ~~false certification under this subsection commits insurance~~
 483 ~~fraud as defined in s. 817.234. However, the 30 day period~~
 484 ~~provided in this paragraph may be extended for an additional 60~~
 485 ~~days as applicable to magnetic resonance imaging equipment if~~
 486 ~~the owner certifies that the extension otherwise complies with~~
 487 ~~this paragraph.~~
 488 ~~(2) "Medically necessary" refers to a medical service or~~
 489 ~~supply that a prudent physician would provide for the purpose of~~
 490 ~~preventing, diagnosing, or treating an illness, injury, disease,~~
 491 ~~or symptom in a manner that is:~~
 492 ~~(a) In accordance with generally accepted standards of~~
 493 ~~medical practice;~~

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494 ~~(b) Clinically appropriate in terms of type, frequency,~~
 495 ~~extent, site, and duration; and~~
 496 ~~(c) Not primarily for the convenience of the patient,~~
 497 ~~physician, or other health care provider.~~
 498 (2)(3) "Motor vehicle" means any self-propelled vehicle
 499 ~~that with four or more wheels which~~ is of a type both designed
 500 and required to be licensed for use on the highways of this
 501 state and any trailer or semitrailer designed for use with such
 502 vehicle and includes:
 503 (a) A "private passenger motor vehicle," which is any motor
 504 vehicle which is a sedan, station wagon, or jeep-type vehicle
 505 and, if not used primarily for occupational, professional, or
 506 business purposes, a motor vehicle of the pickup, panel, van,
 507 camper, or motor home type.
 508 (b) A "commercial motor vehicle," which is any motor
 509 vehicle which is not a private passenger motor vehicle.
 510
 511 The term "motor vehicle" does not include a mobile home or any
 512 motor vehicle which is used in mass transit, other than public
 513 school transportation, and designed to transport more than five
 514 passengers exclusive of the operator of the motor vehicle and
 515 which is owned by a municipality, a transit authority, or a
 516 political subdivision of the state.
 517 ~~(4) "Named insured" means a person, usually the owner of a~~
 518 ~~vehicle, identified in a policy by name as the insured under the~~
 519 ~~policy.~~
 520 (3)(5) "Owner" means a person who holds the legal title to
 521 a motor vehicle; or, in the event a motor vehicle is the subject
 522 of a security agreement or lease with an option to purchase with

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523 the debtor or lessee having the right to possession, then the
524 debtor or lessee shall be deemed the owner ~~for the purposes of~~
525 ~~ss. 627.730-627.7405.~~

526 ~~(6) "Relative residing in the same household" means a~~
527 ~~relative of any degree by blood or by marriage who usually makes~~
528 ~~her or his home in the same family unit, whether or not~~
529 ~~temporarily living elsewhere.~~

530 ~~(7) "Certify" means to swear or attest to being true or~~
531 ~~represented in writing.~~

532 ~~(8) "Immediate personal supervision," as it relates to the~~
533 ~~performance of medical services by nonphysicians not in a~~
534 ~~hospital, means that an individual licensed to perform the~~
535 ~~medical service or provide the medical supplies must be present~~
536 ~~within the confines of the physical structure where the medical~~
537 ~~services are performed or where the medical supplies are~~
538 ~~provided such that the licensed individual can respond~~
539 ~~immediately to any emergencies if needed.~~

540 ~~(9) "Incident," with respect to services considered as~~
541 ~~incident to a physician's professional service, for a physician~~
542 ~~licensed under chapter 458, chapter 459, chapter 460, or chapter~~
543 ~~461, if not furnished in a hospital, means such services must be~~
544 ~~an integral, even if incidental, part of a covered physician's~~
545 ~~service.~~

546 ~~(1)~~(10) "Knowingly" means that a person, with respect to
547 information, has actual knowledge of the information; acts in
548 deliberate ignorance of the truth or falsity of the information;
549 or acts in reckless disregard of the information, and proof of
550 specific intent to defraud is not required.

551 ~~(11) "Lawful" or "lawfully" means in substantial compliance~~

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552 ~~with all relevant applicable criminal, civil, and administrative~~
553 ~~requirements of state and federal law related to the provision~~
554 ~~of medical services or treatment.~~

555 ~~(12) "Hospital" means a facility that, at the time services~~
556 ~~or treatment were rendered, was licensed under chapter 395.~~

557 ~~(13) "Properly completed" means providing truthful,~~
558 ~~substantially complete, and substantially accurate responses as~~
559 ~~to all material elements to each applicable request for~~
560 ~~information or statement by a means that may lawfully be~~
561 ~~provided and that complies with this section, or as agreed by~~
562 ~~the parties.~~

563 ~~(14) "Upcoding" means an action that submits a billing code~~
564 ~~that would result in payment greater in amount than would be~~
565 ~~paid using a billing code that accurately describes the services~~
566 ~~performed. The term does not include an otherwise lawful bill by~~
567 ~~a magnetic resonance imaging facility, which globally combines~~
568 ~~both technical and professional components, if the amount of the~~
569 ~~global bill is not more than the components if billed~~
570 ~~separately; however, payment of such a bill constitutes payment~~
571 ~~in full for all components of such service.~~

572 ~~(15) "Unbundling" means an action that submits a billing~~
573 ~~code that is properly billed under one billing code, but that~~
574 ~~has been separated into two or more billing codes, and would~~
575 ~~result in payment greater in amount than would be paid using one~~
576 ~~billing code.~~

577 ~~(16) "Emergency medical condition" means a medical~~
578 ~~condition manifesting itself by acute symptoms of sufficient~~
579 ~~severity, which may include severe pain, such that the absence~~
580 ~~of immediate medical attention could reasonably be expected to~~

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581 ~~result in any of the following:~~

582 ~~(a) Serious jeopardy to patient health.~~

583 ~~(b) Serious impairment to bodily functions.~~

584 ~~(c) Serious dysfunction of any bodily organ or part.~~

585 ~~(17) "Entity wholly owned" means a proprietorship, group~~
 586 ~~practice, partnership, or corporation that provides health care~~
 587 ~~services rendered by licensed health care practitioners and in~~
 588 ~~which licensed health care practitioners are the business owners~~
 589 ~~of all aspects of the business entity, including, but not~~
 590 ~~limited to, being reflected as the business owners on the title~~
 591 ~~or lease of the physical facility, filing taxes as the business~~
 592 ~~owners, being account holders on the entity's bank account,~~
 593 ~~being listed as the principals on all incorporation documents~~
 594 ~~required by this state, and having ultimate authority over all~~
 595 ~~personnel and compensation decisions relating to the entity.~~
 596 ~~However, this definition does not apply to an entity that is~~
 597 ~~wholly owned, directly or indirectly, by a hospital licensed~~
 598 ~~under chapter 395.~~

599 Section 15. Section 627.733, Florida Statutes, is amended
 600 to read:

601 627.733 Required security.-

602 (1) (a) The Every owner or registrant of a motor vehicle,
 603 other than a motor vehicle used as a school bus as defined in s.
 604 1006.25 or limousine, required to be registered and licensed in
 605 this state shall maintain security as required by this section
 606 ~~subsection (3)~~ in effect continuously throughout the
 607 registration or licensing period.

608 (b) Notwithstanding paragraph (a), an Every owner or
 609 registrant of a motor vehicle used as a taxicab shall ~~not be~~

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610 ~~governed by paragraph (1)(a) but shall maintain security as~~
 611 ~~required under s. 324.032(1), and s. 627.737 shall not apply to~~
 612 ~~any motor vehicle used as a taxicab.~~

613 (2) Every nonresident owner or registrant of a motor
 614 vehicle ~~that which~~, whether operated or not, has been physically
 615 present within this state for more than 90 days during the
 616 preceding 365 days shall ~~thereafter~~ maintain security as
 617 required by this section ~~defined by subsection (3)~~ in effect
 618 ~~continuously~~ throughout the period the ~~such~~ motor vehicle
 619 remains within this state.

620 (3) Such security must ~~shall~~ be provided:

621 (a) By an insurance policy delivered or issued for delivery
 622 in this state by an authorized or eligible motor vehicle
 623 liability insurer which provides the security required under s.
 624 324.022 ~~the benefits and exemptions contained in ss. 627.730-~~
 625 ~~627.7405.~~ Any policy of insurance that provides, or is
 626 represented or sold as providing, the security required in this
 627 section is hereunder shall be deemed to provide insurance for
 628 the payment of the required benefits; or

629 (b) By any other method authorized by s. 324.031(2) or
 630 ~~(3), or (4)~~ and approved by the Department of Highway Safety and
 631 Motor Vehicles as providing ~~affording~~ security equivalent to
 632 that afforded by a policy of insurance or by self-insuring as
 633 authorized by s. 768.28(16). ~~The person filing such security~~
 634 ~~shall have all of the obligations and rights of an insurer under~~
 635 ~~ss. 627.730-627.7405.~~

636 ~~(4) An owner of a motor vehicle with respect to which~~
 637 ~~security is required by this section who fails to have such~~
 638 ~~security in effect at the time of an accident shall have no~~

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639 ~~immunity from tort liability, but shall be personally liable for~~
 640 ~~the payment of benefits under s. 627.736. With respect to such~~
 641 ~~benefits, such an owner shall have all of the rights and~~
 642 ~~obligations of an insurer under ss. 627.730-627.7405.~~

643 ~~(4)(5) In addition to other persons who are not required to~~
 644 ~~provide required security as required under this section and s.~~
 645 ~~324.022, The owner or registrant of a motor vehicle who is~~
 646 ~~exempt from such requirements if she or he is a member of the~~
 647 ~~United States Armed Forces and is called to or on active duty~~
 648 ~~outside the United States in an emergency situation is exempt~~
 649 ~~from this section. The exemption provided by this subsection~~
 650 ~~applies only as long as the member of the armed forces is on~~
 651 ~~such active duty outside the United States and applies only~~
 652 ~~while the vehicle covered by the security required by this~~
 653 ~~section and s. 324.022 is not operated by any person. Upon~~
 654 ~~receipt of a written request by the insured to whom the~~
 655 ~~exemption provided in this subsection applies, the insurer shall~~
 656 ~~cancel the coverages and return any unearned premium or suspend~~
 657 ~~the security required by this section and s. 324.022.~~
 658 ~~Notwithstanding s. 324.0221(2), the Department of Highway Safety~~
 659 ~~and Motor Vehicles may not suspend the registration or~~
 660 ~~operator's license of an any owner or registrant of a motor~~
 661 ~~vehicle during the time she or he qualifies for the an exemption~~
 662 ~~under this subsection. An Any owner or registrant of a motor~~
 663 ~~vehicle who qualifies for the an exemption under this subsection~~
 664 ~~shall immediately notify the department before prior to and at~~
 665 ~~the end of the expiration of the exemption.~~

666 Section 16. Section 627.734, Florida Statutes, is amended
 667 to read:

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668 627.734 Proof of security; security requirements;
 669 penalties.-

670 (1) The provisions of chapter 324 which pertain to the
 671 method of giving and maintaining proof of financial
 672 responsibility and which govern and define a motor vehicle
 673 liability policy ~~shall~~ apply to filing and maintaining proof of
 674 security required under s. 627.733 ~~by ss. 627.730-627.7405.~~

675 (2) Any person who:

676 (a) Gives information required in a report ~~or otherwise as~~
 677 ~~provided for in ss. 627.730-627.7405,~~ knowing or having reason
 678 to believe that such information is false;

679 (b) Forges or, without authority, signs any evidence of
 680 proof of security; or

681 (c) Files, or offers for filing, any such evidence of
 682 proof, knowing or having reason to believe that it is forged or
 683 signed without authority,

684 ~~commits is guilty of~~ a misdemeanor of the first degree,
 685 punishable as provided in s. 775.082 or s. 775.083.

686 Section 17. Section 627.7401, Florida Statutes, is
 687 renumbered as section 627.7341, Florida Statutes, and amended to
 688 read:

689 627.7341 ~~627.7401~~ Notification of security requirements
 690 ~~insured's rights.-~~

691 (1) The commission, by rule, shall adopt a form for
 692 notifying the notification of insureds of the security required
 693 under s. 627.733 and the proof of security requirement under s.
 694 627.734 ~~their right to receive personal injury protection~~
 695 ~~benefits under the Florida Motor Vehicle No-Fault Law. Such~~
 696

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697 notice ~~must~~ shall include:

698 (a) A description of the benefits provided by bodily injury
 699 liability coverage and property damage liability coverage
 700 ~~personal injury protection, including, but not limited to, the~~
 701 ~~specific types of services for which medical benefits are paid,~~
 702 ~~disability benefits, death benefits, significant exclusions from~~
 703 ~~and limitations on personal injury protection benefits, when~~
 704 ~~payments are due, how benefits are coordinated with other~~
 705 ~~insurance benefits that the insured may have, penalties and~~
 706 ~~interest that may be imposed on insurers for failure to make~~
 707 ~~timely payments of benefits, and rights of parties regarding~~
 708 ~~disputes as to benefits.~~

709 (b) An advisory informing insureds that, ~~+~~

710 ~~+~~ pursuant to s. 626.9892, the Department of Financial
 711 Services may pay rewards of up to \$25,000 to persons providing
 712 information leading to the arrest and conviction of persons
 713 committing crimes investigated by the Division of Insurance
 714 Fraud arising from violations of s. 440.105, s. 624.15, s.
 715 626.9541, s. 626.989, or s. 817.234.

716 ~~2. Pursuant to s. 627.736(5)(c)1., if the insured notifies~~
 717 ~~the insurer of a billing error, the insured may be entitled to a~~
 718 ~~certain percentage of a reduction in the amount paid by the~~
 719 ~~insured's motor vehicle insurer.~~

720 (c) A notice that solicitation of a person injured in a
 721 motor vehicle crash for purposes of filing personal injury
 722 ~~protection or~~ tort claims could be a violation of s. 817.234, s
 723 817.505, or the rules regulating The Florida Bar and should be
 724 immediately reported to the Division of Insurance Fraud ~~if such~~
 725 ~~conduct has taken place.~~

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726 (2) Each insurer issuing a policy in this state providing
 727 the security required under s. 627.733 shall ~~personal injury~~
 728 ~~protection benefits must~~ mail or deliver the notice as specified
 729 in subsection (1) to an insured within 21 days after receiving
 730 notice from the insured ~~notice~~ of an automobile accident or
 731 claim involving ~~personal injury to~~ an insured who is covered
 732 under the policy. The office may allow an insurer up to 30 days
 733 of additional time to provide the notice specified in subsection
 734 ~~(1) not to exceed 30 days,~~ upon a showing by the insurer that an
 735 emergency justifies an extension of time.

736 (3) The notice required by this section does not alter or
 737 modify the terms of the insurance contract or other security
 738 requirements of this part act.

739 Section 18. Section 627.7355, Florida Statutes, is created
 740 to read:

741 627.7355 Motor vehicle insurance claims brought in a single
 742 action.—In any action in which the owner, registrant, operator,
 743 or occupant of a motor vehicle, to which security has been
 744 provided pursuant to s. 627.733, is claiming personal injury,
 745 all claims arising out of the plaintiff's injuries, including
 746 all derivative claims, shall be brought together, unless good
 747 cause is shown why such claims should be brought separately.

748 Section 19. Section 627.736, Florida Statutes, is repealed.

749 Section 20. Section 627.737, Florida Statutes, is repealed.

750 Section 21. Section 627.739, Florida Statutes, is repealed.

751 Section 22. Section 627.7403, Florida Statutes, is
 752 repealed.

753 Section 23. Section 627.7405, Florida Statutes, is
 754 repealed.

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755 Section 24. Section 627.7407, Florida Statutes, is
756 repealed.

757 Section 25. Sections 15 and 16 of chapter 2012-197, Laws of
758 Florida, are repealed.

759 Section 26. Paragraph (b) of subsection (2) of section
760 318.18, Florida Statutes, is amended to read:

761 318.18 Amount of penalties.—The penalties required for a
762 noncriminal disposition pursuant to s. 318.14 or a criminal
763 offense listed in s. 318.17 are as follows:

764 (2) Thirty dollars for all nonmoving traffic violations
765 and:

766 (b) For all violations of ss. 320.0605, 320.07(1), 322.065,
767 and 322.15(1). A ~~Any~~ person who is cited for a violation of s.
768 320.07(1) shall be charged a delinquent fee pursuant to s.
769 320.07(4).

770 1. If a person who is cited for a violation of s. 320.0605
771 or s. 320.07 can show proof of having a valid registration at
772 the time of arrest, the clerk of the court may dismiss the case
773 and may assess a dismissal fee of up to \$10. A person who finds
774 it impossible or impractical to obtain a valid registration
775 certificate must submit an affidavit detailing the reasons for
776 the impossibility or impracticality. The reasons may include,
777 but are not limited to, the fact that the vehicle was sold,
778 stolen, or destroyed; that the state in which the vehicle is
779 registered does not issue a certificate of registration; or that
780 the vehicle is owned by another person.

781 2. If a person who is cited for a violation of s. 322.03,
782 s. 322.065, or s. 322.15 can show a driver ~~driver's~~ license
783 issued to him or her and valid at the time of arrest, the clerk

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784 of the court may dismiss the case and may assess a dismissal fee
785 of up to \$10.

786 3. If a person who is cited for a violation of s. 316.646
787 can show proof of security as required by s. 627.733, issued to
788 the person and valid at the time of arrest, the clerk of the
789 court may dismiss the case and may assess a dismissal fee of up
790 to \$10. A person who finds it impossible or impractical to
791 obtain proof of security must submit an affidavit detailing the
792 reasons for the impracticality. The reasons may include, but are
793 not limited to, the fact that the vehicle has since been sold,
794 stolen, or destroyed, ~~that the owner or registrant of the~~
795 ~~vehicle is not required by s. 627.733 to maintain personal~~
796 ~~injury protection insurance,~~ or that the vehicle is owned by
797 another person.

798 Section 27. Paragraphs (a) and (d) of subsection (5) of
799 section 320.02, Florida Statutes, are amended to read:

800 320.02 Registration required; application for registration;
801 forms.—

802 (5) (a) Proof that bodily injury liability and property
803 damage liability coverage ~~personal injury protection~~ benefits
804 have been purchased if ~~when~~ required under ss. 324.022 and s.
805 ~~627.733,~~ ~~that property damage liability coverage has been~~
806 ~~purchased as required under s. 324.022,~~ that bodily injury or
807 death coverage has been purchased if required under s. 324.023,
808 and that combined bodily liability insurance and property damage
809 liability insurance have been purchased if ~~when~~ required under
810 s. 627.7415 shall be provided in the manner prescribed by law by
811 the applicant at the time of application for registration of any
812 motor vehicle that is subject to such requirements. The issuing

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813 agent ~~may not shall refuse to~~ issue registration if such proof
 814 of purchase is not provided. Insurers shall furnish uniform
 815 proof-of-purchase cards in a form prescribed by the department
 816 and ~~shall~~ include the name of the insured's insurance company,
 817 the coverage identification number, and the make, year, and
 818 vehicle identification number of the vehicle insured. The card
 819 ~~must shall~~ contain a statement notifying the applicant of the
 820 penalty specified in s. 316.646(4). The card or insurance
 821 policy, insurance policy binder, or certificate of insurance or
 822 a photocopy of any of these; an affidavit containing the name of
 823 the insured's insurance company, the insured's policy number,
 824 and the make and year of the vehicle insured; or such other
 825 proof as may be prescribed by the department constitutes shall
 826 ~~constitute~~ sufficient proof of purchase. If an affidavit is
 827 provided as proof, it must shall be in substantially the
 828 following form:

829
 830 Under penalty of perjury, I ...(Name of insured)... do hereby
 831 certify that I have ...(Personal Injury Protection, Property
 832 Damage Liability, and, when required, Bodily Injury
 833 Liability)... Insurance currently in effect with ...(Name of
 834 insurance company)... under ...(policy number)... covering
 835 ...(make, year, and vehicle identification number of
 836 vehicle).... ...(Signature of Insured)...

837
 838 The ~~Such~~ affidavit must shall include the following warning:

839
 840 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
 841 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA

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842 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
 843 SUBJECT TO PROSECUTION.

844
 845 ~~If when~~ an application is made through a licensed motor vehicle
 846 dealer as required under ~~in~~ s. 319.23, the original or a
 847 photostatic copy of such card, insurance policy, insurance
 848 policy binder, or certificate of insurance or the original
 849 affidavit from the insured shall be forwarded by the dealer to
 850 the tax collector of the county or the Department of Highway
 851 Safety and Motor Vehicles for processing. By executing the
 852 ~~aforsaid~~ affidavit, the ~~no~~ licensed motor vehicle dealer will
 853 not be liable in damages for any inadequacy, insufficiency, or
 854 falsification of any statement contained therein. ~~A card shall~~
 855 ~~also indicate the existence of any bodily injury liability~~
 856 ~~insurance voluntarily purchased.~~

857 (d) The verifying of proof of ~~personal injury protection~~
 858 ~~insurance, proof of~~ property damage liability insurance, proof
 859 of combined bodily liability insurance and property damage
 860 liability insurance, or proof of financial responsibility
 861 insurance and the issuance or failure to issue the motor vehicle
 862 registration under the provisions of this chapter is may not be
 863 ~~construed in any court as~~ a warranty of the reliability or
 864 accuracy of the evidence of such proof. Neither the department
 865 nor a any tax collector is liable in damages for any inadequacy,
 866 insufficiency, falsification, or unauthorized modification of
 867 any item of the proof of ~~personal injury protection insurance,~~
 868 ~~proof of~~ property damage liability insurance, proof of combined
 869 bodily liability insurance and property damage liability
 870 insurance, or proof of financial responsibility insurance before

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871 ~~prior to~~, during, or after ~~subsequent to~~ the verification of the
872 proof. The issuance of a motor vehicle registration does not
873 constitute prima facie evidence or a presumption of insurance
874 coverage.

875 Section 28. Paragraph (b) of subsection (1) of section
876 320.0609, Florida Statutes, is amended to read:

877 320.0609 Transfer and exchange of registration license
878 plates; transfer fee.—

879 (1)

880 (b) The transfer of a license plate from a vehicle disposed
881 of to a newly acquired vehicle does not constitute a new
882 registration. The application for transfer shall be accepted
883 without requiring proof of ~~personal injury protection or~~
884 liability insurance.

885 Section 29. Subsection (3) of section 320.27, Florida
886 Statutes, is amended to read:

887 320.27 Motor vehicle dealers.—

888 (3) APPLICATION AND FEE.—~~The application for the license~~
889 application shall be in such form as may be prescribed by the
890 department and is ~~shall be~~ subject to such rules ~~with respect~~
891 ~~thereto~~ as may be ~~so~~ prescribed by the department ~~it~~. The ~~Such~~
892 application shall be verified by oath or affirmation and must
893 ~~shall~~ contain a full statement of the name and birth date of the
894 person or persons applying for the license therefor; the name of
895 the firm or copartnership, with the names and places of
896 residence of all members ~~thereof~~, if such applicant is a firm or
897 copartnership; the names and places of residence of the
898 principal officers, if the applicant is a body corporate or
899 other artificial body; the name of the state under whose laws

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900 the corporation is organized; the present and former place or
901 places of residence of the applicant; and the prior business in
902 which the applicant has been engaged and its ~~the~~ location
903 ~~thereof~~. ~~The~~ ~~Such~~ application must ~~shall~~ describe the exact
904 location of the place of business and ~~shall~~ state whether the
905 place of business is owned by the applicant and when acquired,
906 or, if leased, a true copy of the lease shall be attached to the
907 application. The applicant shall certify that the location
908 provides an adequately equipped office and is not a residence;
909 that the location affords sufficient unoccupied space upon and
910 within which adequately to store all motor vehicles offered and
911 displayed for sale; and that the location is a suitable place
912 where the applicant can in good faith carry on such business and
913 keep and maintain books, records, and files necessary to conduct
914 such business, which shall be available at all reasonable hours
915 to inspection by the department or any of its inspectors or
916 other employees. The applicant shall certify that the business
917 of a motor vehicle dealer is the principal business that will
918 ~~which shall~~ be conducted at that location. The application must
919 ~~shall~~ contain a statement that the applicant is ~~either~~
920 franchised by a manufacturer of motor vehicles, in which case
921 the name of each motor vehicle that the applicant is franchised
922 to sell must ~~shall~~ be included, or an independent
923 (nonfranchised) motor vehicle dealer. The application must ~~shall~~
924 contain other relevant information as may be required by the
925 department, including evidence that the applicant is insured
926 under a garage liability insurance policy or a general liability
927 insurance policy coupled with a business automobile policy,
928 which includes ~~shall include~~, at a minimum, \$60,000 ~~\$25,000~~

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929 combined single-limit liability coverage including bodily injury
 930 and property damage protection ~~and \$10,000 personal injury~~
 931 ~~protection~~. However, a salvage motor vehicle dealer as defined
 932 in subparagraph (1)(c)5. is exempt from the requirements for
 933 garage liability insurance ~~and personal injury protection~~
 934 ~~insurance~~ on those vehicles that cannot be legally operated on
 935 roads, highways, or streets in this state. Franchise dealers
 936 must submit a garage liability insurance policy, and all other
 937 dealers must submit a garage liability insurance policy or a
 938 general liability insurance policy coupled with a business
 939 automobile policy. Such policy shall be for the license period,
 940 and evidence of a new or continued policy shall be delivered to
 941 the department at the beginning of each license period. Upon
 942 making initial application, the applicant shall pay to the
 943 department a fee of \$300 in addition to any other fees now
 944 required by law. Upon making a subsequent renewal application,
 945 the applicant shall pay to the department a fee of \$75 in
 946 addition to any other fees now required by law. Upon making an
 947 application for a change of location, the applicant ~~person~~ shall
 948 pay a fee of \$50 in addition to any other fees now required by
 949 law. The department shall, in the case of every application for
 950 initial licensure, verify whether certain facts set forth in the
 951 application are true. Each applicant, general partner in the
 952 case of a partnership, or corporate officer and director in the
 953 case of a corporate applicant, must file a set of fingerprints
 954 with the department for the purpose of determining any prior
 955 criminal record or any outstanding warrants. The department
 956 shall submit the fingerprints to the Department of Law
 957 Enforcement for state processing and forwarding to the Federal

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958 Bureau of Investigation for federal processing. The actual cost
 959 of state and federal processing shall be borne by the applicant
 960 and is in addition to the fee for licensure. The department may
 961 issue a license to an applicant pending the results of the
 962 fingerprint investigation, which license is fully revocable if
 963 the department subsequently determines that any facts set forth
 964 in the application are not true or correctly represented.

965 Section 30. Paragraph (j) of subsection (3) of section
 966 320.771, Florida Statutes, is amended to read:

967 320.771 License required of recreational vehicle dealers.—
 968 (3) APPLICATION.—The application for such license shall be
 969 in the form prescribed by the department and subject to such
 970 rules as may be prescribed by it. The application shall be
 971 verified by oath or affirmation and shall contain:

972 (j) A statement that the applicant is insured under a
 973 garage liability insurance policy, which includes ~~shall include~~,
 974 at a minimum, \$60,000 ~~\$25,000~~ combined single-limit liability
 975 coverage, including bodily injury and property damage
 976 protection, ~~and \$10,000 personal injury protection~~, if the
 977 applicant is to be licensed as a dealer in, or intends to sell,
 978 recreational vehicles.

979 The department shall, if it deems necessary, cause an
 980 investigation to be made to ascertain if the facts set forth in
 981 the application are true and shall not issue a license to the
 982 applicant until it is satisfied that the facts set forth in the
 983 application are true.

984 Section 31. Subsection (2) of section 322.251, Florida
 985 Statutes, is amended to read:

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987 322.251 Notice of cancellation, suspension, revocation, or
988 disqualification of license.—

989 (2) The giving of notice and an order of cancellation,
990 suspension, revocation, or disqualification by mail is complete
991 ~~upon expiration of~~ 20 days after deposit in the United States
992 mail for all notices except those issued under chapter 324 or
993 ss. ~~627.733-627.734~~ 627.732-627.734, which are complete 15 days
994 after deposit in the United States mail. Proof of the giving of
995 notice and an order of cancellation, suspension, revocation, or
996 disqualification in either manner shall be made by entry in the
997 records of the department that such notice was given. The entry
998 is admissible in the courts of this state and constitutes
999 sufficient proof that such notice was given.

1000 Section 32. Subsection (4) of section 400.9905, Florida
1001 Statutes, is amended, present subsection (7) of that section is
1002 renumbered as subsection (8), and new subsection (7) is added to
1003 that section, to read:

1004 400.9905 Definitions.—

1005 (4) "Clinic" means an entity where health care services are
1006 provided to individuals and which tenders charges for
1007 reimbursement for such services, including a mobile clinic and a
1008 portable equipment provider. As used in this part, the term does
1009 not include and the licensure requirements of this part do not
1010 apply to:

1011 (a) Entities licensed or registered by the state under
1012 chapter 395; entities licensed or registered by the state and
1013 providing only health care services within the scope of services
1014 authorized under their respective licenses under ss. 383.30-
1015 383.335, chapter 390, chapter 394, chapter 397, this chapter

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1016 except part X, chapter 429, chapter 463, chapter 465, chapter
1017 466, chapter 478, part I of chapter 483, chapter 484, or chapter
1018 651; end-stage renal disease providers authorized under 42
1019 C.F.R. part 405, subpart U; providers certified under 42 C.F.R.
1020 part 485, subpart B or subpart H; or any entity that provides
1021 neonatal or pediatric hospital-based health care services or
1022 other health care services by licensed practitioners solely
1023 within a hospital licensed under chapter 395.

1024 (b) Entities that own, directly or indirectly, entities
1025 licensed or registered by the state pursuant to chapter 395;
1026 entities that own, directly or indirectly, entities licensed or
1027 registered by the state and providing only health care services
1028 within the scope of services authorized pursuant to their
1029 respective licenses under ss. 383.30-383.335, chapter 390,
1030 chapter 394, chapter 397, this chapter except part X, chapter
1031 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
1032 of chapter 483, chapter 484, or chapter 651; end-stage renal
1033 disease providers authorized under 42 C.F.R. part 405, subpart
1034 U; providers certified under 42 C.F.R. part 485, subpart B or
1035 subpart H; or any entity that provides neonatal or pediatric
1036 hospital-based health care services by licensed practitioners
1037 solely within a hospital licensed under chapter 395.

1038 (c) Entities that are owned, directly or indirectly, by an
1039 entity licensed or registered by the state pursuant to chapter
1040 395; entities that are owned, directly or indirectly, by an
1041 entity licensed or registered by the state and providing only
1042 health care services within the scope of services authorized
1043 pursuant to their respective licenses under ss. 383.30-383.335,
1044 chapter 390, chapter 394, chapter 397, this chapter except part

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1045 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 1046 478, part I of chapter 483, chapter 484, or chapter 651; end-
 1047 stage renal disease providers authorized under 42 C.F.R. part
 1048 405, subpart U; providers certified under 42 C.F.R. part 485,
 1049 subpart B or subpart H; or any entity that provides neonatal or
 1050 pediatric hospital-based health care services by licensed
 1051 practitioners solely within a hospital under chapter 395.

1052 (d) Entities that are under common ownership, directly or
 1053 indirectly, with an entity licensed or registered by the state
 1054 pursuant to chapter 395; entities that are under common
 1055 ownership, directly or indirectly, with an entity licensed or
 1056 registered by the state and providing only health care services
 1057 within the scope of services authorized pursuant to their
 1058 respective licenses under ss. 383.30-383.335, chapter 390,
 1059 chapter 394, chapter 397, this chapter except part X, chapter
 1060 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
 1061 of chapter 483, chapter 484, or chapter 651; end-stage renal
 1062 disease providers authorized under 42 C.F.R. part 405, subpart
 1063 U; providers certified under 42 C.F.R. part 485, subpart B or
 1064 subpart H; or any entity that provides neonatal or pediatric
 1065 hospital-based health care services by licensed practitioners
 1066 solely within a hospital licensed under chapter 395.

1067 (e) An entity that is exempt from federal taxation under 26
 1068 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
 1069 under 26 U.S.C. s. 409 that has a board of trustees at least
 1070 two-thirds of which are Florida-licensed health care
 1071 practitioners and provides only physical therapy services under
 1072 physician orders, any community college or university clinic,
 1073 and any entity owned or operated by the federal or state

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1074 government, including agencies, subdivisions, or municipalities
 1075 thereof.

1076 (f) A sole proprietorship, group practice, partnership, or
 1077 corporation that provides health care services by physicians
 1078 covered by s. 627.419, that is directly supervised by one or
 1079 more of such physicians, and that is wholly owned by one or more
 1080 of those physicians or by a physician and the spouse, parent,
 1081 child, or sibling of that physician.

1082 (g) A sole proprietorship, group practice, partnership, or
 1083 corporation that provides health care services by licensed
 1084 health care practitioners under chapter 457, chapter 458,
 1085 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 1086 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 1087 chapter 490, chapter 491, or part I, part III, part X, part
 1088 XIII, or part XIV of chapter 468, or s. 464.012, and that is
 1089 wholly owned by one or more licensed health care practitioners,
 1090 or the licensed health care practitioners set forth in this
 1091 paragraph and the spouse, parent, child, or sibling of a
 1092 licensed health care practitioner if one of the owners who is a
 1093 licensed health care practitioner is supervising the business
 1094 activities and is legally responsible for the entity's
 1095 compliance with all federal and state laws. However, a health
 1096 care practitioner may not supervise services beyond the scope of
 1097 the practitioner's license, except that, for the purposes of
 1098 this part, a clinic owned by a licensee in s. 456.053(3)(b)
 1099 which provides only services authorized pursuant to s.
 1100 456.053(3)(b) may be supervised by a licensee specified in s.
 1101 456.053(3)(b).

1102 (h) Clinical facilities affiliated with an accredited

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1103 medical school at which training is provided for medical
1104 students, residents, or fellows.

1105 (i) Entities that provide only oncology or radiation
1106 therapy services by physicians licensed under chapter 458 or
1107 chapter 459 or entities that provide oncology or radiation
1108 therapy services by physicians licensed under chapter 458 or
1109 chapter 459 which are owned by a corporation whose shares are
1110 publicly traded on a recognized stock exchange.

1111 (j) Clinical facilities affiliated with a college of
1112 chiropractic accredited by the Council on Chiropractic Education
1113 at which training is provided for chiropractic students.

1114 (k) Entities that provide licensed practitioners to staff
1115 emergency departments or to deliver anesthesia services in
1116 facilities licensed under chapter 395 and that derive at least
1117 90 percent of their gross annual revenues from the provision of
1118 such services. Entities claiming an exemption from licensure
1119 under this paragraph must provide documentation demonstrating
1120 compliance.

1121 (l) Orthotic or prosthetic clinical facilities that are a
1122 publicly traded corporation or that are wholly owned, directly
1123 or indirectly, by a publicly traded corporation. As used in this
1124 paragraph, a publicly traded corporation is a corporation that
1125 issues securities traded on an exchange registered with the
1126 United States Securities and Exchange Commission as a national
1127 securities exchange.

1128 (m) Entities that are owned by a corporation that has \$250
1129 million or more in total annual sales of health care services
1130 provided by licensed health care practitioners where one or more
1131 of the owners is a health care practitioner who is licensed in

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1132 this state and who is responsible for supervising the business
1133 activities of the entity and is legally responsible for the
1134 entity's compliance with state law for purposes of this part.

1135 (n) Entities that employ 50 or more licensed health care
1136 practitioners licensed under chapter 458 or chapter 459 where
1137 the billing for medical services is under a single tax
1138 identification number. The application for exemption under this
1139 subsection must include ~~shall contain information that includes:~~
1140 the name, residence, and business address, and telephone phone
1141 number of the entity that owns the practice; a complete list of
1142 the names and contact information of all the officers and
1143 directors of the corporation; the name, residence address,
1144 business address, and medical license number of each licensed
1145 Florida health care practitioner employed by the entity; the
1146 corporate tax identification number of the entity seeking an
1147 exemption; a list listing of health care services to be provided
1148 by the entity at the health care clinics owned or operated by
1149 the entity and a certified statement prepared by an independent
1150 certified public accountant which states that the entity and the
1151 health care clinics owned or operated by the entity have not
1152 received payment for health care services related to a motor
1153 vehicle accident injury ~~under personal injury protection~~
1154 ~~insurance coverage~~ for the preceding year. If the agency
1155 determines that an entity ~~that which~~ is exempt under this
1156 subsection has received payments for medical services related to
1157 a motor vehicle accident injury ~~under personal injury protection~~
1158 ~~insurance coverage~~, the agency may deny or revoke the exemption
1159 from licensure under this subsection.

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1161 ~~Notwithstanding this subsection, an entity shall be deemed a~~
 1162 ~~clinic and must be licensed under this part in order to receive~~
 1163 ~~reimbursement under the Florida Motor Vehicle No Fault Law, ss.~~
 1164 ~~627.730-627.7405, unless exempted under s. 627.736(5)(h).~~

1165 (7) "Motor vehicle accident injury" means accidental bodily
 1166 injury sustained while occupying a motor vehicle as defined in
 1167 s. 627.732 or, if the injured party is not an occupant of a
 1168 motor vehicle, an injury caused by physical contact with a
 1169 motor vehicle.

1170 Section 33. Subsection (6) of section 400.991, Florida
 1171 Statutes, is amended to read:

1172 400.991 License requirements; background screenings;
 1173 prohibitions.-

1174 (6) All agency forms for licensure application or exemption
 1175 from licensure under this part must contain the following
 1176 statement:

1177
 1178 INSURANCE FRAUD NOTICE.-A person who knowingly submits
 1179 a false, misleading, or fraudulent application or
 1180 other document when applying for licensure as a health
 1181 care clinic, seeking an exemption from licensure as a
 1182 health care clinic, or demonstrating compliance with
 1183 part X of chapter 400, Florida Statutes, with the
 1184 intent to use the license, exemption from licensure,
 1185 or demonstration of compliance to provide services or
 1186 seek reimbursement related to a motor vehicle accident
 1187 injury under the Florida Motor Vehicle No Fault Law,
 1188 commits a fraudulent insurance act, as defined in s.
 1189 626.989, Florida Statutes. A person who presents a

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1190 claim for personal injury protection benefits knowing
 1191 that the payee knowingly submitted such health care
 1192 clinic application or document, commits insurance
 1193 fraud, as defined in s. 817.234, Florida Statutes.

1194
 1195 Section 34. Paragraph (g) of subsection (1) of section
 1196 400.9935, Florida Statutes, is amended to read:

1197 400.9935 Clinic responsibilities.-

1198 (1) Each clinic shall appoint a medical director or clinic
 1199 director who shall agree in writing to accept legal
 1200 responsibility for the following activities on behalf of the
 1201 clinic. The medical director or the clinic director shall:

1202 (g) Conduct systematic reviews of clinic billings to ensure
 1203 that the billings are not fraudulent or unlawful. Upon discovery
 1204 of an unlawful charge, the medical director or clinic director
 1205 shall take immediate corrective action. If the clinic performs
 1206 only the technical component of magnetic resonance imaging,
 1207 static radiographs, computed tomography, or positron emission
 1208 tomography, and provides the professional interpretation of such
 1209 services, in a fixed facility that is accredited by the Joint
 1210 Commission on Accreditation of Healthcare Organizations or the
 1211 Accreditation Association for Ambulatory Health Care, and the
 1212 American College of Radiology; and if, in the preceding quarter,
 1213 the percentage of scans performed by that clinic relating to a
 1214 motor vehicle accident injury ~~which was billed to all personal~~
 1215 ~~injury protection insurance carriers~~ was less than 15 percent,
 1216 the chief financial officer of the clinic may, in a written
 1217 acknowledgment provided to the agency, assume the responsibility
 1218 for the conduct of the systematic reviews of clinic billings to

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1219 ensure that the billings are not fraudulent or unlawful.

1220 Section 35. Subsection (28) of section 409.901, Florida
1221 Statutes, is amended to read:

1222 409.901 Definitions; ss. 409.901-409.920.—As used in ss.
1223 409.901-409.920, except as otherwise specifically provided, the
1224 term:

1225 (28) "Third-party benefit" means any benefit that is or may
1226 be available at any time through contract, court award,
1227 judgment, settlement, agreement, or ~~any~~ arrangement between a
1228 third party and any person or entity, including, without
1229 limitation, a Medicaid recipient, a provider, another third
1230 party, an insurer, or the agency, for any Medicaid-covered
1231 injury, illness, goods, or services, including costs of medical
1232 services related thereto, for bodily ~~personal~~ injury or for
1233 death of the recipient, but specifically excluding ~~policies of~~
1234 life insurance policies on the recipient, unless available under
1235 terms of the policy to pay medical expenses before ~~prior to~~
1236 death. The term includes, ~~without limitation,~~ collateral, as
1237 defined in this section, health insurance, any benefit under a
1238 health maintenance organization, a preferred provider
1239 arrangement, a prepaid health clinic, liability insurance,
1240 uninsured motorist insurance ~~or personal injury protection~~
1241 ~~coverage~~, medical benefits under workers' compensation, and any
1242 obligation under law or equity to provide medical support.

1243 Section 36. Paragraph (f) of subsection (11) of section
1244 409.910, Florida Statutes, is amended to read:

1245 409.910 Responsibility for payments on behalf of Medicaid-
1246 eligible persons when other parties are liable.—

1247 (11) The agency may, as a matter of right, in order to

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1248 enforce its rights under this section, institute, intervene in,
1249 or join any legal or administrative proceeding in its own name
1250 in one or more of the following capacities: individually, as
1251 subrogee of the recipient, as assignee of the recipient, or as
1252 lienholder of the collateral.

1253 (f) Notwithstanding any other provision in this section ~~to~~
1254 ~~the contrary, if in the event of~~ an action in tort against a
1255 third party in which the recipient or his or her legal
1256 representative is a party ~~which~~ results in a judgment, award, or
1257 settlement from a third party, the amount recovered shall be
1258 distributed as follows:

1259 1. After attorney ~~attorney's~~ fees and taxable costs as
1260 defined by the Florida Rules of Civil Procedure, one-half of the
1261 remaining recovery shall be paid to the agency up to the total
1262 amount of medical assistance provided by Medicaid.

1263 2. The remaining amount of the recovery shall be paid to
1264 the recipient.

1265 3. For purposes of calculating the agency's recovery of
1266 medical assistance benefits paid, the fee for services of an
1267 attorney retained by the recipient or his or her legal
1268 representative shall be calculated at 25 percent of the
1269 judgment, award, or settlement.

1270 4. Notwithstanding any other provision of this section ~~to~~
1271 ~~the contrary, the agency is shall be~~ entitled to all medical
1272 coverage benefits up to the total amount of medical assistance
1273 provided by Medicaid. For purposes of this paragraph, "medical
1274 coverage" means any benefits under health insurance, a health
1275 maintenance organization, a preferred provider arrangement, or a
1276 prepaid health clinic, and the portion of benefits designated

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1277 for medical payments under coverage for workers' compensation,
 1278 ~~personal injury protection~~, and casualty.

1279 Section 37. Paragraph (k) of subsection (2) of section
 1280 456.057, Florida Statutes, is amended to read:

1281 456.057 Ownership and control of patient records; report or
 1282 copies of records to be furnished.—

1283 (2) As used in this section, the terms "records owner,"
 1284 "health care practitioner," and "health care practitioner's
 1285 employer" do not include any of the following persons or
 1286 entities; furthermore, the following persons or entities are not
 1287 authorized to acquire or own medical records, but are authorized
 1288 under the confidentiality and disclosure requirements of this
 1289 section to maintain those documents required by the part or
 1290 chapter under which they are licensed or regulated:

1291 ~~(k) Persons or entities practicing under s. 627.736(7).~~

1292 Section 38. Paragraphs (gg) through (nn) of subsection (1)
 1293 of section 456.072, Florida Statutes, are redesignated as
 1294 paragraphs (ee) through (ll), respectively, and paragraphs (ee)
 1295 and (ff) of that subsection are amended, to read:

1296 456.072 Grounds for discipline; penalties; enforcement.—

1297 (1) The following acts shall constitute grounds for which
 1298 the disciplinary actions specified in subsection (2) may be
 1299 taken:

1300 ~~(cc) With respect to making a personal injury protection~~
 1301 ~~claim as required by s. 627.736, intentionally submitting a~~
 1302 ~~claim, statement, or bill that has been "upcoded" as defined in~~
 1303 ~~s. 627.732.~~

1304 ~~(ff) With respect to making a personal injury protection~~
 1305 ~~claim as required by s. 627.736, intentionally submitting a~~

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1306 ~~claim, statement, or bill for payment of services that were not~~
 1307 ~~rendered.~~

1308 Section 39. Paragraph (i) of subsection (1) of section
 1309 626.9541, Florida Statutes, is amended to read:

1310 626.9541 Unfair methods of competition and unfair or
 1311 deceptive acts or practices defined.—

1312 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 1313 ACTS.—The following are defined as unfair methods of competition
 1314 and unfair or deceptive acts or practices:

1315 (i) Unfair claim settlement practices.—

1316 1. Attempting to settle claims on the basis of an
 1317 application, when serving as a binder or intended to become a
 1318 part of the policy, or any other material document that ~~which~~
 1319 was altered without notice to, or knowledge or consent of, the
 1320 insured;

1321 2. A material misrepresentation made to an insured or any
 1322 other person having an interest in the proceeds that are payable
 1323 under a ~~such~~ contract or policy, for the purpose and with the
 1324 intent of effecting settlement of such claims, loss, or damage
 1325 under such contract or policy on less favorable terms than those
 1326 provided in, and contemplated by, the ~~such~~ contract or policy;
 1327 or

1328 3. Committing or performing with such frequency as to
 1329 indicate a general business practice any of the following:

1330 a. Failing to adopt and implement standards for the proper
 1331 investigation of claims;

1332 b. Misrepresenting pertinent facts or insurance policy
 1333 provisions relating to coverages at issue;

1334 c. Failing to acknowledge and act promptly upon

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1335 communications with respect to claims;

1336 d. Denying claims without conducting reasonable
1337 investigations based upon available information;

1338 e. Failing to affirm or deny full or partial coverage of
1339 claims, and, as to partial coverage, the dollar amount or extent
1340 of coverage, or failing to provide a written statement that the
1341 claim is being investigated, upon the written request of the
1342 insured, within 30 days after proof-of-loss statements have been
1343 completed;

1344 f. Failing to promptly provide a reasonable explanation in
1345 writing to the insured of the basis in the insurance policy, in
1346 relation to the facts or applicable law, for denial of a claim
1347 or for the offer of a compromise settlement;

1348 g. Failing to promptly notify the insured of any additional
1349 information necessary for the processing of a claim; or

1350 h. Failing to clearly explain the nature of the requested
1351 information and the reasons why such information is necessary.

1352 ~~4. Failing to pay personal injury protection insurance
1353 claims within the time periods required by s. 627.726(4)(b). The
1354 office may order the insurer to pay restitution to a
1355 policyholder, medical provider, or other claimant, including
1356 interest at a rate consistent with the amount set forth in s.
1357 55.03(1), for the time period within which an insurer fails to
1358 pay claims as required by law. Restitution is in addition to any
1359 other penalties allowed by law, including, but not limited to,
1360 the suspension of the insurer's certificate of authority.~~

1361 4. Failing to pay undisputed amounts of partial or full
1362 benefits owed under first-party property insurance policies
1363 within 90 days after an insurer receives notice of a residential

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1364 property insurance claim, determines the amounts of partial or
1365 full benefits, and agrees to coverage, unless payment of the
1366 undisputed benefits is prevented by an act of God, prevented by
1367 the impossibility of performance, or due to actions by the
1368 insured or claimant ~~which that~~ constitute fraud, lack of
1369 cooperation, or intentional misrepresentation regarding the
1370 claim for which benefits are owed.

1371 Section 40. Paragraph (a) of subsection (1) of section
1372 626.989, Florida Statutes, is amended to read:

1373 626.989 Investigation by department or Division of
1374 Insurance Fraud; compliance; immunity; confidential information;
1375 reports to division; division investigator's power of arrest.-

1376 (1) For the purposes of this section:

1377 (a) A person commits a "fraudulent insurance act" if the
1378 person:

1379 1. Knowingly and with intent to defraud presents, causes to
1380 be presented, or prepares with knowledge or belief that it will
1381 be presented, to or by an insurer, self-insurer, self-insurance
1382 fund, servicing corporation, purported insurer, broker, or any
1383 agent thereof, any written statement as part of, or in support
1384 of, an application for the issuance of, or the rating of, any
1385 insurance policy, or a claim for payment or other benefit
1386 pursuant to any insurance policy, which the person knows to
1387 contain materially false information concerning any fact
1388 material thereto or if the person conceals, for the purpose of
1389 misleading another, information concerning any fact material
1390 thereto.

1391 2. Knowingly submits:

1392 a. A false, misleading, or fraudulent application or other

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1393 document when applying for licensure as a health care clinic,
 1394 seeking an exemption from licensure as a health care clinic, or
 1395 demonstrating compliance with part X of chapter 400 with an
 1396 intent to use the license, exemption from licensure, or
 1397 demonstration of compliance to provide services or seek
 1398 reimbursement relating to a motor vehicle accident under the
 1399 ~~Florida Motor Vehicle No-Fault Law.~~

1400 b. A claim for payment or other benefit relating to a motor
 1401 vehicle accident pursuant to a personal injury protection
 1402 insurance policy under the Florida Motor Vehicle No Fault Law if
 1403 the person knows that the payee knowingly submitted a false,
 1404 misleading, or fraudulent application or other document when
 1405 applying for licensure as a health care clinic, seeking an
 1406 exemption from licensure as a health care clinic, or
 1407 demonstrating compliance with part X of chapter 400.

1408 Section 41. Paragraph (a) of subsection (4) of section
 1409 626.9895, Florida Statutes, is amended to read:

1410 626.9895 Motor vehicle insurance fraud direct-support
 1411 organization.—

1412 (4) BOARD OF DIRECTORS.—

1413 (a) The board of directors of the organization consists
 1414 ~~shall consist~~ of the following 11 members:

1415 1. The Chief Financial Officer, or designee, who serves
 1416 ~~shall serve~~ as chair.

1417 2. Two state attorneys, one ~~of whom shall be~~ appointed by
 1418 the Chief Financial Officer and the other one of whom shall be
 1419 appointed by the Attorney General.

1420 3. Two representatives of motor vehicle insurers appointed
 1421 by the Chief Financial Officer.

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1422 4. Two representatives of local law enforcement agencies,
 1423 one ~~of whom shall be~~ appointed by the Chief Financial Officer
 1424 and the other one of whom shall be appointed by the Attorney
 1425 General.

1426 5. Two representatives of the types of health care
 1427 providers who regularly make claims for benefits related to
 1428 motor vehicle accidents under ss. 627.730-627.7405, one ~~of whom~~
 1429 ~~shall be~~ appointed by the President of the Senate and the other
 1430 ~~one of whom shall be~~ appointed by the Speaker of the House of
 1431 Representatives. The appointees may not represent the same type
 1432 of health care provider.

1433 6. A private attorney who has experience in representing
 1434 claimants in motor vehicle tort claims, actions for benefits
 1435 under ss. 627.730-627.7405, who shall be appointed by the
 1436 President of the Senate.

1437 7. A private attorney who has experience in representing
 1438 insurers in motor vehicle tort claims, actions for benefits
 1439 under ss. 627.730-627.7405, who shall be appointed by the
 1440 Speaker of the House of Representatives.

1441 Section 42. Subsection (1) of section 627.06501, Florida
 1442 Statutes, is amended to read:

1443 627.06501 Insurance discounts for certain persons
 1444 completing driver improvement course.—

1445 (1) Any rate, rating schedule, or rating manual for the
 1446 liability, ~~personal injury protection,~~ and collision coverages
 1447 of a motor vehicle insurance policy filed with the office may
 1448 provide for an appropriate reduction in premium charges as to
 1449 such coverages if when the principal operator on the covered
 1450 vehicle has successfully completed a driver improvement course

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 1451 approved and certified by the Department of Highway Safety and
 1452 Motor Vehicles which is effective in reducing crash or violation
 1453 rates, or both, ~~as determined pursuant to s. 310.1451(5)~~. Any
 1454 discount, not to exceed 10 percent, used by an insurer is
 1455 presumed to be appropriate unless credible data demonstrates
 1456 otherwise.

1457 Section 43. Subsection (1) of section 627.0652, Florida
 1458 Statutes, is amended to read:

1459 627.0652 Insurance discounts for certain persons completing
 1460 safety course.—

1461 (1) Any rates, rating schedules, or rating manuals for the
 1462 liability, ~~personal injury protection~~, and collision coverages
 1463 of a motor vehicle insurance policy filed with the office must
 1464 ~~shall~~ provide for an appropriate reduction in premium charges as
 1465 to such coverages if when the principal operator on the covered
 1466 vehicle is an insured 55 years of age or older who has
 1467 successfully completed a motor vehicle accident prevention
 1468 course approved by the Department of Highway Safety and Motor
 1469 Vehicles. Any discount used by an insurer is presumed to be
 1470 appropriate unless credible data demonstrates otherwise.

1471 Section 44. Subsections (1) and (3) of section 627.0653,
 1472 Florida Statutes, are amended to read:

1473 627.0653 Insurance discounts for specified motor vehicle
 1474 equipment.—

1475 (1) Any rates, rating schedules, or rating manuals for the
 1476 liability, ~~personal injury protection~~, and collision coverages
 1477 of a motor vehicle insurance policy filed with the office must
 1478 ~~shall~~ provide a premium discount if the insured vehicle is
 1479 equipped with factory-installed, four-wheel antilock brakes.

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 1480 (3) Any rates, rating schedules, or rating manuals for
 1481 ~~personal injury protection coverage and~~ medical payments
 1482 coverage, if offered, of a motor vehicle insurance policy filed
 1483 with the office must shall provide a premium discount if the
 1484 insured vehicle is equipped with one or more air bags which are
 1485 factory installed.

1486 Section 45. Section 627.4132, Florida Statutes, is amended
 1487 to read:

1488 627.4132 Stacking of coverages prohibited.—If an insured or
 1489 named insured is protected by any type of motor vehicle
 1490 insurance policy for liability, ~~personal injury protection~~, or
 1491 other coverage, the policy must shall provide that the insured
 1492 or named insured is protected only to the extent of the coverage
 1493 she or he has on the vehicle involved in the accident. However,
 1494 if none of the insured's or named insured's vehicles is involved
 1495 in the accident, coverage is available only to the extent of
 1496 coverage on any one of the vehicles with applicable coverage.
 1497 Coverage on any other vehicles may shall not be added to or
 1498 stacked onto upon that coverage. This section does not apply:

1499 (1) To uninsured motorist coverage, which is separately
 1500 governed by s. 627.727.

1501 (2) To reduce the coverage available by reason of insurance
 1502 policies insuring different named insureds.

1503 Section 46. Subsection (6) of section 627.6482, Florida
 1504 Statutes, is amended to read:

1505 627.6482 Definitions.—As used in ss. 627.648-627.6498, the
 1506 term:

1507 (6) "Health insurance" means any hospital and medical
 1508 expense incurred policy, minimum premium plan, stop-loss

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 1509 coverage, health maintenance organization contract, prepaid
 1510 health clinic contract, multiple-employer welfare arrangement
 1511 contract, or fraternal benefit society health benefits contract,
 1512 whether sold as an individual or group policy or contract. The
 1513 term does not include ~~a any~~ policy covering medical payment
 1514 coverage or ~~bodily personal injury liability protection~~ coverage
 1515 in a motor vehicle policy, coverage issued as a supplement to
 1516 liability insurance, or workers' compensation.

1517 Section 47. Section 627.7263, Florida Statutes, is amended
 1518 to read:

1519 627.7263 Rental and leasing driver's insurance to be
 1520 primary; exception.—

1521 (1) ~~The~~ Valid and collectible liability insurance ~~or~~
 1522 ~~personal injury protection insurance~~ providing coverage for the
 1523 lessor of a motor vehicle for rent or lease is primary unless
 1524 otherwise stated in at least 10-point type on the face of the
 1525 rental or lease agreement. Such insurance is primary for the
 1526 limits of liability required under s. 324.021(7) ~~and personal~~
 1527 ~~injury protection coverage as required by ss. 324.021(7) and~~
 1528 ~~627.736.~~

1529 (2) If the lessee's coverage is to be primary, the rental
 1530 or lease agreement must contain the following language, in at
 1531 least 10-point type:

1532
 1533 "The valid and collectible liability insurance ~~and~~
 1534 ~~personal injury protection insurance~~ of an any
 1535 authorized rental or leasing driver is primary for the
 1536 limits of liability ~~and personal injury protection~~
 1537 coverage required under s. 324.021(7) ~~and~~

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 1538 ~~627.736~~, Florida Statutes."

1539 Section 48. Subsections (8) through (10) of section
 1540 627.727, Florida Statutes, are renumbered as subsections (7)
 1541 through (9), respectively, and subsection (1) and present
 1542 subsection (7) of that section are amended, to read:

1543 627.727 Motor vehicle insurance; uninsured and underinsured
 1544 vehicle coverage; insolvent insurer protection.—

1545 (1) No motor vehicle liability insurance policy which
 1546 provides bodily injury liability coverage shall be delivered or
 1547 issued for delivery in this state with respect to any
 1548 specifically insured or identified motor vehicle registered or
 1549 principally garaged in this state unless uninsured motor vehicle
 1550 coverage is provided therein or supplemental thereto for the
 1551 protection of persons insured thereunder who are legally
 1552 entitled to recover damages from owners or operators of
 1553 uninsured motor vehicles because of bodily injury, sickness, or
 1554 disease, including death, resulting therefrom. However, the
 1555 coverage required under this section is not applicable if when,
 1556 or to the extent that, an insured named in the policy makes a
 1557 written rejection of the coverage on behalf of all insureds
 1558 under the policy. If when a motor vehicle is leased for ~~a period~~
 1559 ~~of~~ 1 year or longer and the lessor of such vehicle, by the terms
 1560 of the lease contract, provides liability coverage on the leased
 1561 vehicle, the lessee of such vehicle shall have the sole
 1562 privilege to reject uninsured motorist coverage or to select
 1563 lower limits than the bodily injury liability limits, regardless
 1564 of whether the lessor is qualified as a self-insurer pursuant to
 1565 s. 324.171. Unless an insured, or lessee having the privilege of
 1566 rejecting uninsured motorist coverage, requests such coverage or

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1567 requests higher uninsured motorist limits in writing, the
 1568 coverage or such higher uninsured motorist limits need not be
 1569 provided in or supplemental to any other policy ~~that which~~
 1570 renews, extends, changes, supersedes, or replaces an existing
 1571 policy with the same bodily injury liability limits ~~if when~~ an
 1572 insured or lessee had rejected the coverage. ~~If when~~ an insured
 1573 or lessee has initially selected limits of uninsured motorist
 1574 coverage lower than her or his bodily injury liability limits,
 1575 higher limits of uninsured motorist coverage need not be
 1576 provided in or supplemental to any other policy ~~that which~~
 1577 renews, extends, changes, supersedes, or replaces an existing
 1578 policy with the same bodily injury liability limits unless an
 1579 insured requests higher uninsured motorist coverage in writing.
 1580 The rejection or selection of lower limits shall be made on a
 1581 form approved by the office. The form must ~~shall~~ fully advise
 1582 the applicant of the nature of the coverage and ~~shall~~ state that
 1583 the coverage is equal to bodily injury liability limits unless
 1584 lower limits are requested or the coverage is rejected. The
 1585 heading of the form shall be in 12-point bold type and ~~shall~~
 1586 state: "You are electing not to purchase certain valuable
 1587 coverage ~~that which~~ protects you and your family or you are
 1588 purchasing uninsured motorist limits less than your bodily
 1589 injury liability limits when you sign this form. Please read
 1590 carefully." If this form is signed by a named insured, it will
 1591 be conclusively presumed that there was an informed, knowing
 1592 rejection of coverage or election of lower limits on behalf of
 1593 all insureds. The insurer shall notify the named insured at
 1594 least annually of her or his options as to the coverage required
 1595 by this section. Such notice must ~~shall~~ be part of, and attached

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1596 to, the notice of premium, must ~~shall~~ provide ~~for~~ a means to
 1597 allow the insured to request such coverage, and must ~~shall~~ be
 1598 given in a manner approved by the office. Receipt of this notice
 1599 does not constitute an affirmative waiver of the insured's right
 1600 to uninsured motorist coverage ~~if where~~ the insured has not
 1601 signed a selection or rejection form. The coverage described
 1602 under this section is ~~shall be~~ over and above, but may ~~shall~~ not
 1603 duplicate, the benefits available to an insured under any
 1604 workers' compensation law, ~~personal injury protection benefits,~~
 1605 disability benefits law, or similar law; under any automobile
 1606 medical expense coverage; under any motor vehicle liability
 1607 insurance coverage; or from the owner or operator of the
 1608 uninsured motor vehicle or any other person or organization
 1609 jointly or severally liable ~~together~~ with such owner or operator
 1610 for the accident; and such coverage must ~~shall~~ cover the
 1611 difference, if any, between the sum of such benefits and the
 1612 damages sustained, up to the maximum amount of ~~such~~ coverage
 1613 provided under this section. The amount of coverage available
 1614 under this section may ~~shall~~ not be reduced by a setoff against
 1615 any coverage, including liability insurance. Such coverage does
 1616 ~~shall~~ not inure, directly or indirectly, to the benefit of any
 1617 workers' compensation or disability benefits carrier or any
 1618 person or organization qualifying as a self-insurer under any
 1619 workers' compensation or disability benefits law or similar law.
 1620 ~~(7) The legal liability of an uninsured motorist coverage~~
 1621 ~~insurer does not include damages in tort for pain, suffering,~~
 1622 ~~mental anguish, and inconvenience unless the injury or disease~~
 1623 ~~is described in one or more of paragraphs (a) (d) of s.~~
 1624 ~~627.737(2).~~

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1625 Section 49. Subsection (1) and paragraph (a) of subsection
1626 (2) of section 627.7275, Florida Statutes, are amended to read:
1627 627.7275 Motor vehicle liability.—

1628 (1) A motor vehicle insurance policy ~~providing personal~~
1629 ~~injury protection as set forth in s. 627.736 may not be~~
1630 delivered or issued for delivery in this state for a with
1631 ~~respect to any~~ specifically insured or identified motor vehicle
1632 registered or principally garaged in this state must provide
1633 ~~unless the policy also provides~~ coverage for property damage
1634 liability and bodily injury liability as required under ~~by~~ s.
1635 324.022.

1636 (2) (a) Insurers writing motor vehicle insurance in this
1637 state shall make available, subject to the insurers' usual
1638 underwriting restrictions:

1639 1. Coverage under policies as described in subsection (1)
1640 to any applicant for private passenger motor vehicle insurance
1641 coverage who is seeking the coverage in order to reinstate the
1642 applicant's driving privileges in this state if ~~when the~~ driving
1643 privileges were revoked or suspended pursuant to s. 316.646 or
1644 s. 324.0221 due to the failure of the applicant to maintain
1645 required security.

1646 2. Coverage under policies as described in subsection (1),
1647 which also provides bodily injury liability coverage and
1648 property damage liability coverage ~~for bodily injury, death, and~~
1649 ~~property damage arising out of the ownership, maintenance, or~~
1650 ~~use of the motor vehicle~~ in an amount not less than the limits
1651 described in s. 324.021(7) and conforms to the requirements of
1652 s. 324.151, to any applicant for private passenger motor vehicle
1653 insurance coverage who is seeking the coverage in order to

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1654 reinstate the applicant's driving privileges in this state after
1655 such privileges were revoked or suspended under s. 316.193 or s.
1656 322.26(2) for driving under the influence.

1657 Section 50. Paragraph (a) of subsection (1) of section
1658 627.728, Florida Statutes, is amended to read:

1659 627.728 Cancellations; nonrenewals.—

1660 (1) As used in this section, the term:

1661 (a) "Policy" means ~~the~~ bodily injury and property damage
1662 liability, ~~personal injury protection,~~ medical payments,
1663 comprehensive, collision, and uninsured motorist coverage
1664 portions of a policy of motor vehicle insurance delivered or
1665 issued for delivery in this state:

1666 1. Insuring a natural person as named insured or one or
1667 more related individuals who are residents ~~resident~~ of the same
1668 household; and

1669 2. Insuring only a motor vehicle of the private passenger
1670 type or station wagon type which is not used as a public or
1671 livery conveyance for passengers or rented to others; or
1672 insuring any other four-wheel motor vehicle having a load
1673 capacity of 1,500 pounds or less which is not used in the
1674 occupation, profession, or business of the insured other than
1675 farming; other than any policy issued under an automobile
1676 insurance assigned risk plan; insuring more than four
1677 automobiles; or covering garage, automobile sales agency, repair
1678 shop, service station, or public parking place operation
1679 hazards.

1680 The term "policy" does not include a binder as defined in s.
1681 627.420 unless the duration of the binder period exceeds 60
1682

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1683 days.

1684 Section 51. Paragraphs (a) and (b) of subsection (1),
1685 paragraph (a) of subsection (5), and subsection (7) of section
1686 627.7295, Florida Statutes, are amended to read:

1687 627.7295 Motor vehicle insurance contracts.—

1688 (1) As used in this section, the term:

1689 (a) "Policy" means a motor vehicle insurance policy that
1690 provides bodily injury liability ~~personal injury protection~~
1691 coverage, property damage liability coverage, or both.

1692 (b) "Binder" means a binder that provides motor vehicle
1693 bodily injury liability ~~personal injury protection~~ and property
1694 damage liability coverage.

1695 (5) (a) A licensed general lines agent may charge a per-
1696 policy fee of up to not to exceed \$10 to cover the agent's
1697 administrative costs ~~of the agent~~ associated with selling the
1698 motor vehicle insurance policy if the policy covers only bodily
1699 injury liability ~~personal injury protection~~ coverage ~~as provided~~
1700 ~~by s. 627.736~~ and property damage liability coverage as provided
1701 by s. 627.7275 and if no other insurance is sold or issued in
1702 conjunction with or collateral to the policy. The fee is not
1703 ~~considered~~ part of the premium.

1704 (7) A policy of private passenger motor vehicle insurance
1705 or a binder for such a policy may be initially issued in this
1706 state only if, before the effective date of such binder or
1707 policy, the insurer or agent has collected ~~from the insured an~~
1708 ~~amount equal to~~ 2 months' premium from the insured. An insurer,
1709 agent, or premium finance company may not, directly or
1710 indirectly, take any action that results ~~resulting~~ in the
1711 insured paying ~~having paid~~ from the insured's own funds an

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1712 amount less than the 2 months' premium required by this
1713 subsection. This subsection applies without regard to whether
1714 the premium is financed by a premium finance company or is paid
1715 pursuant to a periodic payment plan of an insurer or an
1716 insurance agent.

1717 (a) This subsection does not apply:

1718 1. If an insured or member of the insured's family is
1719 renewing or replacing a policy or a binder for such policy
1720 written by the same insurer or a member of the same insurer
1721 group; ~~This subsection does not apply~~

1722 2. To an insurer that issues private passenger motor
1723 vehicle coverage primarily to active duty or former military
1724 personnel or their dependents; ~~or. This subsection does not~~
1725 ~~apply~~

1726 3. If all policy payments are paid pursuant to a payroll
1727 deduction plan or an automatic electronic funds transfer payment
1728 plan from the policyholder.

1729 (b) This subsection and subsection (4) do not apply if:

1730 1. All policy payments to an insurer are paid pursuant to
1731 an automatic electronic funds transfer payment plan from an
1732 agent, a managing general agent, or a premium finance company
1733 and if the policy includes, at a minimum, bodily injury
1734 liability and ~~personal injury protection pursuant to ss.~~
1735 ~~627.730 627.7405,~~ motor vehicle property damage liability
1736 pursuant to s. 627.7275; ~~or and bodily injury liability in at~~
1737 ~~least the amount of \$10,000 because of bodily injury to, or~~
1738 ~~death of, one person in any one accident and in the amount of~~
1739 ~~\$20,000 because of bodily injury to, or death of, two or more~~
1740 ~~persons in any one accident. This subsection and subsection (4)~~

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1741 ~~do not apply if~~

1742 2. An insured has had a policy in effect for at least 6
1743 months, the insured's agent is terminated by the insurer that
1744 issued the policy, and the insured obtains coverage on the
1745 policy's renewal date with a new company through the terminated
1746 agent.

1747 Section 52. Section 627.8405, Florida Statutes, is amended
1748 to read:

1749 627.8405 Prohibited acts; financing companies.—~~A No~~ premium
1750 finance company ~~shall~~, in a premium finance agreement or other
1751 agreement, may not finance the cost of or otherwise provide for
1752 the collection or remittance of dues, assessments, fees, or
1753 other periodic payments of money for the cost of:

1754 (1) A membership in an automobile club. The term
1755 "automobile club" means a legal entity that which, in
1756 consideration of dues, assessments, or periodic payments of
1757 money, promises its members or subscribers to assist them in
1758 matters relating to the ownership, operation, use, or
1759 maintenance of a motor vehicle; however, the term this
1760 ~~definition of "automobile club"~~ does not include persons,
1761 associations, or corporations that which are organized and
1762 operated solely for the purpose of conducting, sponsoring, or
1763 sanctioning motor vehicle races, exhibitions, or contests upon
1764 racetracks, or upon racecourses established and marked as such
1765 for the duration of such particular events. The term words
1766 "motor vehicle" ~~has used herein have~~ the same meaning as
1767 provided defined in chapter 320.

1768 (2) An accidental death and dismemberment policy sold in
1769 combination with a bodily injury liability ~~personal injury~~

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1770 ~~protection~~ and property-damage-only ~~property damage only~~ policy.

1771 (3) Any product not regulated under the provisions of this
1772 insurance code.

1773

1774 This section also applies to premium financing by any insurance
1775 agent or insurance company under part XVI. The commission shall
1776 adopt rules to assure disclosure, at the time of sale, of
1777 coverages financed with bodily injury liability coverage
1778 ~~personal injury protection~~ and shall prescribe the form of such
1779 disclosure.

1780 Section 53. Subsection (1) of section 627.915, Florida
1781 Statutes, is amended to read:

1782 627.915 Insurer experience reporting.—

1783 (1) Each insurer transacting private passenger automobile
1784 insurance in this state shall report certain information
1785 annually to the office. The information ~~is will be~~ due on or
1786 before July 1 of each year. The information shall be divided
1787 into the following categories: bodily injury liability; property
1788 damage liability; uninsured motorist; ~~personal injury protection~~
1789 ~~benefits~~, medical payments; comprehensive and collision. The
1790 information ~~must given shall~~ be on direct insurance writings in
1791 the state alone and ~~shall~~ represent total limits data. The
1792 information set forth in paragraphs (a)-(f) is applicable to
1793 voluntary private passenger and Joint Underwriting Association
1794 private passenger writings and shall be reported for each of the
1795 latest 3 calendar-accident years, with an evaluation date of
1796 March 31 of the current year. The information set forth in
1797 paragraphs (g)-(j) is applicable to voluntary private passenger
1798 writings and shall be reported on a calendar-accident year basis

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1799 ultimately seven times at seven different stages of development.
 1800 (a) Premiums earned for the latest 3 calendar-accident
 1801 years.
 1802 (b) Loss development factors and the historic development
 1803 of those factors.
 1804 (c) Policyholder dividends incurred.
 1805 (d) Expenses for other acquisition and general expense.
 1806 (e) Expenses for agents' commissions and taxes, licenses,
 1807 and fees.
 1808 (f) Profit and contingency factors as utilized in the
 1809 insurer's automobile rate filings for the applicable years.
 1810 (g) Losses paid.
 1811 (h) Losses unpaid.
 1812 (i) Loss adjustment expenses paid.
 1813 (j) Loss adjustment expenses unpaid.
 1814 Section 54. Present paragraph (e) of subsection (2) of
 1815 section 628.909, Florida Statutes, is redesignated as paragraph
 1816 (d), present paragraph (d) of that subsection is amended,
 1817 present paragraph (e) of subsection (3) of that section is
 1818 redesignated as paragraph (d), and present paragraph (d) of that
 1819 subsection is amended, to read:
 1820 628.909 Applicability of other laws.—
 1821 (2) The following provisions of the Florida Insurance Code
 1822 apply to captive insurers who are not industrial insured captive
 1823 insurers to the extent that such provisions are not inconsistent
 1824 with this part:
 1825 ~~(d) Sections 627.730-627.7405, when no fault coverage is~~
 1826 ~~provided.~~
 1827 (3) The following provisions of the Florida Insurance Code

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1828 apply to industrial insured captive insurers to the extent that
 1829 such provisions are not inconsistent with this part:
 1830 ~~(d) Sections 627.730-627.7405 when no fault coverage is~~
 1831 ~~provided.~~
 1832 Section 55. Subsections (2), (6), and (7) of section
 1833 705.184, Florida Statutes, are amended to read:
 1834 705.184 Derelict or abandoned motor vehicles on the
 1835 premises of public-use airports.—
 1836 (2) The airport director or the director's designee shall
 1837 contact the Department of Highway Safety and Motor Vehicles to
 1838 notify that department that the airport has possession of the
 1839 abandoned or derelict motor vehicle and to determine the name
 1840 and address of the owner of the motor vehicle, the insurance
 1841 company insuring the motor vehicle, ~~notwithstanding the~~
 1842 ~~provisions of s. 627.736,~~ and any person who has filed a lien on
 1843 the motor vehicle. Within 7 business days after receipt of the
 1844 information, the director or the director's designee shall send
 1845 notice by certified mail, return receipt requested, to the owner
 1846 of the motor vehicle, the insurance company insuring the motor
 1847 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all
 1848 persons of record claiming a lien against the motor vehicle. The
 1849 notice shall state the fact of possession of the motor vehicle,
 1850 that charges for reasonable towing, storage, and parking fees,
 1851 if any, have accrued and the amount thereof, that a lien as
 1852 provided in subsection (6) will be claimed, that the lien is
 1853 subject to enforcement pursuant to law, that the owner or
 1854 lienholder, if any, has the right to a hearing as set forth in
 1855 subsection (4), and that any motor vehicle which, at the end of
 1856 30 calendar days after receipt of the notice, has not been

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1857 removed from the airport upon payment in full of all accrued
1858 charges for reasonable towing, storage, and parking fees, if
1859 any, may be disposed of as provided in s. 705.182(2) (a), (b),
1860 (d), or (e), including, but not limited to, the motor vehicle
1861 being sold free of all prior liens after 35 calendar days after
1862 the time the motor vehicle is stored if any prior liens on the
1863 motor vehicle are more than 5 years of age or after 50 calendar
1864 days after the time the motor vehicle is stored if any prior
1865 liens on the motor vehicle are 5 years of age or less.

1866 (6) The airport pursuant to this section or, if used, a
1867 licensed independent wrecker company pursuant to s. 713.78 shall
1868 have a lien on an abandoned or derelict motor vehicle for all
1869 reasonable towing, storage, and accrued parking fees, if any,
1870 except that no storage fee shall be charged if the motor vehicle
1871 is stored less than 6 hours. As a prerequisite to perfecting a
1872 lien under this section, the airport director or the director's
1873 designee must serve a notice in accordance with subsection (2)
1874 on the owner of the motor vehicle, the insurance company
1875 insuring the motor vehicle, notwithstanding the provisions of s.
1876 627.736, and all persons of record claiming a lien against the
1877 motor vehicle. If attempts to notify the owner, the insurance
1878 company insuring the motor vehicle, notwithstanding the
1879 provisions of s. 627.736, or lienholders are not successful, the
1880 requirement of notice by mail shall be considered met. Serving
1881 of the notice does not dispense with recording the claim of
1882 lien.

1883 (7) (a) For the purpose of perfecting its lien under this
1884 section, the airport shall record a claim of lien which states
1885 shall state:

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1886 1. The name and address of the airport.
1887 2. The name of the owner of the motor vehicle, the
1888 insurance company insuring the motor vehicle, ~~notwithstanding~~
1889 ~~the provisions of s. 627.736,~~ and all persons of record claiming
1890 a lien against the motor vehicle.

1891 3. The costs incurred from reasonable towing, storage, and
1892 parking fees, if any.

1893 4. A description of the motor vehicle sufficient for
1894 identification.

1895 (b) The claim of lien shall be signed and sworn to or
1896 affirmed by the airport director or the director's designee.

1897 (c) The claim of lien is shall be sufficient if it is in
1898 substantially the following form:

1899 CLAIM OF LIEN

1900 State of
1901 County of
1902 Before me, the undersigned notary public, personally appeared
1903, who was duly sworn and says that he/she is the
1904 of, whose address is.....; and that the
1905 following described motor vehicle:
1906 ...(Description of motor vehicle)...
1907 owned by, whose address is, has accrued
1908 \$..... in fees for a reasonable tow, for storage, and for
1909 parking, if applicable; that the lienor served its notice to the
1910 owner, the insurance company insuring the motor vehicle
1911 ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~
1912 and all persons of record claiming a lien against the motor
1913 vehicle on, ...(year)..., by.....
1914

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1915 ... (Signature)...

1916 Sworn to (or affirmed) and subscribed before me this day of

1917, ...(year)..., by ...(name of person making statement)...

1918 ...(Signature of Notary Public)..... (Print, Type, or Stamp

1919 Commissioned name of Notary Public)...

1920 Personally Known....OR Produced....as identification.

1921

1922 However, the negligent inclusion or omission of any information

1923 in this claim of lien which does not prejudice the owner does

1924 not constitute a default that operates to defeat an otherwise

1925 valid lien.

1926 (d) The claim of lien shall be served on the owner of the

1927 motor vehicle, the insurance company insuring the motor vehicle,

1928 ~~notwithstanding the provisions of s. 627.736,~~ and all persons of

1929 record claiming a lien against the motor vehicle. If attempts to

1930 notify the owner, the insurance company insuring the motor

1931 vehicle ~~notwithstanding the provisions of s. 627.736,~~ or

1932 lienholders are not successful, the requirement of notice by

1933 mail shall be considered met. The claim of lien shall be so

1934 served before recordation.

1935 (e) The claim of lien shall be recorded with the clerk of

1936 court in the county where the airport is located. The recording

1937 of the claim of lien shall be constructive notice to all persons

1938 of the contents and effect of such claim. The lien shall attach

1939 at the time of recordation and shall take priority as of that

1940 time.

1941 Section 56. Subsection (4) of section 713.78, Florida

1942 Statutes, is amended to read:

1943 713.78 Liens for recovering, towing, or storing vehicles

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1944 and vessels.-

1945 (4) (a) Any person regularly engaged in the business of

1946 recovering, towing, or storing vehicles or vessels who comes

1947 into possession of a vehicle or vessel pursuant to subsection

1948 (2), and who claims a lien for recovery, towing, or storage

1949 services, shall give notice to the registered owner, the

1950 insurance company insuring the vehicle ~~notwithstanding the~~

1951 ~~provisions of s. 627.736,~~ and ~~to~~ all persons claiming a lien

1952 thereon, as disclosed by the records in the Department of

1953 Highway Safety and Motor Vehicles or of a corresponding agency

1954 in any other state.

1955 (b) If a ~~Whenever any~~ law enforcement agency authorizes the

1956 removal of a vehicle or vessel or if a ~~whenever any~~ towing

1957 service, garage, repair shop, or automotive service, storage, or

1958 parking place notifies the law enforcement agency of possession

1959 of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law

1960 enforcement agency of the jurisdiction where the vehicle or

1961 vessel is stored shall contact the Department of Highway Safety

1962 and Motor Vehicles, or the appropriate agency of the state of

1963 registration, if known, within 24 hours through ~~the medium of~~

1964 electronic communications, giving the full description of the

1965 vehicle or vessel. Upon receipt of the full description of the

1966 vehicle or vessel, the department shall search its files to

1967 determine the owner's name, the insurance company insuring the

1968 vehicle or vessel, and whether any person has filed a lien upon

1969 the vehicle or vessel as provided in s. 319.27(2) and (3) and

1970 notify the applicable law enforcement agency within 72 hours.

1971 The person in charge of the towing service, garage, repair shop,

1972 or automotive service, storage, or parking place shall obtain

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1973 such information from the applicable law enforcement agency
 1974 within 5 days after the date of storage and shall give notice
 1975 pursuant to paragraph (a). The department may release the
 1976 insurance company information to the requestor ~~notwithstanding~~
 1977 ~~the provisions of s. 627.736.~~

1978 (c) Notice by certified mail shall be sent within 7
 1979 business days after the date of storage of the vehicle or vessel
 1980 to the registered owner, the insurance company insuring the
 1981 vehicle ~~notwithstanding the provisions of s. 627.736~~, and all
 1982 persons of record claiming a lien against the vehicle or vessel.
 1983 The notice must ~~it shall~~ state the fact of possession of the
 1984 vehicle or vessel, that a lien as provided in subsection (2) is
 1985 claimed, that charges have accrued and the amount thereof, that
 1986 the lien is subject to enforcement pursuant to law, ~~and~~ that the
 1987 owner or lienholder, if any, has the right to a hearing as set
 1988 forth in subsection (5), and that any vehicle or vessel which
 1989 remains unclaimed, or for which the charges for recovery,
 1990 towing, or storage services remain unpaid, may be sold free of
 1991 all prior liens after 35 days if the vehicle or vessel is more
 1992 than 3 years of age or after 50 days if the vehicle or vessel is
 1993 3 years of age or less.

1994 (d) If attempts to locate the name and address of the owner
 1995 or lienholder prove unsuccessful, the towing-storage operator
 1996 shall, after 7 working days, excluding Saturday and Sunday, of
 1997 the initial tow or storage, notify the public agency of
 1998 jurisdiction where the vehicle or vessel is stored in writing by
 1999 certified mail or acknowledged hand delivery that the towing-
 2000 storage company has been unable to locate the name and address
 2001 of the owner or lienholder and a physical search of the vehicle

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2002 or vessel has disclosed no ownership information and a good
 2003 faith effort has been made. As used in ~~For purposes of~~ this
 2004 paragraph and subsection (9), the term "good faith effort" means
 2005 that the following checks have been performed by the company to
 2006 establish prior state of registration and ~~for~~ title:

2007 1. Check of vehicle or vessel for any type of tag, tag
 2008 record, temporary tag, or regular tag.

2009 2. Check of law enforcement report for tag number or other
 2010 information identifying the vehicle or vessel, if the vehicle or
 2011 vessel was towed at the request of a law enforcement officer.

2012 3. Check of trip sheet or tow ticket of tow truck operator
 2013 to see if a tag was on vehicle or vessel at beginning of tow, if
 2014 private tow.

2015 4. If there is no address of the owner on the impound
 2016 report, check of law enforcement report to see if an out-of-
 2017 state address is indicated from driver license information.

2018 5. Check of vehicle or vessel for inspection sticker or
 2019 other stickers and decals that may indicate a state of possible
 2020 registration.

2021 6. Check of the interior of the vehicle or vessel for any
 2022 papers that may be in the glove box, trunk, or other areas for a
 2023 state of registration.

2024 7. Check of vehicle for vehicle identification number.

2025 8. Check of vessel for vessel registration number.

2026 9. Check of vessel hull for a hull identification number,
 2027 which should be carved, burned, stamped, embossed, or otherwise
 2028 permanently affixed to the outboard side of the transom or, if
 2029 there is no transom, to the outmost seaboard side at the end of
 2030 the hull that bears the rudder or other steering mechanism.

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2031 Section 57. Paragraph (a) of subsection (1), paragraph (c)
 2032 of subsection (7), paragraphs (a) through (c) of subsection (8),
 2033 and subsections (9) and (10) of section 817.234, Florida
 2034 Statutes, are amended to read:

2035 817.234 False and fraudulent insurance claims.—

2036 (1) (a) A person commits insurance fraud punishable as
 2037 provided in subsection (11) if that person, with the intent to
 2038 injure, defraud, or deceive any insurer:

2039 1. Presents or causes to be presented any written or oral
 2040 statement as part of, or in support of, a claim for payment or
 2041 other benefit pursuant to an insurance policy or a health
 2042 maintenance organization subscriber or provider contract,
 2043 knowing that such statement contains ~~any~~ false, incomplete, or
 2044 misleading information concerning any fact or thing material to
 2045 such claim;

2046 2. Prepares or makes any written or oral statement that is
 2047 intended to be presented to an ~~any~~ insurer in connection with,
 2048 or in support of, any claim for payment or other benefit
 2049 pursuant to an insurance policy or a health maintenance
 2050 organization subscriber or provider contract, knowing that such
 2051 statement contains ~~any~~ false, incomplete, or misleading
 2052 information concerning any fact or thing material to such claim;

2053 3.a. Knowingly presents, causes to be presented, or
 2054 prepares or makes with knowledge or belief that it will be
 2055 presented to an ~~any~~ insurer, purported insurer, servicing
 2056 corporation, insurance broker, or insurance agent, or ~~any~~
 2057 employee or agent thereof, ~~any~~ false, incomplete, or misleading
 2058 information or written or oral statement as part of, or in
 2059 support of, an application for the issuance of, or the rating

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2060 of, any insurance policy, or a health maintenance organization
 2061 subscriber or provider contract; or

2062 b. Knowingly conceals information concerning any fact
 2063 material to such application; or

2064 4. Knowingly presents, causes to be presented, or prepares
 2065 or makes with knowledge or belief that it will be presented to
 2066 any insurer a claim for payment or other benefit under a motor
 2067 vehicle ~~personal injury protection~~ insurance policy if the
 2068 person knows that the payee knowingly submitted a false,
 2069 misleading, or fraudulent application or other document when
 2070 applying for licensure as a health care clinic, seeking an
 2071 exemption from licensure as a health care clinic, or
 2072 demonstrating compliance with part X of chapter 400.

2073 (7)

2074 (c) An insurer, or any person acting at the direction of or
 2075 on behalf of an insurer, may not change an opinion in a mental
 2076 or physical report ~~prepared under s. 627.736(8)~~ or direct the
 2077 physician preparing the report to change such opinion; however,
 2078 this provision does not preclude the insurer from calling to the
 2079 attention of the physician errors of fact in the report based
 2080 upon information in the claim file. Any person who violates this
 2081 paragraph commits a felony of the third degree, punishable as
 2082 provided in s. 775.082, s. 775.083, or s. 775.084.

2083 (8) (a) It is unlawful for any person intending to defraud
 2084 any other person to solicit or cause to be solicited any
 2085 business from a person involved in a motor vehicle accident for
 2086 the purpose of making, adjusting, or settling motor vehicle tort
 2087 claims ~~or claims for personal injury protection benefits~~
 2088 ~~required by s. 627.736~~. Any person who violates ~~the provisions~~

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2089 ~~of~~ this paragraph commits a felony of the second degree,
 2090 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 2091 A person who is convicted of a violation of this subsection
 2092 shall be sentenced to a minimum term of imprisonment of 2 years.

2093 (b) A person may not solicit or cause to be solicited any
 2094 business from a person involved in a motor vehicle accident by
 2095 any means of communication other than advertising directed to
 2096 the public for the purpose of making motor vehicle tort claims
 2097 ~~or claims for personal injury protection benefits required by s.~~
 2098 ~~627.736,~~ within 60 days after the occurrence of the motor
 2099 vehicle accident. Any person who violates this paragraph commits
 2100 a felony of the third degree, punishable as provided in s.
 2101 775.082, s. 775.083, or s. 775.084.

2102 (c) A lawyer, health care practitioner as defined in s.
 2103 456.001, or owner or medical director of a clinic required to be
 2104 licensed pursuant to s. 400.9905 may not, at any time after 60
 2105 days have elapsed from the occurrence of a motor vehicle
 2106 accident, solicit or cause to be solicited any business from a
 2107 person involved in a motor vehicle accident by means of in
 2108 person or telephone contact at the person's residence, for the
 2109 purpose of making motor vehicle tort claims ~~or claims for~~
 2110 ~~personal injury protection benefits required by s. 627.736.~~ Any
 2111 person who violates this paragraph commits a felony of the third
 2112 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2113 775.084.

2114 (9) A person may not organize, plan, or knowingly
 2115 participate in an intentional motor vehicle crash or a scheme to
 2116 create documentation of a motor vehicle crash that did not occur
 2117 for the purpose of making motor vehicle tort claims ~~or claims~~

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

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2118 ~~for personal injury protection benefits as required by s.~~
 2119 ~~627.736.~~ Any person who violates this subsection commits a
 2120 felony of the second degree, punishable as provided in s.
 2121 775.082, s. 775.083, or s. 775.084. A person who is convicted of
 2122 a violation of this subsection shall be sentenced to a minimum
 2123 term of imprisonment of 2 years.

2124 (10) A licensed health care practitioner who is found
 2125 guilty of insurance fraud under this section for an act relating
 2126 to a motor vehicle personal injury protection insurance policy
 2127 loses his or her license to practice for 5 years and may not
 2128 receive reimbursement for bodily personal injury liability
 2129 protection benefits for 10 years.

2130 Section 58. Applicability; notice to policyholders.-

2131 (1) As used in this section, the term "minimum security
 2132 requirements" means security that enables a person to respond in
 2133 damages for liability on account of accidents arising out of the
 2134 use of a motor vehicle in the amount of \$10,000 for damage to,
 2135 or destruction of, property of others in any one crash; in the
 2136 amount of \$25,000 for bodily injury to, or the death of, one
 2137 person in any one crash; and, subject to such limits for one
 2138 person, in the amount of \$50,000 for bodily injury to, or the
 2139 death of, two or more persons in any one crash.

2140 (2) Effective January 1, 2014:

2141 (a) Motor vehicle insurance policies issued or renewed on
 2142 or after that date may not include personal injury protection.

2143 (b) Any person subject to ss. 324.022 and 627.733, Florida
 2144 Statutes, must maintain at least minimum security requirements.

2145 (c) Any new or renewal motor vehicle insurance policy
 2146 delivered or issued for delivery in this state must provide

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2147 coverage that complies with minimum security requirements.

2148 (d) An existing motor vehicle insurance policy issued
 2149 before that date which provides personal injury protection and
 2150 property damage liability coverage that meet the requirements of
 2151 ss. 324.022 and 627.733, Florida Statutes, on December 31, 2013,
 2152 but that do not meet minimum security requirements on or after
 2153 January 1, 2014, shall be deemed to meet the security
 2154 requirements of s. 324.022 and s. 627.733, Florida Statutes,
 2155 until such policy is renewed, nonrenewed, or canceled on or
 2156 after January 1, 2014.

2157 (3) Each insurer shall allow each insured who has a new or
 2158 renewal policy providing personal injury protection which
 2159 becomes effective before January 1, 2014, and whose policy does
 2160 not meet minimum security requirements on or after January 1,
 2161 2014, to change coverages so as to eliminate personal injury
 2162 protection and obtain coverage providing minimum security
 2163 requirements, which shall be effective on or after January 1,
 2164 2014. The insurer is not required to provide coverage complying
 2165 with minimum security requirements in such policies if the
 2166 insured does not pay the required premium, if any, by January 1,
 2167 2014, or such later date as the insurer may allow. Any reduction
 2168 in the premium must be refunded by the insurer. The insurer may
 2169 not impose an additional fee or charge on the insured which
 2170 applies solely to a change in coverage; however, the insurer may
 2171 charge an additional required premium that is actuarially
 2172 indicated.

2173 (4) By September 1, 2013, each motor vehicle insurer shall
 2174 provide notice of the provisions of this section to each motor
 2175 vehicle policyholder who is subject to this section. The notice

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2176 is subject to approval by the Office of Insurance Regulation and
 2177 must clearly inform the policyholder that:

2178 (a) The Florida Motor Vehicle No-Fault Law is repealed,
 2179 effective January 1, 2014, and that on or after that date, the
 2180 insured is no longer required to maintain personal injury
 2181 protection insurance coverage, that personal injury protection
 2182 coverage is no longer available for purchase in this state, and
 2183 that all new or renewal policies issued on or after that date do
 2184 not contain such coverage.

2185 (b) Effective January 1, 2014, any person subject to the
 2186 financial responsibility requirements of s. 324.022, Florida
 2187 Statutes, must maintain minimum security requirements that
 2188 enable such person to respond in damages for liability on
 2189 account of accidents arising out of the use of a motor vehicle
 2190 in the amount of \$10,000 for damage to, or destruction of,
 2191 property of others in any one crash; in the amount of \$25,000
 2192 for bodily injury to, or the death of, one person in any one
 2193 crash; and, subject to such limits for one person, in the amount
 2194 of \$50,000 for bodily injury to, or the death of, two or more
 2195 persons in any one crash.

2196 (c) Personal injury protection insurance pays covered
 2197 medical expenses for injuries sustained in the motor vehicle
 2198 crash by the policyholder, passengers, and relatives residing in
 2199 the policyholder's household.

2200 (d) Bodily injury liability coverage protects the insured,
 2201 up to the coverage limits, against loss if the insured is
 2202 legally responsible for the death of or bodily injury to others
 2203 in a motor vehicle accident.

2204 (e) The policyholder may be able to obtain medical payments

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2205 coverage that pays covered medical expenses for injuries
 2206 sustained in a motor vehicle crash by the policyholder and
 2207 relatives residing in the policyholder's household, but that
 2208 such coverage is not required under state law.

2209 (f) Policyholders whose insurance policies do not contain
 2210 bodily injury liability coverage are without coverage that
 2211 protects against loss if the policyholder is legally responsible
 2212 for the death or bodily injury of others in a motor vehicle
 2213 accident.

2214 (g) Underinsured motorist coverage provides benefits up to
 2215 the limits of such coverage to a policyholder or other insured
 2216 under the policy who is entitled to recover damages from owners
 2217 or operators of uninsured or underinsured motor vehicles because
 2218 of bodily injury, sickness, disease, or death in a motor vehicle
 2219 accident.

2220 (h) If the policyholder's new or renewal motor vehicle
 2221 insurance policy is effective before January 1, 2014, and
 2222 contains personal injury protection and property damage
 2223 liability coverage as required by state law before January 1,
 2224 2014, but does not meet minimum security requirements on or
 2225 after January 1, 2014, such policy shall be deemed to meet
 2226 minimum security requirements until it is renewed, nonrenewed,
 2227 or canceled on or after January 1, 2014.

2228 (i) A policyholder whose new or renewal policy becomes
 2229 effective before January 1, 2014, but does not meet minimum
 2230 security requirements on or after January 1, 2014, may change
 2231 coverages under the policy so as to eliminate personal injury
 2232 protection and to obtain coverage providing minimum security
 2233 requirements, including bodily injury liability coverage, which

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2234 are effective on or after January 1, 2014.

2235 (j) If the policyholder has any questions, he or she should
 2236 contact the name and phone number provided in the notice.

2237 (5) This section shall take effect upon this act becoming a
 2238 law.

2239 Section 59. Application of suspensions for failure to
 2240 maintain security; reinstatement.-All suspensions for failure to
 2241 maintain required security as required by law in effect before
 2242 January 1, 2014, remain in full force and effect after the
 2243 effective date of this act. A driver may reinstate a suspended
 2244 driver license or registration as provided under s. 324.0221.

2245 Section 60. Except as otherwise expressly provided in this
 2246 act, and except for this section, which shall take effect upon
 2247 becoming law, this act shall take effect January 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic PSB 7152 - Motor Vehicle Ins. Bill Number 7152
Name Leiah Carr Amendment Barcode _____ (if applicable)
Job Title President - Florida State Massage Therapy Assoc. (FSMTA)
Address 978 Douglas Ave Ste 104 Phone 904-477-2277
Street Altamonte Springs, FL 32714 E-mail statepresident@FSMTA.org
City *State* *Zip*

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.

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)

16 APR 2013
Meeting Date

Topic AUTO INSURANCE

Bill Number SPA 7152
(if applicable)

Name PAUL JESS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 218 S. MONROE ST
Street

Phone 850 224-9403

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7150

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: Public Records/Insurance Policies

DATE: April 16, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess		Submitted as a Committee Bill
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7150 expands the public records exemption for motor vehicle insurance policy numbers and personal identifying information of insureds, applying it to policies providing bodily injury liability insurance. The current exemption for such information related to policies providing personal injury protection and property damage liability insurance policies will remain in effect. 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.

The bill takes effect on the same date that an unspecified legislative act (SPB 7152) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

This bill substantially amends the following sections of the Florida Statutes: 324.242

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 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of

¹ Section 1390, 1391 F.S. (Rev. 1892).

access to public records to a constitutional level.² 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, 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,³ which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ 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.⁵

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.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public

² Article I, s. 24, Fla. Constitution.

³ Chapter 119, F.S.

⁴ 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.

⁵ Section 119.011(11), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c), Fla. Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

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.¹² If a record is simply made exempt from disclosure requirements, then an agency is not prohibited from disclosing the record in all circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ 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.¹⁵

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.¹⁶

⁹ *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).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c), Fla. Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

¹⁶ Section 119.15(4)(b), F.S.

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?
- 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?

Section 324.242, F.S., Exemption

Every Florida registrant of a motor vehicle must obtain and provide proof of holding a motor vehicle insurance policy that includes \$10,000 in personal injury protection (PIP).¹⁷ Additionally, s. 324.022, F.S., requires owners and operators of Florida-registered motor vehicles to maintain the ability to pay at least \$10,000 in property damage, which may be met by maintaining \$10,000 in property damage liability coverage.¹⁸ A higher financial requirement is placed on commercial motor vehicles, taxicab owners and operators, for-hire passenger transportation vehicles, and registered vehicle owners or operators found guilty or that have plead nolo contendere to driving under the influence.¹⁹

The Department of Highway Safety and Motor Vehicles (DHSMV) is notified by insurers that supply policies with personal injury protection or property damage liability coverage of renewals, cancellations, and non-renewals of these policies within 45 days of their effective dates, as required by s. 324.0221, F.S. The insurer must also notify the named insured in writing of the cancellation or non-renewal of a policy and give notice of the consequences from the failure of maintaining PIP and property damage coverage, including the loss of registration, loss of driving privileges, and imposition of reinstatement fees. The records held by the DHSMV contain the insurance company code, the policy number, driver's license number, personal identifying information (name and address), and information identifying the vehicle, including the vehicle identification number and the make, model, and year of the vehicle.

Section 324.242, F.S., exempts from public records requirements personal identifying information, including the name, address, and driver's license number of insureds and former insureds and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies.²⁰ The exemption serves to protect sensitive personal information concerning individuals whose reputation or safety from identity theft would be jeopardized if the information were released. The exemption also protects confidential information used for business advantage against competitors. The disclosure of this information could injure insurance companies in the market since competitors would be able to solicit the business of their

¹⁷ Section 627.733, F.S.

¹⁸ Section 324.022, F.S.

¹⁹ See ss. 324.023, F.S., and 324.032, F.S.

²⁰ The statutory predecessor to s. 324.242, F.S., was s. 627.736(9)(a), F.S., which was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007.

policyholders. The information exempted by s. 324.242, F.S., is neither obtainable by alternate means nor protected under other exemptions. However under s. 324.242, F.S., the DHSMV must release the policy number for a vehicle involved in an accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident upon receipt of a written request and copy of the crash report.

III. Effect of Proposed Changes:

Section 1 amends s. 324.242, F.S., to expand the public records exemption for motor vehicle insurance policy numbers and personal identifying information of insureds, applying the exemption to policies providing bodily injury liability insurance. The current exemption for such information related to policies providing personal injury protection and property damage liability insurance policies will remain in effect. 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.

Section 2 states that the Legislature finds that it is a public necessity to make certain information regarding bodily injury liability insurance policies held by the DHSMV confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution. The Legislature finds that automobile drivers must be properly insured for BI liability and PD liability in order to ensure public safety on the state's roads and highways. As such, insurers must report to the DHSMV and verify the issuance of a new insurance policy to a driver, as well as the renewal, nonrenewal, or cancellation of that policy. Such information includes the personal identifying information of an insured or former insured and the insurance policy number of the insured, which, if compiled, could result in a customer list of every insurer in the state. This information is traditionally considered proprietary business information because such lists could be used by competitors to solicit customers. Consequently, the release of that information could injure the insurer in the marketplace. Further, public access to such information could be used to perpetuate fraud against an insured and put him or her at risk or to make the insured the target of uninvited solicitations from other insurers or from others seeking to profit from motor vehicle accidents.

Section 3 provides that the effective date of the bill is the same date that an unspecified legislative act (SPB 7152) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Please see *Section II. Present Situation* of this Staff Analysis.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The proposed bill will only take effect upon the enactment of SPB 7152, or similar legislation, that repeals the Florida Motor Vehicle No-Fault Law and requires owners and operators of motor vehicles registered in this state to obtain bodily injury liability coverage.

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.



306156

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 19
and insert:

(1) The following information regarding personal injury protection, bodily injury liability, and property damage liability insurance policies held by the department is

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 5 - 6
and insert:



306156

13

liability insurance;

FOR CONSIDERATION By the Committee on Banking and Insurance

597-03132-13

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A bill to be entitled

An act relating to public records; amending s.

324.242, F.S.; providing a public records exemption for certain information regarding bodily injury

liability insurance policies and deleting the exemption for personal injury protection policies; providing for future legislative review and repeal of the exemption for information regarding certain liability insurance policies under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 324.242, Florida Statutes, is amended to read:

(1) The following information regarding bodily injury liability ~~personal injury protection~~ and property damage liability insurance policies held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Personal identifying information of an insured or former insured; and

(b) An insurance policy number.

(2) Upon receipt of a written request and a copy of a crash report as required under s. 316.065, s. 316.066, or s. 316.068, the department shall release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

(a) Any person involved in such accident;

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(b) The attorney of any person involved in such accident; or

(c) A representative of the insurer of any person involved in such accident.

(3) This exemption applies to personal identifying information of an insured or former insured and insurance policy numbers held by the department before, on, or after October 11, 2007.

(4) This section is 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.

Section 2. The Legislature finds and declares that it is a public necessity to make certain information regarding bodily injury liability insurance policies held by the Department of Highway Safety and Motor Vehicles confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to ensure public safety on the roads and highways of this state, it is imperative that automobile drivers be properly insured for liability for bodily injury, as well as damage to real property. As such, insurers are required to report to the Department of Highway Safety and Motor Vehicles and verify the issuance of a new policy to a driver, as well as the renewal, nonrenewal, or cancellation of that policy. Such information includes the personal identifying information of an insured or former insured as well as the insurance policy number of the insured. If this information is compiled, it could result in a customer list of every insurer in the state. Customer lists contain detailed

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59 client and policy information that is traditionally considered
60 proprietary business information because such lists could be
61 used by competitors to solicit customers. Consequently, the
62 release of that information could injure the insurer in the
63 marketplace by diminishing the advantage that the insurer
64 maintains over those who do not possess such information.
65 Further, public access to such information could be used to
66 perpetuate fraud against an insured and put him or her at risk
67 or to make the insured the target of uninvited solicitations
68 from other insurers or from others seeking to profit from motor
69 vehicle accidents.

70 Section 3. This act shall take effect on the same date that
71 SB ____ or similar legislation takes effect, if such legislation
72 is adopted in the same legislative session or an extension
73 thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Education
Ethics and Elections
Gaming
Governmental Oversight and Accountability
Rules

SENATOR LIZBETH BENACQUISTO

Majority Leader
30th District

April 15, 2013

The Honorable David Simmons, Chair
Senate Banking and Insurance
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons

Please excuse me from attending the Senate Banking and Insurance Committee on April 16th. I have a commitment at that time. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Caption: Senate Banking and Insurance

Case:

Judge:

Type:

Started: 4/16/2013 1:39:27 PM

Ends: 4/16/2013 2:16:22 PM

Length: 00:36:56

1:39:36 PM Chairman calls meeting to order
1:39:47 PM CAA calls roll -- quorum present
1:41:14 PM Remarks by Chairman Simmons
1:42:15 PM Remarks by V. Chair Clemens
1:42:51 PM Confirmation of Mr. Barry Gilway, Executive Director, Citizens
1:45:38 PM CAA calls roll on Confirmation of Barry Gilway -- favorable
1:47:10 PM Tab 2 -- SB 594
1:47:31 PM Explanation of bill by Sen. Bean's aide.
1:47:49 PM Amd. 377474 --Sen. Hays -- Technical amd. -- w/o adopted
1:48:27 PM Amd. 123374 -- by Sen. Hays -- w/o objection -- adopted
1:49:22 PM Amd. 858202 - by Sen. Hays --
1:50:31 PM James McFadden recognized to answer question posed by Sen. Margolis
1:51:37 PM Amd. 858202 -- w/o adopted
1:51:53 PM Motion for CS -- Hays - w/o favorable
1:52:52 PM Roll call on CS/SB 594 -- Favorable
1:53:26 PM Tab 3 - SB 1020 by Sen. Hays
1:53:41 PM Amd. 185768 (delete all amendment)
1:53:58 PM Explanation of Amd. by Senator Hays
1:54:16 PM French Brown - Ofc. of Financial Regulation
1:55:18 PM Amd. 185768 -- w/o favorable
1:55:36 PM Motion for CS -- Senator Hays - adopted
1:56:04 PM Roll call on CS/SB 1020 -- favorable
1:56:38 PM TAB 4 - SB 1246 by Sen. Hays
1:56:53 PM Amd. 398790 -- adopted last meeting
1:57:08 PM Substitute Amd. by Sen. Hays -- withdrawn
1:59:13 PM Amd. 548468 by Senator Ring -- (delete all amendment) TP'd
2:00:46 PM TAB 5 --SPB 7152 -- (Sen. Simmons turn chair over to Sen. Richter)
2:01:47 PM Amd. 818684 -- w/d
2:01:56 PM Amd. 357706 -- w/o adopted
2:02:34 PM Leah Carr, President, FL State Massage Therapy Assoc.
2:05:03 PM Roll call on SPB 7152 -- favorable
2:07:31 PM SPB 7150 -- Favorable --
2:11:33 PM S 1262 -- Amd. 548468 by Senator Ring--Delete all amendment--w/o adopted
2:12:54 PM Amd. 303624 -- withdrawn by Sen. Hays
2:14:02 PM Motion for CS -- Sen. Hays -- Motion withdrawn
2:15:03 PM Roll call vote on SB 1262 -- Favorable w/1 amendment
2:16:09 PM Motion to rise by Sen Lee