

Tab 1 SB 1084 by Gaetz; (Compare to H 0963) Health Care Protocols

398542	A	S	RCS	BI, Montford	Delete L.133 - 135:	01/19 06:23 PM
641538	A	S	RCS	BI, Montford	Delete L.232:	01/19 06:23 PM

Tab 2 SB 992 by Brandes; (Similar to H 0651) Department of Financial Services

715350	D	S	RCS	BI, Richter	Delete everything after	01/19 06:23 PM
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Tab 3 SB 632 by Richter; (Similar to H 0005) Civil Remedies Against Insurers

Tab 4 SB 774 by Montford; (Similar to CS/H 0577) Liability Insurance Coverage

572854	A	S	RCS	BI, Montford	Delete L.19:	01/19 06:23 PM
594046	A	S	RCS	BI, Montford	Delete L.30:	01/19 06:23 PM

Tab 5 SB 966 by Benacquisto (CO-INTRODUCERS) Gaetz; (Identical to H 1041) Unclaimed Property

332402	A	S	RCS	BI, Benacquisto	Delete L.112 - 157:	01/19 06:23 PM
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Tab 6 SB 1118 by Simmons; Transportation Network Company Insurance

390508	A	S	RS	BI, Simmons	Delete L.49 - 250:	01/19 06:23 PM
382418	SA	S	L RCS	BI, Simmons	Delete L.49 - 250:	01/19 06:23 PM

Tab 7 SB 562 by Stargel (CO-INTRODUCERS) Gaetz; (Similar to H 0713) Consumer Debt Collection

517062	A	S	RCS	BI, Richter	Delete L.20 - 35:	01/19 06:23 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Benacquisto, Chair
Senator Richter, Vice Chair

MEETING DATE: Tuesday, January 19, 2016
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, Margolis, Montford, Negron, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1084 Gaetz (Compare H 963, S 210)	Health Care Protocols; Citing this act as the "Right Medicine Right Time Act"; requiring a managed care plan, an insurer, and a health maintenance organization to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; prohibiting a health maintenance organization from requiring that a health care provider use a clinical decision support system or a laboratory benefits management program in certain circumstances, etc. BI 01/19/2016 Fav/CS HP AP	Fav/CS Yeas 10 Nays 0
2	SB 992 Brandes (Similar H 651, Compare H 593, CS/S 686)	Department of Financial Services; Authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; requiring an individual to pass a certain examination by a specified time as part of certain firefighter certifications, etc. BI 01/19/2016 Fav/CS AGG AP	Fav/CS Yeas 10 Nays 0
3	SB 632 Richter (Similar H 5)	Civil Remedies Against Insurers; Requiring an insured, a claimant, or a person acting on behalf of an insured or a claimant to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common-law action for a third-party bad faith action for failure to settle an insurance claim, etc. BI 01/19/2016 Temporarily Postponed JU RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, January 19, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 774 Montford (Similar CS/H 577)	Liability Insurance Coverage; Adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage, etc. BI 01/11/2016 Temporarily Postponed BI 01/19/2016 Fav/CS RC	Fav/CS Yeas 10 Nays 0
5	SB 966 Benacquisto (Identical H 1041)	Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to perform a comparison of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File to determine if a death is indicated; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities, etc. BI 01/11/2016 Temporarily Postponed BI 01/19/2016 Fav/CS AGG AP	Fav/CS Yeas 10 Nays 0
6	SB 1118 Simmons	Transportation Network Company Insurance; Requiring a transportation network company driver or such company on the driver's behalf, or a combination thereof, to maintain primary automobile insurance issued by specified insurers with certain coverages in specified amounts during certain timeframes; requiring a transportation network company driver to carry proof of certain insurance coverage at all times during his or her use of a personal vehicle and to disclose specified information in the event of an accident; requiring a transportation network company to make certain disclosures to transportation network company drivers, etc. BI 01/19/2016 Fav/CS JU AP	Fav/CS Yeas 10 Nays 0
7	SB 562 Stargel (Similar H 713)	Consumer Debt Collection; Providing that a person attempting to collect a debt is not liable for a violation of prohibited communication practices if the debtor or the debtor's attorney fails to provide certain notice or information; authorizing the Office of Financial Regulation to adopt rules for certain notices delivered by electronic communication, etc. BI 01/19/2016 Fav/CS CM FP	Fav/CS Yeas 7 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, January 19, 2016, 4:00—6:00 p.m.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1084

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Health Care Protocols

DATE: January 20, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			HP	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 creates the “Right Medicine, Right Time Act.” Timely access to health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have conditions with the potential to cause death, disability, or serious discomfort unless treated with the most appropriate medical care. Generally, step-therapy or fail-first protocols for prescription drugs coverage require an insured or enrollee to try a certain drug, usually a generic alternative, before receiving coverage for another drug, usually a branded, and more expensive product.

The bill requires Medicaid managed care plans, health maintenance organizations (HMOs), and insurers that restrict medications by a step-therapy or fail-first protocol to have a clear and convenient process to request an override of the protocol. The bill requires these entities to grant an override of the protocol within 24 hours if, based on sound clinical evidence or medical and scientific evidence, the prescribing provider:

- Concludes that the preferred treatment required under the fail-first protocol has been ineffective in the treatment of the enrollee’s disease or medical condition; or
- Believes that the preferred treatment required under the fail-first protocol is likely to be ineffective given the known relevant physical or mental characteristics and medical history of the enrollee and the known characteristics of the drug regimen or will cause or is likely to cause an adverse reaction or other physical harm to the enrollee.

The bill requires that the duration of treatment may not exceed a period deemed appropriate by the prescribing provider, if the provider follows the fail-first protocol recommended by the

managed care plan for an enrollee. Following such period, if the prescriber deems the treatment provided under the protocol clinically ineffective, the enrollee is entitled to receive the course of therapy that the prescribing provider recommends, and the provider is not required to seek approval of an override of the fail-first protocol.

The bill prohibits an HMO from requiring a health care provider to use a clinical decision support system or a laboratory benefits management program before the provider may order clinical laboratory services or in an attempt to direct or limit the provider's medical decision-making relating to the use of such services. Advocates of clinical decision support systems and laboratory benefits management programs contend that these programs were developed to improve affordability and quality of care for enrollees and avoid errors and adverse events. Some opponents of these programs contend that these applications impinge upon medical judgment of the health care provider, cause delays in providing care, and increase costs.

II. Present Situation:

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.¹ The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.² As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.³

Florida's Statewide Medicaid Managed Care

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. In Florida, the Agency for Healthcare Administration (AHCA) administers the program. In 2013 and 2014, the agency implemented the legislatively mandated Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components: the Managed Medicaid Assistance (MMA) program and the Long-term Care program. The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014. Most Florida Medicaid recipients who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan.

Managed care plans have the ability to implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Medicaid managed care plans are required to ensure that: service authorization decisions are based on objective evidenced-based criteria, utilization management procedures are applied consistently, and all decisions to deny or limit a requested service are made by health care professionals who have the appropriate clinical expertise in treating the enrollee's

¹ Section 20.121(3)(a), F.S.

² Section 641.21(1), F.S.

³ Section 641.495, F.S.

condition/disease. The managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field; consider the needs of the enrollees; are adopted in consultation with providers; and are reviewed and updated periodically, as appropriate. These guidelines are consistent with requirements found in federal regulations.⁴

The AHCA maintains coverage and limitations policies for most Florida Medicaid services. Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid State Plan (which is approved by the federal Centers for Medicare and Medicaid Services or CMS) in providing services to their enrollees. Managed care plans must notify enrollees and providers of the services they provide and inform them of any prior authorization requirements or coverage limitations in their respective handbooks.

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics (P&T) committee within the AHCA for the development of a Florida Medicaid preferred drug list (PDL). The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the AHCA's Florida Medicaid PDL, such that the PDL provides for medically appropriate drug therapies for Florida Medicaid recipients and an array of choices for prescribers within each therapeutic class. The AHCA also manages the federally required Medicaid Drug Utilization Board, which meets quarterly, develops, and reviews clinical prior authorization criteria, including step-therapy protocols for drugs that are not on the AHCA's Florida Medicaid PDL.

Managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the AHCA's Florida Medicaid PDL for at least the first year of operation.⁵ As such, the managed care plans have not implemented their own plan-specific formulary or PDL. The managed care plan's prior authorization criteria/protocols related to prescribed drugs cannot be more restrictive than the criteria established by the AHCA. The AHCA posts prior authorization, step-edit criteria and protocol, and updates to the list of drugs that are subject to prior authorization on the AHCA's Internet Web site within 21 days after the prior authorization and step-edit criteria and protocol and updates are approved by the AHCA, in accordance with s. 409.912, F.S. MMA plans may adopt the Florida Medicaid prior authorization criteria or develop their own criteria. Prior authorization and step-therapy protocols for PDL may not be more restrictive than protocols posted on the AHCA's website.⁶

Section 409.967, F.S., currently requires managed care plans to publish any prescribed drug formulary or PDL on the plan's Web site in a manner that is accessible to and searchable by enrollees and providers. The plan must update the list within 24 hours after making a change. Each plan must ensure that the prior authorization process for prescribed drugs is readily

⁴ 42 CFR s. 438.236(b).

⁵ See SMMC Plans, Model Contract, Attachment II, Core Contract Provisions, page 45, effective November 1, 2015, at: http://ahca.myflorida.com/Medicaid/statewide_mc/plans.shtml and the Pharmacy Snapshot at: https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Pharmacy_Snapshot_2014-08-27.pdf (last visited Jan. 14, 2016).

⁶ Agency for Health Care Administration *Senate Bill 1084 Analysis* (Jan.13, 2016) (on file with the Senate Committee on Banking and Insurance).

accessible to health care providers, including posting appropriate contact information on its Web site and providing timely responses to providers.

Florida' State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a pharmacy benefits manager (PBM) for the state employees' prescription drug program pursuant to s. 110.12315, F.S.

The health plan administrators, HMOs and PBM each have their respective clinical coverage guidelines and utilization management practices to ensure appropriateness of care and to manage plan costs. These coverage guidelines are based on clinical evidence and recommendations from clinical and pharmacy and therapeutics committees comprised of practicing physicians and pharmacists. The National Committee for Quality Assurance and other national accreditation organizations define the structure and function of these committees, which have the same duties described for the proposed commission.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list). Contractually the PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.⁷

Federal Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.⁸ The PPACA provides fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required essential health benefits, rating and underwriting standards, review of rate increases, and internal and external appeals of adverse benefit determinations.⁹

⁷ Footnote 1A of s.110.12315, F.S., prohibits the state's prescription drug program from implementing a prior authorization program or step-therapy program for non-HMO members. Step-therapy is currently not in place for any state-group health plan member.

⁸ The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. P.L. 111-148.

⁹ Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg *et seq.*).

Qualifying coverage may be obtained through an employer, the federal or state marketplaces or exchanges created under PPACA, or private individual or group coverage meeting the minimum essential benefits coverage standard off the exchange. Florida did not establish its own state exchange under PPACA. Premium credits and other cost sharing subsidies are available to U.S. citizens and legal immigrants within certain income limits for qualified coverage purchased through the exchange. Premium credits are set on a sliding scale based on a percentage of the federal poverty level and reduce the out-of-pocket costs incurred by individuals and families.

Prior to an insurer offering a plan through an exchange, an exchange must certify that the plan meets certain federal essential health benefits and other requirements to be deemed a qualified health plan (QHP). Section 1302 of the Affordable Care Act requires QHPs to provide coverage of essential health benefits (EHB), meet cost-sharing limits and actuarial value requirements. The law directs that EHBs cover at least 10 specified categories, which includes prescription drugs.¹⁰

Final HHS Notice of Benefit and Payment Parameters for 2016

On March 20, 2014, the final HHS regulations relating to notice of benefit and payment parameters was released, which establishes key standards for issuers and marketplaces for 2016. These regulations include provisions relating to prescription drug coverage, formulary drug lists, and the drug exception process.¹¹

Prescription Drug Coverage. Currently, for purposes of complying with the essential health benefits, insurers and HMOs must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's essential health benefit (EHB) benchmark plan. For plan years beginning on or after January 1, 2017, plans must also use a P&T committee process that meets certain requirements. The P&T committee must design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines.¹²

Formulary Drug List. The regulations require a health plan must publish an up-to-date and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the state, the marketplace, HHS, and the public. Additionally, insurers and HMOs must also make this information available in a standard-readable format to provide the opportunity for third parties to create resources that aggregate information on different plans.

Drug Exceptions Process. Under current HHS regulations, plans providing EHBs must have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not included on the plan's formulary drug list. Such procedures must include a process to

¹⁰ See <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last visited Jan.14, 2016) for Florida's benchmark plan.

¹¹ HHS, *Final HHS Notice of Benefit and Payment Parameters for 2016*, Factsheet, at: <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2016-PN-Fact-Sheet-final.pdf> (last visited Jan. 10, 2016).

¹² 45 CFR s. 156.122.

request an expedited review based on exigent circumstances. Under this expedited process, the issuer must make its coverage determination no later than 24 hours after it receives the request. This requirement, commonly referred to as the “exceptions process,” applies to drugs that are not included on the plan’s formulary drug list. For plan years beginning in 2016, these processes must also include certain processes and timeframes for the standard review process, and have an external review process if the internal review request is denied. The costs of the non-formulary drug provided through the exceptions process count towards the annual limitation on cost sharing and actuarial value of the plan.¹³

Cost Containment Measures Used by Insurers and HMOs

Prior Authorization and Step Therapy or Fail First Therapy

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain drugs on their formulary. This may include requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to try first a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under the plan. A PDL is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective. In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required. Prior authorization for emergency services is not required. Preauthorization for hospital inpatient services is generally required.

In some cases, plans require an insured to try one drug first to treat his or her medical condition before they will cover another drug for that condition. For example, if Drug A and Drug B both treat a medical condition, a plan may require doctors to prescribe Drug A first. If Drug A does not work for a beneficiary, then the plan will cover Drug B. Advocates of step therapy state that a step therapy approach requires the use of a clinically recognized first-line drug before approval of a more complex and often more expensive medication where the safety, effectiveness, and values has been well established before a second-line drug is authorized.

According to a published report by researchers affiliated with the National Institutes of Health, there is mixed evidence on the impact of step therapy policies.¹⁴ A review of the literature by Brenda Motheral found that there is little good empirical evidence,¹⁵ but other studies¹⁶ suggest

¹³ 45 C.F.R. s. 156.122(c). The drug exception process is distinct from the coverage appeals process, which applies if an enrollee receives an adverse benefit determination for a drug that is included on the plan’s formulary drug list. The coverage appeals process has separate requirements for its external review process and allows for a secondary level of internal review before the final internal review determination for group plans. [45 C.F.R. s. 147.136]

¹⁴ The Ethics Of “Fail First”: Guidelines and Practical Scenarios for Step Therapy Coverage Policies, Rahul K. Nayak and Steven D. Pearson *Health Affairs* 33, No.10 (2014):1779-1785.

¹⁵ Pharmaceutical Step Therapy Interventions: A Critical Review of the Literature, Brenda R. Motheral, *Journal of Managed Care Pharmacy* 17, no. 2 (2011) 143-55.

¹⁶ See fn. 14 at pg. 1780.

that step therapy policies have been effective at reducing drug costs without increasing the use of other medical services. However, some studies have found that the policies can increase total utilization costs over the long run because of increased inpatient admissions and emergency department visits.¹⁷ One-step therapy policy for a typical antipsychotic medication in a Medicaid program was associated with a higher rate of discontinuity in medication use, an outcome that was linked to increased risk for hospitalization.¹⁸

Clinical Decision Support Systems and Laboratory Benefit Management Programs

Clinical decision support (CDS) systems are designed to improve clinical decision-making and to provide a platform for integrating evidence based knowledge into health care delivery.¹⁹ The CDS systems encompass a variety of tools to enhance decision-making in the clinical workflow. These tools include computerized alerts and reminders to care providers and patients; clinical guidelines; condition-specific order sets; focused patient data reports and summaries; documentation templates; diagnostic support, and contextually relevant reference information, among other tools.

Laboratory Benefit Management Programs. The Laboratory Benefit Management Program (program)²⁰ was developed to help manage appropriate utilization for outpatient laboratory services.²¹ A pilot program, instituted in 2014, is limited to fully insured commercial members in Florida, excluding Neighborhood Health Partnership members. As part of the program, all outpatient laboratory services for these members are subject to new requirements including advance notification and new medical policies. If a provider orders laboratory services and their practice is located in Florida, the provider must use BeaconLBS Physician Decision Support when ordering any of the Decision Support Tests for members who are part of the program. The Physicians Decision Support system is an online tool that helps physicians select tests and laboratories using evidence-based guidelines and following insurer's policies. These tests are listed in the administrative protocol.

Associations that represent health care providers have expressed concerns about the negative impact that this electronic decision support program will have on the quality of and access to care for patients.²² In particular, some have stated that the program interferes with the physician relationship and does not improve health care quality or access to care. These interactions, they argue, redirect valuable time and resources away from patients and add to a growing administrative burden that threatens the practice of medicine.²³

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See <https://www.healthit.gov/policy-researchers-implementers/clinical-decision-support-cds> (last visited January 15, 2016).

²⁰ Beacon Laboratory Benefit Solutions, Inc. (BeaconLBS®), a subsidiary of LabCorp®, administers the Laboratory Benefit Management Program for UnitedHealthcare.

²¹ UnitedHealthcare, *UnitedHealthcare Laboratory Benefit Management Program Frequently Asked Questions* (Jun. 29, 2015) (on file with Senate Committee on Banking and Insurance).

²² James L. Madara, M.D., correspondence with UnitedHealth Group (Mar. 18, 2015) (on file with Senate Banking and Insurance Committee).

²³ Allen Pillersdorf, M.D., correspondence with UnitedHealthcare (on file with Senate Banking and Insurance Committee).

III. Effect of Proposed Changes:

Section 1 states that the act may be known as the “Right Medicine Right Time Act.”

Sections 2, 3, and 5 amends s. 409.967, and creates ss. 627.42392, and 641.394, F.S., respectively, relating to Medicaid managed care plans, insurers, and HMOs, that utilize a fail-first protocol. The bill require Medicaid managed care plans, HMOs, and insurers that restrict medications by a step-therapy or fail-first protocol to have a clear and convenient process to request an override of the protocol. The bill requires these entities to grant an override of the protocol within 24 hours if, based on sound clinical evidence or medical and scientific evidence, the prescribing provider:

- Concludes that the preferred treatment required under the fail-first protocol has been ineffective in the treatment of the enrollee’s disease or medical condition; or
- Believes that the preferred treatment required under the fail-first protocol is likely to be ineffective given the known relevant physical or mental characteristics and medical history of the enrollee and the known characteristics of the drug regimen, or will cause or is likely to cause an adverse reaction or other physical harm to the enrollee.

The bill requires that the duration of treatment may not exceed a period deemed appropriate by the prescribing provider, if the provider follows the fail-first protocol recommended by the managed care plan for an enrollee. Following such period, if the prescriber deems the treatment provided under the protocol clinically ineffective, the enrollee is entitled to receive the course of therapy that the prescribing provider recommends, and the provider is not required to seek approval of an override of the fail-first protocol.

Section 4 of the bill amends s. 641.31, F.S., to prohibit an HMO from requiring a health care provider to use a clinical decision support system or a laboratory benefits management program before the provider may order clinical laboratory services or in an attempt to direct or limit the provider’s medical decision-making relating to the use of such services. The term, “clinical decision support system,” means software designed to direct or assist clinical decision-making by matching the characteristics of an individual patient to a computerized clinical knowledge base and providing patient-specific assessments or recommendations based on the match. The term, “laboratory benefits management program,” means an HMO protocol that dictates or limits health care provider decision-making relating to the use of clinical laboratory services. Further, the term, “clinical laboratory services” is defined. The bill specifies that this provision does not prohibit prior authorization requirements that the HMO has regarding the provision of clinical laboratory services.

Section 6 provides that this act is effective January 1, 2017.

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:

Implementation of the bill may provide health care providers with a greater number of prescription drugs to meet the unique medical needs of their patients and reduce the administrative burden associated with current step therapy or fail first therapy protocols.

To the extent that current step therapy policies contribute to increased costs from increased inpatient admissions and hospital emergency visits, the bill may serve to reduce those costs.

Medicaid managed care plans, insurers, and HMOs may experience an indeterminate increase in costs associated with changes in the step therapy protocols provided in the bill. These cost increases are likely to pass through to the purchasers of health insurance, such as individuals and employers.

The provisions of the bill would not apply to self-insured health plans since plans are preempted from state regulation under the Employee Retirement Income Security Act of 1974. In Florida, an estimated 60 percent of private-sector enrollees obtain coverage through a self-insured plan.

Government Sector Impact:

Medicaid

The Agency for Health Care Administration indicates that the fiscal impact to Florida Medicaid under the provisions and language of the bill is indeterminate. If the bill is enacted, it may have an operational and fiscal impact on the Florida Medicaid program, as it establishes an enrollee entitlement to a prescription after one use of the fail-first protocol and exempts the provider from seeking an override of the fail-first protocol. It is unclear how the bill applies if the health plans themselves do not have restrictions. This will not allow managed care plans to apply the medical necessity definition or utilization

management criteria for any prescribed treatment subsequent to the first prescription utilized under the fail-first protocol.²⁴

Division of State Group Insurance/DMS

According to the DMS, with regard to the fail-first protocol (step-therapy) override process requirement for insurers and HMOs, the bill does not affect the state group insurance prescription drug program, as step-therapy is not currently a provision of the plan design.

Further, the DMS states that the provision in the bill that prohibits HMOs from requiring health care providers to use a clinical decision support system or a laboratory benefits management program, to direct or limit provider's decision-making ability could affect the state group health insurance program. Changes to current medical management procedures that cause an HMO's medical costs to increase would result in higher negotiated premiums for the state-contracted HMOs.²⁵

Office of Insurance Regulation

Indeterminate. The OIR did not provide a fiscal impact of implementing the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.967 and 641.31.

This bill creates the following sections of the Florida Statutes: 627.42392 and 641.394.

IX. Additional Information:

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

CS by Banking and Insurance Committee on January 19, 2016:

The effective date of the bill was changed from July 1, 2016, to January 1, 2017. Further,

²⁴ Agency for Health Care Administration, *Senate Bill 1084 Fiscal Analysis* (Jan. 13, 2016) (on file with the Senate Committee on Banking and Insurance).

²⁵ Department of Management Services, *Senate Bill 1084 Fiscal Analysis* (Jan. 14, 2016) (on file with Banking and Insurance Committee).

the bill was revised to apply the provisions relating to step therapy or fail first protocols to individual and group insurance policies and HMO contracts.

B. Amendments:

None.

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



398542

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
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The Committee on Banking and Insurance (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 133 - 135

and insert:

Section 3. Section 627.42392, Florida Statutes, is created to read:

627.42392 Fail-first protocols.-If an insurer restricts the

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

And the title is amended as follows:



398542

11 Delete line 9
12 and insert:
13 protocol"; creating s. 627.42392, F.S.; requiring an



641538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 232
and insert:
Section 6. This act shall take effect January 1, 2017.

By Senator Gaetz

1-00098B-16

20161084__

A bill to be entitled

An act relating to health care protocols; providing a short title; amending s. 409.967, F.S.; requiring a managed care plan to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; creating s. 627.6466, F.S.; requiring an insurer to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; amending s. 641.31, F.S.; prohibiting a health maintenance organization from requiring that a health care provider use a clinical decision support system or a laboratory benefits management program in certain circumstances; defining terms; providing for construction; creating s. 641.394, F.S.; requiring a health maintenance organization to establish a process by which a prescribing physician may request an override of certain restrictions in certain circumstances; providing the circumstances under which an override must be granted; defining the term "fail-first protocol"; providing an effective date.

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

Section 1. This act may be known as the "Right Medicine Right Time Act."

Section 2. Paragraph (c) of subsection (2) of section

Page 1 of 8

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

1-00098B-16

20161084__

409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(c) *Access*.—

1. The agency shall establish specific standards for the number, type, and regional distribution of providers in managed care plan networks to ensure access to care for both adults and children. Each plan must maintain a regionwide network of providers in sufficient numbers to meet the access standards for specific medical services for all recipients enrolled in the plan. The exclusive use of mail-order pharmacies may not be sufficient to meet network access standards. Consistent with the standards established by the agency, provider networks may include providers located outside the region. A plan may contract with a new hospital facility before the date the hospital becomes operational if the hospital has commenced construction, will be licensed and operational by January 1, 2013, and a final order has issued in any civil or administrative challenge. Each plan shall establish and maintain an accurate and complete electronic database of contracted providers, including information about licensure or registration, locations and hours of operation, specialty credentials and other certifications, specific performance indicators, and such other information as the agency deems necessary. The database must be available online to both the agency and the public and have the capability to compare the

Page 2 of 8

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

1-00098B-16

20161084__

62 availability of providers to network adequacy standards and to
 63 accept and display feedback from each provider's patients. Each
 64 plan shall submit quarterly reports to the agency identifying
 65 the number of enrollees assigned to each primary care provider.

66 2.a. Each managed care plan must publish any prescribed
 67 drug formulary or preferred drug list on the plan's website in a
 68 manner that is accessible to and searchable by enrollees and
 69 providers. The plan must update the list within 24 hours after
 70 making a change. Each plan must ensure that the prior
 71 authorization process for prescribed drugs is readily accessible
 72 to health care providers, including posting appropriate contact
 73 information on its website and providing timely responses to
 74 providers. For Medicaid recipients diagnosed with hemophilia who
 75 have been prescribed anti-hemophilic-factor replacement
 76 products, the agency shall provide for those products and
 77 hemophilia overlay services through the agency's hemophilia
 78 disease management program.

79 b. If a managed care plan restricts the use of prescribed
 80 drugs through a fail-first protocol, it must establish a clear
 81 and convenient process that a prescribing physician may use to
 82 request an override of the restriction from the managed care
 83 plan. The managed care plan shall grant an override of the
 84 protocol within 24 hours if:

85 (I) Based on sound clinical evidence, the prescribing
 86 provider concludes that the preferred treatment required under
 87 the fail-first protocol has been ineffective in the treatment of
 88 the enrollee's disease or medical condition; or

89 (II) Based on sound clinical evidence or medical and
 90 scientific evidence, the prescribing provider believes that the

1-00098B-16

20161084__

91 preferred treatment required under the fail-first protocol:

92 (A) Is likely to be ineffective given the known relevant
 93 physical or mental characteristics and medical history of the
 94 enrollee and the known characteristics of the drug regimen; or

95 (B) Will cause or is likely to cause an adverse reaction or
 96 other physical harm to the enrollee.

97
 98 If the prescribing provider follows the fail-first protocol
 99 recommended by the managed care plan for an enrollee, the
 100 duration of treatment under the fail-first protocol may not
 101 exceed a period deemed appropriate by the prescribing provider.
 102 Following such period, if the prescribing provider deems the
 103 treatment provided under the protocol clinically ineffective,
 104 the enrollee is entitled to receive the course of therapy that
 105 the prescribing provider recommends, and the provider is not
 106 required to seek approval of an override of the fail-first
 107 protocol. As used in this subparagraph, the term "fail-first
 108 protocol" means a prescription practice that begins medication
 109 for a medical condition with the most cost-effective drug
 110 therapy and progresses to other more costly or risky therapies
 111 only if necessary.

112 3. Managed care plans, and their fiscal agents or
 113 intermediaries, must accept prior authorization requests for any
 114 service electronically.

115 4. Managed care plans serving children in the care and
 116 custody of the Department of Children and Families ~~shall must~~
 117 maintain complete medical, dental, and behavioral health
 118 encounter information and participate in making such information
 119 available to the department or the applicable contracted

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120 community-based care lead agency for use in providing
 121 comprehensive and coordinated case management. The agency and
 122 the department shall establish an interagency agreement to
 123 provide guidance for the format, confidentiality, recipient,
 124 scope, and method of information to be made available and the
 125 deadlines for submission of the data. The scope of information
 126 available to the department ~~are shall be~~ the data that managed
 127 care plans are required to submit to the agency. The agency
 128 shall determine the plan's compliance with standards for access
 129 to medical, dental, and behavioral health services; the use of
 130 medications; and followup on all medically necessary services
 131 recommended as a result of early and periodic screening,
 132 diagnosis, and treatment.

133 Section 3. Section 627.6466, Florida Statutes, is created
 134 to read:

135 627.6466 Fail-first protocols.—If an insurer restricts the
 136 use of prescribed drugs through a fail-first protocol, it must
 137 establish a clear and convenient process that a prescribing
 138 physician may use to request an override of the restriction from
 139 the insurer. The insurer shall grant an override of the protocol
 140 within 24 hours if:

141 (1) Based on sound clinical evidence, the prescribing
 142 provider concludes that the preferred treatment required under
 143 the fail-first protocol has been ineffective in the treatment of
 144 the insured's disease or medical condition; or

145 (2) Based on sound clinical evidence or medical and
 146 scientific evidence, the prescribing provider believes that the
 147 preferred treatment required under the fail-first protocol:

148 (a) Is likely to be ineffective given the known relevant

1-00098B-16

20161084__

149 physical or mental characteristics and medical history of the
 150 insured and the known characteristics of the drug regimen; or
 151 (b) Will cause or is likely to cause an adverse reaction or
 152 other physical harm to the insured.

153
 154 If the prescribing provider follows the fail-first protocol
 155 recommended by the insurer for an insured, the duration of
 156 treatment under the fail-first protocol may not exceed a period
 157 deemed appropriate by the prescribing provider. Following such
 158 period, if the prescribing provider deems the treatment provided
 159 under the protocol clinically ineffective, the insured is
 160 entitled to receive the course of therapy that the prescribing
 161 provider recommends, and the provider is not required to seek
 162 approval of an override of the fail-first protocol. As used in
 163 this section, the term "fail-first protocol" means a
 164 prescription practice that begins medication for a medical
 165 condition with the most cost-effective drug therapy and
 166 progresses to other more costly or risky therapies only if
 167 necessary.

168 Section 4. Subsection (44) is added to section 641.31,
 169 Florida Statutes, to read:

170 641.31 Health maintenance contracts.—

171 (44) A health maintenance organization may not require a
 172 health care provider, by contract with another health care
 173 provider, a patient, or another individual or entity, to use a
 174 clinical decision support system or a laboratory benefits
 175 management program before the provider may order clinical
 176 laboratory services or in an attempt to direct or limit the
 177 provider's medical decisionmaking relating to the use of such

1-00098B-16 20161084__

178 services. This subsection may not be construed to prohibit any
 179 prior authorization requirements that the health maintenance
 180 organization may have regarding the provision of clinical
 181 laboratory services. As used in this subsection, the term:

182 (a) "Clinical decision support system" means software
 183 designed to direct or assist clinical decisionmaking by matching
 184 the characteristics of an individual patient to a computerized
 185 clinical knowledge base and providing patient-specific
 186 assessments or recommendations based on the match.

187 (b) "Clinical laboratory services" means the examination of
 188 fluids or other materials taken from the human body, which
 189 examination is ordered by a health care provider for use in the
 190 diagnosis, prevention, or treatment of a disease or in the
 191 identification or assessment of a medical or physical condition.

192 (c) "Laboratory benefits management program" means a health
 193 maintenance organization protocol that dictates or limits health
 194 care provider decisionmaking relating to the use of clinical
 195 laboratory services.

196 Section 5. Section 641.394, Florida Statutes, is created to
 197 read:

198 641.394 Fail-first protocols.—If a health maintenance
 199 organization restricts the use of prescribed drugs through a
 200 fail-first protocol, it must establish a clear and convenient
 201 process that a prescribing physician may use to request an
 202 override of the restriction from the health maintenance
 203 organization. The health maintenance organization shall grant an
 204 override of the protocol within 24 hours if:

205 (1) Based on sound clinical evidence, the prescribing
 206 provider concludes that the preferred treatment required under

1-00098B-16 20161084__

207 the fail-first protocol has been ineffective in the treatment of
 208 the subscriber's disease or medical condition; or

209 (2) Based on sound clinical evidence or medical and
 210 scientific evidence, the prescribing provider believes that the
 211 preferred treatment required under the fail-first protocol:

212 (a) Is likely to be ineffective given the known relevant
 213 physical or mental characteristics and medical history of the
 214 subscriber and the known characteristics of the drug regimen; or

215 (b) Will cause or is likely to cause an adverse reaction or
 216 other physical harm to the subscriber.

217
 218 If the prescribing provider follows the fail-first protocol
 219 recommended by the health maintenance organization for a
 220 subscriber, the duration of treatment under the fail-first
 221 protocol may not exceed a period deemed appropriate by the
 222 prescribing provider. Following such period, if the prescribing
 223 provider deems the treatment provided under the protocol
 224 clinically ineffective, the subscriber is entitled to receive
 225 the course of therapy that the prescribing provider recommends,
 226 and the provider is not required to seek approval of an override
 227 of the fail-first protocol. As used in this section, the term
 228 "fail-first protocol" means a prescription practice that begins
 229 medication for a medical condition with the most cost-effective
 230 drug therapy and progresses to other more costly or risky
 231 therapies only if necessary.

232 Section 6. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-16

Meeting Date

1084

Bill Number (if applicable)

Topic HEALTH CARE PROTOCOLS

Amendment Barcode (if applicable)

Name MIKE FISCHER

Job Title

Address PO BOX 1197

Phone 222-6344

Street

TLH

FL

32303

Email mike@redfishconsult.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing AMERICAN CANCER SOCIETY

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16
Meeting Date

SB 1084
Bill Number (if applicable)

Topic Health Care Protocols

Amendment Barcode (if applicable)

Name Jack Murray

Job Title Advocacy Manager

Address 200 W. College Ave
Street

Phone 850 577-5163

Tally FL 32301
City State Zip

Email jmurray@aarpa.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-2016

Meeting Date

SB1084

Bill Number (if applicable)

Topic HEALTH CARE PROTOCOLS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DR

Phone 878-7364

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-16

Meeting Date

1084

Bill Number (if applicable)

Topic SB. 1084

Amendment Barcode (if applicable)

Name Jarrod Fowler

Job Title _____

Address _____
Street

Phone 904-525-4446

City _____ State _____ Zip _____

Email Jfowler@flmedsoc.org

Speaking: For Against Information

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

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16

Meeting Date

1084

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DANIEL BENDYOWICZ

Job Title PHYSICIAN PRIVATE PRACTICE

Address 15750 New Hampshire Ct D

Street

Fort Myers

City

FL

State

33908

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing Florida Chapter, American College of Physicians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1084
Bill Number (if applicable)

Topic Health Care Protocols

Amendment Barcode (if applicable) _____

Name Beth LABASKY

Job Title Consultant

Address 1400 Village Sq Blvd

Phone 850 322 7335

Street

Tweel
City

Fla
State

32312
Zip

Email bethlabasky@aol.com

Speaking: For Against Information

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

Representing COPD FOUNDATION Alpha Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16

Meeting Date

1084

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Noland

Job Title _____

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville FL 32209

Email nolandlan@aol.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Florida Society of Thoracic & Cardiovascular Surgeons; Florida Gastroenterology Society

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 19th
Meeting Date

1084
Bill Number (if applicable)

Topic Step Therapy / Prior Auth / One Beacon fix Amendment Barcode (if applicable)

Name DR. Bob Levin

Job Title physician, rheumatologist,

Address 1416 Virginia St
Street
Dunedin, FL
City State Zip

Phone (727) 643-5850

Email rlevin@msn.com

Speaking: For Against Information

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

Representing Florida Society of Rheumatology

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/15
Meeting Date

1084
Bill Number (if applicable)

Topic Health Care Protocols

Amendment Barcode (if applicable)

Name Tammy Perdue

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

Tallahassee FL 32301
City State Zip

Email tperdue@aif.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16
Meeting Date

1084
Bill Number (if applicable)

Topic Fail First / Patient Access

Amendment Barcode (if applicable)

Name Pam Langford

Job Title President

Address PO Box 180813

Phone _____

Street

Tallahassee
City

FL
State

32318
Zip

Email _____

Speaking: For Against Information

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

Representing HEALS OF THE SOUTH

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE APPEARANCE RECORD

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

1/19/16

Meeting Date

SB 1084

Bill Number (if applicable)

Topic Health Care Protocols

Amendment Barcode (if applicable)

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St.

Phone (850) 521-1200

Street

Tallahassee, FL 32301

Email bhunt@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-16

Meeting Date

SB 1084

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 South Monroe St
Street

Phone 850-222-7200

Tallahassee, FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FIC - Florida Blue

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-16
Meeting Date

1084
Bill Number (if applicable)

Topic Health Care Protocols

Amendment Barcode (if applicable)

Name Andrey Brown

Job Title President + C.E.O

Address 200 W. College Ave
Street

Phone 850-386-2904

Jallahessie FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

Committee Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 11, 2016

I respectfully request that Senate Bill 1084, Health Care Protocols, be placed on the agenda for the Banking and Insurance Committee at your convenience. Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Don Gaetz", written in a cursive style.

Senator Don Gaetz

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 992

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Department of Financial Services

DATE: January 21, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 992 makes various changes to statutes relating to the Department of Financial Services (DFS or the Department).

Current law requires plaintiffs to serve lawsuits on insurance companies by serving documents initiating the lawsuit at the Department. These documents are sent to DFS by mail or by process server. This bill would allow the DFS to create a system for electronic service of process and create an internet-based system for distributing documents to insurance companies.

The Chief Financial Officer is designated the State Fire Marshal. The CFO administers the state fire code and the certification of firefighters. This bill provides for expiration of firefighter certifications after 4 years and provides a renewal process. It provides additional grounds that the State Fire Marshal can suspend, revoke, or deny an application for certification. The bill creates a procedure for an applicant for firefighter certification with a criminal record or dishonorable discharge from the United States Armed Forces to obtain a certificate if they can demonstrate by clear and convincing evidence that they do not pose a risk to persons or property.

The bill creates the "Firefighter Assistance Grant Program." The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments. The program will provide financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The bill provides that employees of the state university system, a special district, or a water management district can participate in the deferred compensation program from state employees administered by the Department.

This bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000 to conform to the federal single audit act. It reorganizes the statute to place the provisions relating to higher education entities in one section.

The bill provides that the DFS will select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association's regular membership but does not provide for nominations.

The Department administers the sinkhole neutral evaluation program for the resolution of disputed sinkhole insurance claims. This bill amends the qualifications of the neutral evaluator to provide that one cannot serve as a neutral evaluator on a claim if the individual was employed, within the previous 5 years, by the firm that did the initial sinkhole testing.

This bill allows the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code. This will allow, for example, the DFS Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.

II. Present Situation:

This bill amends various provisions relating to the DFS.

Service of Process on the Chief Financial Officer

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Section 48.151, F.S., provides that the Chief Financial Officer ("CFO") is the agent for service of process for:

- All insurers applying for authority to transact insurance;
- All licensed nonresident insurance agents;
- All nonresident disability insurance agents;
- Any unauthorized insurer under s. 626.906 or s. 626.937, F.S.;
- All domestic reciprocal insurers;
- All fraternal benefit societies;
- All warranty associations;
- All prepaid limited health service organizations; under chapter 636; and
- All persons required to file statements under s. 628.461, F.S.¹

All persons or entities for which the CFO is the agent for service of process must designate an individual to receive documents served on DFS. In order to serve process on an insurance company or other entity for which the CFO is the agent, a plaintiff must mail the summons and

¹ See s. 48.151(3), F.S.

other documents to the DFS or serve the documents at the DFS by personal service at the DFS Tallahassee office. The plaintiff must pay a \$15 fee to the DFS for service.² The CFO cannot accept service via electronic mail.³

Once the DFS receives the documents, it forwards them to the insurer or entity.⁴ The CFO can use registered or certified mail to send the documents to authorized insurers.⁵ The CFO can use registered mail to send the documents to unauthorized insurers.⁶ Section 624.307, F.S., also allows the CFO to use certified mail, registered mail, or other verifiable means to serve regulated entities.

According to representatives of the DFS, many law firms are creating and filing documents in court electronically but must print and send paper copies to the DFS. The DFS believes it could improve efficiency if plaintiffs were allowed to serve DFS electronically.⁷

Alternative Retirement Benefits for OPS Employees

Section 110.1315, F.S., requires that upon review and approval by the Executive Office of the Governor, the DFS must provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The DFS is allowed to contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code.⁸ By creating the program for such employees, the state does not have to contribute to Social Security as an employer.⁹ The DFS reports that the program has saved the state \$11 million in 2013 and 2014.¹⁰

Florida Deferred Compensation Program

Section 112.215, Florida Statutes, requires the CFO to create a deferred compensation plan for state employees. The plan allows state employees to defer a portion of their income and place it in an investment account. The employee does not pay taxes on the deferred amount or any investment gains until the employee withdraws the money.¹¹

Approval of Bonds

Section 137.09, F.S., provides that each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale

² See s. 624.502, F.S.

³ See <http://www.myfloridacfo.com/division/legalservices/ServiceofProcess/default.htm> (last visited January 13, 2016).

⁴ See ss. 624.307, 624.423, and 626.907, F.S.

⁵ See s. 624.423, F.S.

⁶ See s. 626.907, F.S.

⁷ Interview with DFS staff, January 13, 2016.

⁸ See s. 110.1315(1), F.S.

⁹ See *Description of Intended Single Source Purchase*, Department of Financial Services, December 22, 2015 at http://www.myflorida.com/apps/vbs/adoc/F20507_PUR7776DFSTRSS151610.pdf (last visited January 14, 2016).

¹⁰ *Id.*

¹¹ See <https://www.myfloridadeferredcomp.com/SOFWeb/default.aspx> (last visited January 14, 2016).

under legal process to make good his or her bond. These bonds must be approved by the board of county commissioners and by the DFS. Section 374.983, F.S., requires each commissioner of the Board of Commissioners of the Florida Inland Navigation District to post a surety bond in the sum of \$10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of the office. This bond must be approved by the CFO. The DFS has not been required to approve bonds under either of these statutes in quite some time and believes the requirements are not needed.¹²

Florida Single Audit Act

Section 215.97, F.S., creates the Florida Single Audit Act. The DFS has explained the history and purpose:

In 1998, the Florida Single Audit Act was enacted to establish state audit and accountability requirements for state financial assistance provided to nonstate entities. The Legislature found that while federal financial assistance passing through the state to nonstate entities was subject to mandatory federal audit requirements, significant amounts of state financial assistance was being provided to nonstate entities that was not subject to audit requirements that paralleled federal audit requirements. Accordingly, it was the intent of the Act that state audit and accountability requirements, to the extent possible, parallel the federal audit requirements.¹³

Each nonstate entity that expends more than \$500,000 in state financial assistance¹⁴ in a fiscal year is required to have an audit for that fiscal year. Nonstate entities include local governments, nonprofit organizations, and for-profit organizations.¹⁵

Section 215.97(8)(o), F.S., provides that contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:

- A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or
- A combination of the above contract forms.

The DFS reports that because references to higher education entities are spread throughout the Florida Single Audit Act, there is confusion over which provisions apply in various situations.¹⁶

¹² See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

¹³ See <https://apps.fldfs.com/fsaa/singleauditact.aspx> (last visited January 14, 2016).

¹⁴ State financial assistance is state resources provided to a nonstate entity to carry out a state project.

¹⁵ See s. 215.97(2)(m), F.S.

¹⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

Driver Licenses Photographs

The Department of Highway Safety and Motor Vehicles maintains digital photographs of licenses pursuant to s. 322.142, F.S. Those photographs are exempt from public disclosure but may be shared with various state agencies to assist the agencies' with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims.¹⁷

Boiler Regulation

Chapter 554, F.S., is the Florida Boiler Safety Act. The DFS administers the boiler safety code. Section 509.211, F.S., provides that every enclosed room or space that contains a boiler and that is located in a public lodging establishment must be equipped with a carbon monoxide sensor that bears the label of a nationally tested laboratory and complies with the most recent Underwriters Laboratories Standard 2034.¹⁸ The statute provides that the carbon monoxide detector is not necessary if the DFS Division of State Fire Marshal determines the carbon monoxide hazard has been mitigated.¹⁹

Appointments to the Board of the Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office ("FSLSO). The FSLSO is a self-regulating, nonprofit association for Florida surplus lines agents. The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.²⁰ The FSLSO is operated under the supervision of a board of governors consisting of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association.
- Two individuals appointed by the DFS, one from each of the two largest domestic agents' associations, each of whom shall be licensed surplus lines agents.
- The Insurance Consumer Advocate.
- One individual appointed by the department, who shall be a risk manager for a large domestic commercial enterprise.²¹

The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies. The purpose of the association is to encourage an exchange of information among members and to disseminate educational information for the benefit of members and the betterment of the excess and surplus lines industry.²²

¹⁷ See s. 322.142(4), F.S.

¹⁸ The standard relating to carbon monoxide detectors. See <http://ulstandards.ul.com/standard/?id=2034> (last visited January 14, 2016).

¹⁹ See s. 509.211(4), F.S.

²⁰ See s. 626.921(1), F.S.

²¹ See s. 626.921(4), F.S.

²² See s. <http://www.myfsla.com/about/>

Neutral Evaluators

Sections 627.707-627.7074, F.S., create requirements for the investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing²³ to determine the cause of the loss if sinkhole loss is covered under the policy.²⁴ If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²⁵

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁶ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁷ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁸

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.²⁹ A request for neutral evaluation is filed with the DFS. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.³⁰ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.³¹ The report is admissible in subsequent court proceedings.³² Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Section 627.7074(7), F.S., provides reasons for which a neutral evaluator may be disqualified:

- A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.
- The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.
- The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

²³ s. 627.7072, F.S., contains testing standards in sinkhole claims.

²⁴ s. 627.707(2), F.S.

²⁵ s. 627.707(4)(a), F.S.

²⁶ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁷ s. 627.7074(2), F.S.

²⁸ s. 627.7074(3), F.S.

²⁹ s. 627.7074(4), F.S.

³⁰ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

³¹ ss. 627.7074(5), (12), F.S.

³² s. 627.7074(13), F.S.

- The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

Provisions Related to the State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the CFO as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.³³ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code³⁴, which contains fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

III. Effect of Proposed Changes:

Service of Process on the Chief Financial Officer (Sections 1, 9, 10, 11, and 12)

This bill provides an alternative means for plaintiffs to serve process on insurers and other regulated persons. The bill allows the DFS to create an internet-based transmission system to accept service of process by electronic transmission of documents. This will allow plaintiffs to serve documents electronically and allow DFS to remove the requirement that paper documents be served.

Once served, the CFO can mail the documents, send them by some other verifiable means, or make them available by electronic transmission to a secure website established by the DFS. Once documents are made available electronically, the CFO shall send notice of receipt to the person designated to receive legal process. The notice shall state the date and manner in which the copy of process was made available and contain the uniform resource locator for a hyperlink to access files and information on the Department's website to obtain a copy of the process.

The bill increases the service of process fee paid to the DFS when service of process is made on unauthorized insurers from \$15 to \$25. The fee is increased because for the current fee is generally exceeded by the cost for the DFS to serve unauthorized insurers.

Alternative Retirement Benefits for OPS Employees (Section 2)

Section 2 amends s. 110.1315, F.S., to remove the review and approval duties from the Executive Office of the Governor relating to the alternative retirement income security program for temporary and seasonal employees of the state.

³³ s. 633.104, F.S.

³⁴ See <http://www.myfloridacfo.com/division/sfm/BFP/FloridaFirePreventionCodePage.htm> (last visited January 14, 2016).

Florida Deferred Compensation Program (Section 3)

Section 3 of this bill amends s. 112.215, F.S., to provide that persons employed by a state university, special district, or a water management district are eligible to participate in the deferred compensation program established by the CFO. According the DFS, some of these employees have been participating in the program but the DFS staff believed the statute needed clarification.³⁵

Approval of Bonds (Sections 4 and 7)

The bill amends ss. 137.09 and 374.983, F.S., to remove the requirement that the DFS approve bonds for county commissioners and commissioners of the Florida Inland Navigation District. The bonds will still be reviewed by the county boards and by the Florida Inland Navigation District.

Florida Single Audit Act (Section 5)

The bill amends the Florida Single Audit Act to raise the audit threshold from \$500,000 to \$750,000. According to the DFS, the federal single audit threshold was recently raised from \$500,000 to \$750,000. The bill matches the Florida threshold to the federal threshold. Many entities that receive state financial assistance also receive federal financial assistances. This change prevents an entity from having to comply with different audit thresholds.³⁶

The bill creates a new subsection to the Florida Single Audit Act to consolidate the provision of the Act relating to higher education entities.³⁷ The bill provides that any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance must comply with s. 215.971(1), F.S., (providing that the contract must include provisions relating to scope of work, deliverables, consequences for nonperformance, and return of unused funds) and s. 216.3475, F.S. (limiting payments to the prevailing rate for services). The contract must be in the form or a combination of the following:

- A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.
- A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.
- A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

The bill provides that if a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the contracting requirements of the bill.

³⁵ See Department of Financial Services, *An Act Relating to the Department of Financial Services* White Paper (on file with the Committee on Banking and Insurance).

³⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

³⁷ The bill defines “higher education entity” as a Florida College System institution or a state university.

The bill does not exempt the higher education entity from compliance with maintaining records concerning state financial assistance and does not exempt the entity from laws that allow access and examination of those records by the state awarding agency, the higher education entity, the DFS, or the Auditor General.

Driver Licenses Photographs (Section 6)

This bill amends s. 322.142, F.S., to allow the DFS to have access of digital photographs from the Department of Highway Safety and Motor Vehicles to investigate allegations of violations of the insurance code by licensees and by unlicensed persons. This will allow, for example, the DFS Division of Agent and Agency Services access to photographs to aid in the investigation of insurance agents.³⁸

Boiler Regulation (Section 8)

This bill amends s. 509.211, F.S., to remove the reference to a “nationally recognized testing laboratory.” It requires the carbon monoxide detector to bear the certification mark from a testing and certification organization accredited in accordance with ISO/IEC Guide 65, General Requirements for Bodies Operating Product Certification Systems.³⁹ It requires that carbon monoxide detectors comply with Underwriters Laboratories Standard 2075.

The bill removes the ability of the Division of State Fire Marshal determine that some other method has adequately mitigated the risk. It requires the carbon monoxide to meet the statutory requirements.

Appointments to the Board of the FLSO (Section 13)

The bill requires that the five members of the Florida Surplus Lines Association regular membership appointed to the FLSO board of governors must be individuals nominated by the Florida Surplus Lines Association.

Neutral Evaluators (Section 14)

The bill provides that a proposed neutral evaluator is disqualified if he or she has, within the preceding 5 years, worked for the entity that performed the initial sinkhole testing required by s. 627.7072, F.S.

Provisions Related to the State Fire Marshal (Sections 15-22)

Criminal Records of Applicants for Certification

Section 633.412, F.S., provides that a person applying for certification as a firefighter must not have been convicted of a felony, a misdemeanor relating to the certification, a misdemeanor relating to perjury or false statements, or have been dishonorably discharged from the Armed Forces of the United States. Section 15 of the bill creates s. 633.107, F.S., to give the DFS the

³⁸ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

³⁹ “ISO” is the International Organization for Standardization. See <http://www.iso.org/iso/home.htm> and <http://www.businessdictionary.com/definition/International-Standards-Organization-ISO.html> (last visited January 14, 2016).

discretion to grant certificates to some applicants with criminal records if certain conditions are met. The applicant must have paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense. In addition, at least 5 years must have elapsed since the applicant completed or was released from confinement, supervision, or nonmonetary conditions imposed by the court for a disqualifying offense or at least 5 years must have elapsed since the applicant was dishonorably discharged from the United States Armed Forces. Once those conditions are met, the applicant must demonstrate, by clear and convincing evidence, that he or she would not pose a risk to persons or property if licensed or certified. Evidence must include:

- Facts and circumstances surrounding the disqualifying offense;
- The time that has elapsed since the offense;
- The nature of the offense and harm caused to the victim;
- The applicant’s history before and after the offense; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

The bill gives the DFS the discretion whether to grant or deny an exemption. The department must provide its decision to deny the exemption in writing and must state with particularity the reasons for denial. The department’s decision is subject to proceedings under chapter 120, F.S., except that a formal proceeding under s. 120.57(1), F.S., is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.⁴⁰

Life Safety Code

Section 17 of this bill provides that the provisions of the Life Safety Code, part of the Florida Fire Prevention Code, do not apply to “newly constructed” one and two-family dwellings. One and two-family dwellings are exempt from the Florida Fire Prevention Code and representatives of the DFS are concerned that the statute could lead to confusion.⁴¹

Firefighter and Volunteer Firefighter Training and Certification

Currently, to work as a firefighter, an individual must hold a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal (“Division”).⁴² To obtain a firefighter certificate of compliance, an individual must:

- Satisfactorily complete the Minimum Standards Course⁴³ or have satisfactorily completed training for firefighters in another state which has been determined by the division to be the equivalent of the training required for the Minimum Standards Course.
- Passes the Minimum Standards Course examination.
- Possesses the qualifications in s. 633.412, F.S.:⁴⁴
 - Be a high school graduate

⁴⁰ The procedure set forth in this bill is similar to the procedure in s. 435.07, F.S., and discussed in *J.D. v. Florida Department of Children and Families*, 114 So.3d 1127 (Fla. 1st DCA 2013).

⁴¹ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

⁴² See s. 633.416, F.S.

⁴³ This course provides the basic fundamental knowledge and skills to function in a fire fighting environment and consists of at least 398 hours. See <http://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited January 14, 2016).

⁴⁴ See s. 633.408(4), F.S.

- Be at least 18 years old
- Have no felony convictions
- Have no misdemeanor convictions relating to the certification or for perjury or false statements
- Be of good moral character
- Be in good physical condition as determined by a division approved physical examination
- Be a nonuser of tobacco or tobacco products for at least year prior to the application

A volunteer firefighter certificate of completion is used for individuals who satisfactorily complete a course established by the division.

Section 19 of the bill requires that an individual seeking a firefighter certificate of compliance must pass the minimum standards course examination within 12 months after completing the required courses. Section 19 also provides that a firefighter certificate of compliance or a volunteer firefighter certificate of completion expires 4 years after the date of issuance unless renewed.

Current law requires that if the DFS suspends or revokes an individual's certificate, it must suspend or revoke all other certificates that the individual currently holds. Section 20 of this bill removes that requirement.

Retention and Renewal of Certificates

Under current law, s. 633.414, F.S., provides requirements to retain a firefighter certificate of compliance and a volunteer firefighter certificate of completion. In order for a firefighter to retain a certificate of compliance, the firefighter must, every 4 years:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

Currently, in order for a volunteer firefighter to retain a volunteer firefighter certificate of completion, the volunteer firefighter must, every 4 years, be active as a volunteer firefighter or successfully complete a 40 hour refresher course.⁴⁵

Section 21 of the bill requires that the firefighter complete a "Firefighter Retention Refresher Course within six months before the 4-year period expires. It further provides that a firefighter or volunteer firefighter certificate expires if the individual does not meet retention requirements. Section 21 provides that the State Fire Marshal may suspend, revoke, or deny a certificate if a reason for denial existed but was not known at the time of issuance, for violations of ch. 633, F.S., or rules or orders of the State Fire Marshal, or falsification of records.

⁴⁵ See s. 633.414, F.S.

Section 22 of the bill provides that, effective July 1, 2013, an individual who holds a certificate is subject to revocation for:

- A conviction of a misdemeanor relating to the certification or to perjury or false statements;
- A conviction of a felony; or
- A dishonorable discharge from the Armed Forces of the United States.

Firefighter Assistance Grant Program (Section 16)

Section 16 of this bill creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.

The program shall provide financial assistance to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities. The bill requires the division to administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. The division is required to prioritize the annual award of grants to such fire departments in a county having a population of 75,000 or less.

The bill requires the State Fire Marshal to adopt rules for the program that require grant recipients to:

- Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;
- Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536, F.S.;
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and
- Meet the definition of the term “fire service provider” in s. 633.102, F.S.

The bill requires that funds be used to:

- Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division’s electronic database;
- Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear; and
- Purchase self-contained breathing apparatus equipment and purchase fire engine pumper apparatus equipment.

The bill does not contain an appropriation to fund the grant program.

Effective Date (Section 23)

This bill takes effect July 1, 2016.

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:**

This bill increases the service of process fee for service on unauthorized insurers from \$15 to \$25.

B. Private Sector Impact:

This bill creates a system for electronic service of process at DFS. This could result in cost savings for plaintiffs who serve documents at DFS but reduce revenue for process servers who serve pleadings at the DFS office in Tallahassee.

C. Government Sector Impact:

The DFS anticipates a \$54,000 per year recurring savings from reduced postage, printing, and information technology costs due to the changes in the service of process statutes in this bill.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 633.107 and 633.135.

⁴⁶ See Department of Financial Services, *Senate Bill 992 Bill Analysis* (January 12, 2016).

This bill substantially amends the following sections of the Florida Statutes: 48.151, 110.1315, 112.215, 137.09, 215.97, 322.142, 374.983, 509.211, 624.307, 624.423, 624.502, 626.907, 626.921, 627.7074, 633.208, 633.216, 633.408, 633.412, 633.414, and 633.426.

IX. Additional Information:

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

CS by Banking and Insurance on January 19, 2016:

The committee substitute:

- Maintains current law regarding “for-profit organizations” and the Florida Single Audit Act. The original bill excluded for-profit organizations from the Act.
- Creates a procedure for applicants for certification as firefighters who have been convicted of a felony to obtain certification if they demonstrate by clear and convincing evidence that they would not pose a risk to persons or property if they were granted a certificate.
- Creates the “Firefighter Assistance Grant Program.” The purpose of the program is to improve the emergency response capability of volunteer fire departments and combination fire departments.
- Requires the DFS to select five persons nominated by the Florida Surplus Lines Association to serve on the Florida Surplus Lines Service Office board of governors. Current law requires the DFS to select members from the Florida Surplus Lines Association’s regular membership but does not provide for nominations.
- Provides discretion for the State Fire Marshal to suspend or revoke other certificates when a firefighter or other certificate holder has a certificate suspended or revoked.
- Removes a provision of the original bill relating to sinkhole insurance.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
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01/19/2016	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 48.151, Florida
Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer or his or her assistant or
deputy or another person in charge of the office is the agent
for service of process on all insurers applying for authority to



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11 transact insurance in this state, all licensed nonresident
12 insurance agents, all nonresident disability insurance agents
13 licensed pursuant to s. 626.835, any unauthorized insurer under
14 s. 626.906 or s. 626.937, domestic reciprocal insurers,
15 fraternal benefit societies under chapter 632, warranty
16 associations under chapter 634, prepaid limited health service
17 organizations under chapter 636, and persons required to file
18 statements under s. 628.461. As an alternative to service of
19 process made by mail or personal service on the Chief Financial
20 Officer, on his or her assistant or deputy, or on another person
21 in charge of the office, the Department of Financial Services
22 may create an Internet-based transmission system to accept
23 service of process by electronic transmission of documents.

24 Section 2. Subsection (1) of section 110.1315, Florida
25 Statutes, is amended to read:

26 110.1315 Alternative retirement benefits; other-personal-
27 services employees.-

28 (1) ~~Upon review and approval by the Executive Office of the~~
29 ~~Governor,~~ The Department of Financial Services shall provide an
30 alternative retirement income security program for eligible
31 temporary and seasonal employees of the state who are
32 compensated from appropriations for other personal services. The
33 Department of Financial Services may contract with a private
34 vendor or vendors to administer the program under a defined-
35 contribution plan under ss. 401(a) and 403(b) or s. 457 of the
36 Internal Revenue Code, and the program must provide retirement
37 benefits as required under s. 3121(b)(7)(F) of the Internal
38 Revenue Code. The Department of Financial Services may develop a
39 request for proposals and solicit qualified vendors to compete



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40 for the award of the contract. A vendor shall be selected on the
41 basis of the plan that best serves the interest of the
42 participating employees and the state. The proposal must comply
43 with all necessary federal and state laws and rules.

44 Section 3. Paragraph (a) of subsection (4) and subsection
45 (12) of section 112.215, Florida Statutes, are amended to read:

46 112.215 Government employees; deferred compensation
47 program.—

48 (4) (a) The Chief Financial Officer, with the approval of
49 the State Board of Administration, shall establish such plan or
50 plans of deferred compensation for state employees and may
51 include persons employed by a state university as defined in s.
52 1000.21, a special district as defined in s. 189.012, or a water
53 management district as defined in s. 189.012, including all such
54 investment vehicles or products incident thereto, as may be
55 available through, or offered by, qualified companies or
56 persons, and may approve one or more such plans for
57 implementation by and on behalf of the state and its agencies
58 and employees.

59 (12) The Chief Financial Officer may adopt any rule
60 necessary to administer and implement this act with respect to
61 deferred compensation plans for state employees and persons
62 employed by a state university as defined in s. 1000.21, a
63 special district as defined in s. 189.012, or a water management
64 district as defined in s. 189.012.

65 Section 4. Section 137.09, Florida Statutes, is amended to
66 read:

67 137.09 Justification and approval of bonds.—Each surety
68 upon every bond of any county officer shall make affidavit that



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69 he or she is a resident of the county for which the officer is
70 to be commissioned, and that he or she has sufficient visible
71 property therein unencumbered and not exempt from sale under
72 legal process to make good his or her bond. Every such bond
73 shall be approved by the board of county commissioners ~~and by~~
74 ~~the Department of Financial Services~~ when the board is ~~they and~~
75 ~~it are~~ satisfied in its ~~their~~ judgment that the bond ~~same~~ is
76 legal, sufficient, and proper to be approved.

77 Section 5. Paragraphs (h) through (y) of subsection (2) of
78 section 215.97, Florida Statutes, are redesignated as paragraphs
79 (i) through (z), respectively, a new paragraph (h) is added to
80 that subsection, present paragraphs (a), (m), and (v) of that
81 subsection and paragraph (o) of subsection (8) are amended,
82 subsections (9), (10), and (11) are renumbered as subsections
83 (10), (11), and (12), respectively, and a new subsection (9) is
84 added to that section, to read:

85 215.97 Florida Single Audit Act.—

86 (2) ~~Definitions~~; As used in this section, the term:

87 (a) "Audit threshold" means the threshold amount used to
88 determine when a state single audit or project-specific audit of
89 a nonstate entity shall be conducted in accordance with this
90 section. Each nonstate entity that expends a total amount of
91 state financial assistance equal to or in excess of \$750,000
92 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
93 required to have a state single audit, or a project-specific
94 audit, for such fiscal year in accordance with the requirements
95 of this section. Every 2 years the Auditor General, after
96 consulting with the Executive Office of the Governor, the
97 Department of Financial Services, and all state awarding



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98 agencies, shall review the threshold amount for requiring audits
99 under this section and may adjust such threshold amount
100 consistent with the purposes of this section.

101 (h) "Higher education entity" means a Florida College
102 System institution or a state university, as those terms are
103 defined in s. 1000.21.

104 (n) ~~(m)~~ "Nonstate entity" means a local governmental entity,
105 higher education entity, nonprofit organization, or for-profit
106 organization that receives state financial assistance.

107 (w) ~~(v)~~ "State project-specific audit" means an audit of one
108 state project performed in accordance with the requirements of
109 subsection (11) ~~(10)~~.

110 (8) Each recipient or subrecipient of state financial
111 assistance shall comply with the following:

112 (o) A higher education entity is exempt from the
113 requirements of paragraph (2) (a) and this subsection ~~A contract~~
114 ~~involving the State University System or the Florida College~~
115 ~~System funded by state financial assistance may be in the form~~
116 ~~of:~~

117 ~~1. A fixed-price contract that entitles the provider to~~
118 ~~receive full compensation for the fixed contract amount upon~~
119 ~~completion of all contract deliverables;~~

120 ~~2. A fixed-rate-per-unit contract that entitles the~~
121 ~~provider to receive compensation for each contract deliverable~~
122 ~~provided;~~

123 ~~3. A cost-reimbursable contract that entitles the provider~~
124 ~~to receive compensation for actual allowable costs incurred in~~
125 ~~performing contract deliverables; or~~

126 ~~4. A combination of the contract forms described in~~



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127 ~~subparagraphs 1., 2., and 3.~~

128 (9) This subsection applies to any contract or agreement
129 between a state awarding agency and a higher education entity
130 that is funded by state financial assistance.

131 (a) The contract or agreement must comply with ss.
132 215.971(1) and 216.3475 and must be in the form of one or a
133 combination of the following:

134 1. A fixed-price contract that entitles the provider to
135 receive compensation for the fixed contract amount upon
136 completion of all contract deliverables.

137 2. A fixed-rate-per-unit contract that entitles the
138 provider to receive compensation for each contract deliverable
139 provided.

140 3. A cost-reimbursable contract that entitles the provider
141 to receive compensation for actual allowable costs incurred in
142 performing contract deliverables.

143 (b) If a higher education entity has extremely limited or
144 no required activities related to the administration of a state
145 project and acts only as a conduit of state financial
146 assistance, none of the requirements of this section apply to
147 the conduit higher education entity. However, the subrecipient
148 that is provided state financial assistance by the conduit
149 higher education entity is subject to the requirements of this
150 subsection and subsection (8).

151 (c) Regardless of the amount of the state financial
152 assistance, this subsection does not exempt a higher education
153 entity from compliance with provisions of law that relate to
154 maintaining records concerning state financial assistance to the
155 higher education entity or that allow access and examination of



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156 those records by the state awarding agency, the higher education
157 entity, the Department of Financial Services, or the Auditor
158 General.

159 (d) This subsection does not prohibit the state awarding
160 agency from including terms and conditions in the contract or
161 agreement which require additional assurances that the state
162 financial assistance meets the applicable requirements of laws,
163 regulations, and other compliance rules.

164 Section 6. Paragraph (j) of subsection (4) of section
165 322.142, Florida Statutes, is amended to read:

166 322.142 Color photographic or digital imaged licenses.—

167 (4) The department may maintain a film negative or print
168 file. The department shall maintain a record of the digital
169 image and signature of the licensees, together with other data
170 required by the department for identification and retrieval.
171 Reproductions from the file or digital record are exempt from
172 the provisions of s. 119.07(1) and may be made and issued only:

173 (j) To the Department of Financial Services pursuant to an
174 interagency agreement to facilitate the location of owners of
175 unclaimed property, the validation of unclaimed property claims,
176 ~~and~~ the identification of fraudulent or false claims, and the
177 investigation of allegations of violations of the insurance code
178 by licensees and unlicensed persons;

179 Section 7. Subsection (2) of section 374.983, Florida
180 Statutes, is amended to read:

181 374.983 Governing body.—

182 (2) The present board of commissioners of the district
183 shall continue to hold office until their respective terms shall
184 expire. Thereafter the members of the board shall continue to be



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185 appointed by the Governor for a term of 4 years and until their
186 successors shall be duly appointed. Specifically, commencing on
187 January 10, 1997, the Governor shall appoint the commissioners
188 from Broward, Indian River, Martin, St. Johns, and Volusia
189 Counties and on January 10, 1999, the Governor shall appoint the
190 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm
191 Beach, and St. Lucie Counties. The Governor shall appoint the
192 commissioner from Nassau County for an initial term that
193 coincides with the period remaining in the current terms of the
194 commissioners from Broward, Indian River, Martin, St. Johns, and
195 Volusia Counties. Thereafter, the commissioner from Nassau
196 County shall be appointed to a 4-year term. Each new appointee
197 must be confirmed by the Senate. Whenever a vacancy occurs among
198 the commissioners, the person appointed to fill such vacancy
199 shall hold office for the unexpired portion of the term of the
200 commissioner whose place he or she is selected to fill. Each
201 commissioner under this act before he or she assumes office
202 shall be required to give a good and sufficient surety bond in
203 the sum of \$10,000 payable to the Governor and his or her
204 successors in office, conditioned upon the faithful performance
205 of the duties of his or her office, such bond to be approved by
206 and filed with the board of commissioners of the district Chief
207 ~~Financial Officer~~. Any and all premiums upon such surety bonds
208 shall be paid by the board of commissioners of such district as
209 a necessary expense of the district.

210 Section 8. Subsection (4) of section 509.211, Florida
211 Statutes, is amended to read:

212 509.211 Safety regulations.—

213 (4) Every enclosed space or room that contains a boiler



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214 regulated under chapter 554 which is fired by the direct
215 application of energy from the combustion of fuels and that is
216 located in any portion of a public lodging establishment that
217 also contains sleeping rooms shall be equipped with one or more
218 carbon monoxide detector ~~sensor~~ devices that bear the
219 certification mark from a testing and certification organization
220 accredited in accordance with ISO/IEC Guide 65, General
221 Requirements for Bodies Operating Product Certification Systems,
222 ~~label of a nationally recognized testing laboratory and that~~
223 have been tested and listed as complying with the most recent
224 Underwriters Laboratories, Inc., Standard 2075 ~~2034~~, or its
225 equivalent, ~~unless it is determined that carbon monoxide hazards~~
226 ~~have otherwise been adequately mitigated as determined by the~~
227 ~~Division of State Fire Marshal of the Department of Financial~~
228 ~~Services.~~ Such devices shall be integrated with the public
229 lodging establishment's fire detection system. Any such
230 installation or determination shall be made in accordance with
231 rules adopted by the Division of State Fire Marshal.

232 Section 9. Subsection (9) of section 624.307, Florida
233 Statutes, is amended to read:

234 624.307 General powers; duties.—

235 (9) Upon receiving service of legal process issued in any
236 civil action or proceeding in this state against any regulated
237 person or any unauthorized insurer under s. 626.906 or s.
238 626.937 which is required to appoint the Chief Financial Officer
239 as its attorney to receive service of all legal process, the
240 Chief Financial Officer, as attorney, may, in lieu of sending
241 the process by registered or certified mail, send the process or
242 make it available by any other verifiable means, including, but



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243 not limited to, making the documents available by electronic
244 transmission from a secure website established by the department
245 to the person last designated by the regulated person or the
246 unauthorized insurer to receive the process. When process
247 documents are made available electronically, the Chief Financial
248 Officer shall send a notice of receipt of service of process to
249 the person last designated by the regulated person or
250 unauthorized insurer to receive legal process. The notice must
251 state the date and manner in which the copy of the process was
252 made available to the regulated person or unauthorized insurer
253 being served and contain the uniform resource locator (URL) for
254 a hyperlink to access files and information on the department's
255 website to obtain a copy of the process.

256 Section 10. Section 624.423, Florida Statutes, is amended
257 to read:

258 624.423 Serving process.—

259 (1) Service of process upon the Chief Financial Officer as
260 process agent of the insurer ~~(under s. 624.422 and s. 626.937)~~
261 shall be made by serving a copy of the process upon the Chief
262 Financial Officer or upon her or his assistant, deputy, or other
263 person in charge of her or his office. Service may also be made
264 by mail or electronically as provided in s. 48.151. Upon
265 receiving such service, the Chief Financial Officer shall retain
266 a record copy and promptly forward one copy of the process by
267 registered or certified mail or by other verifiable means, as
268 provided under s. 624.307(9), to the person last designated by
269 the insurer to receive the same, as provided under s.
270 624.422(2). For purposes of this section, records may be
271 retained as paper or electronic copies.



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272 (2) ~~If~~ ~~where~~ process is served upon the Chief Financial
273 Officer as an insurer's process agent, the insurer ~~is shall~~ not
274 ~~be~~ required to answer or plead except within 20 days after the
275 date upon which the Chief Financial Officer sends or makes
276 available by other verifiable means ~~mailed~~ a copy of the process
277 served upon her or him as required by subsection (1).

278 (3) Process served upon the Chief Financial Officer and
279 sent or made available in accordance with this section and s.
280 624.307(9) ~~copy thereof forwarded as in this section provided~~
281 shall for all purposes constitute valid and binding service
282 thereof upon the insurer.

283 Section 11. Notwithstanding the expiration date in section
284 41 of chapter 2015-222, Laws of Florida, section 624.502,
285 Florida Statutes, as amended by chapter 2013-41, Laws of
286 Florida, is reenacted and amended to read:

287 624.502 Service of process fee.—In all instances as
288 provided in any section of the insurance code and s. 48.151(3)
289 in which service of process is authorized to be made upon the
290 Chief Financial Officer or the director of the office, the party
291 requesting service ~~plaintiff~~ shall pay to the department or
292 office a fee of \$15 for such service of process on an authorized
293 insurer or \$25 for such service of process on an unauthorized
294 insurer, which fee shall be deposited into the Administrative
295 Trust Fund.

296 Section 12. Subsection (1) of section 626.907, Florida
297 Statutes, is amended to read:

298 626.907 Service of process; judgment by default.—

299 (1) Service of process upon an insurer or person
300 representing or aiding such insurer pursuant to s. 626.906 shall



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301 be made by delivering to and leaving with the Chief Financial
302 Officer, his or her assistant or deputy, or another person in
303 charge of the ~~or some person in apparent charge of his or her~~
304 office two copies thereof and the service of process fee as
305 required in s. 624.502. The Chief Financial Officer shall
306 forthwith mail by registered mail, commercial carrier, or any
307 verifiable means, one of the copies of such process to the
308 defendant at the defendant's last known principal place of
309 business as provided by the party submitting the documents and
310 shall keep a record of all process so served upon him or her.
311 The service of process is sufficient, provided notice of such
312 service and a copy of the process are sent within 10 days
313 thereafter by registered mail by plaintiff or plaintiff's
314 attorney to the defendant at the defendant's last known
315 principal place of business, and the defendant's receipt, or
316 receipt issued by the post office with which the letter is
317 registered, showing the name of the sender of the letter and the
318 name and address of the person to whom the letter is addressed,
319 and the affidavit of the plaintiff or plaintiff's attorney
320 showing a compliance herewith are filed with the clerk of the
321 court in which the action is pending on or before the date the
322 defendant is required to appear, or within such further time as
323 the court may allow.

324 Section 13. Paragraph (a) of subsection (4) of section
325 626.921, Florida Statutes, is amended to read:

326 626.921 Florida Surplus Lines Service Office.—

327 (4) The association shall operate under the supervision of
328 a board of governors consisting of:

329 (a) Five individuals nominated by the Florida Surplus Lines



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330 Association and appointed by the department from the regular
331 membership of the Florida Surplus Lines Association.

332
333 Each board member shall be appointed to serve beginning on the
334 date designated by the plan of operation and shall serve at the
335 pleasure of the department for a 3-year term, such term
336 initially to be staggered by the plan of operation so that three
337 appointments expire in 1 year, three appointments expire in 2
338 years, and three appointments expire in 3 years. Members may be
339 reappointed for subsequent terms. The board of governors shall
340 elect such officers as may be provided in the plan of operation.

341 Section 14. Paragraph (a) of subsection (7) of section
342 627.7074, Florida Statutes, is amended to read:

343 627.7074 Alternative procedure for resolution of disputed
344 sinkhole insurance claims.—

345 (7) Upon receipt of a request for neutral evaluation, the
346 department shall provide the parties a list of certified neutral
347 evaluators. The department shall allow the parties to submit
348 requests to disqualify evaluators on the list for cause.

349 (a) The department shall disqualify neutral evaluators for
350 cause based only on any of the following grounds:

351 1. A familial relationship within the third degree exists
352 between the neutral evaluator and either party or a
353 representative of either party.

354 2. The proposed neutral evaluator has, in a professional
355 capacity, previously represented either party or a
356 representative of either party in the same or a substantially
357 related matter.

358 3. The proposed neutral evaluator has, in a professional



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359 capacity, represented another person in the same or a
360 substantially related matter and that person's interests are
361 materially adverse to the interests of the parties. The term
362 "substantially related matter" means participation by the
363 neutral evaluator on the same claim, property, or adjacent
364 property.

365 4. The proposed neutral evaluator has, within the preceding
366 5 years, worked as an employer or employee of any party to the
367 case.

368 5. The proposed neutral evaluator has, within the preceding
369 5 years, worked for any entity that performed any sinkhole loss
370 testing, review or analysis for the property.

371 Section 15. Section 633.107, Florida Statutes, is created
372 to read:

373 633.107 Exemption from disqualification from licensure or
374 certification.—

375 (1) The department may grant an exemption from
376 disqualification to any person disqualified from licensure or
377 certification by the Division of State Fire Marshal under this
378 chapter because of a criminal record or dishonorable discharge
379 from the United States Armed Forces if the applicant has paid in
380 full any fee, fine, fund, lien, civil judgment, restitution,
381 cost of prosecution, or trust contribution imposed by the court
382 as part of the judgment and sentence for any disqualifying
383 offense and:

384 (a) At least 5 years have elapsed since the applicant
385 completed or has been lawfully released from confinement,
386 supervision, or nonmonetary condition imposed by the court for a
387 disqualifying offense; or



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388 (b) At least 5 years have elapsed since the applicant was
389 dishonorably discharged from the United States Armed Forces.

390 (2) For the department to grant an exemption, the applicant
391 must clearly and convincingly demonstrate that he or she would
392 not pose a risk to persons or property if permitted to be
393 licensed or certified under this chapter, evidence of which must
394 include, but need not be limited to, facts and circumstances
395 surrounding the disqualifying offense, the time that has elapsed
396 since the offense, the nature of the offense and harm caused to
397 the victim, the applicant's history before and after the
398 offense, and any other evidence or circumstances indicating that
399 the applicant will not present a danger if permitted to be
400 licensed or certified.

401 (3) The department has discretion whether to grant or deny
402 an exemption. The department shall provide its decision in
403 writing which, if the exemption is denied, must state with
404 particularity the reasons for denial. The department's decision
405 is subject to proceedings under chapter 120, except that a
406 formal proceeding under s. 120.57(1) is available only if there
407 are disputed issues of material fact that the department relied
408 upon in reaching its decision.

409 (4) An applicant may request an exemption, notwithstanding
410 the time limitations of paragraphs (1)(a) and (b), if by
411 executive clemency his or her civil rights are restored, or he
412 or she receives a pardon, from the disqualifying offense. The
413 fact that the applicant receives executive clemency does not
414 alleviate his or her obligation to comply with subsection (2) or
415 in itself require the department to award the exemption.

416 (5) The division may adopt rules to administer this



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417 section.

418 Section 16. Section 633.135, Florida Statutes, is created
419 to read:

420 633.135 Firefighter Assistance Grant Program.—

421 (1) The Firefighter Assistance Grant Program is created
422 within the division to improve the emergency response capability
423 of volunteer fire departments and combination fire departments.
424 The program shall provide financial assistance to improve
425 firefighter safety and enable such fire departments to provide
426 firefighting, emergency medical, and rescue services to their
427 communities. For purposes of this section, the term "combination
428 fire department" means a fire department composed of a
429 combination of career and volunteer firefighters.

430 (2) The division shall administer the program and annually
431 award grants to volunteer fire departments and combination fire
432 departments using the annual Florida Fire Service Needs
433 Assessment Survey. The purpose of the grants is to assist such
434 fire departments in providing volunteer firefighter training and
435 procuring necessary firefighter personal protective equipment,
436 self-contained breathing apparatus equipment, and fire engine
437 pumper apparatus equipment. However, the division shall
438 prioritize the annual award of grants to such fire departments
439 in a county having a population of 75,000 or less.

440 (3) The State Fire Marshal shall adopt rules and procedures
441 for the program that require grant recipients to:

442 (a) Report their activity to the division for submission in
443 the Fire and Emergency Incident Information Reporting System
444 created pursuant to s. 633.136;

445 (b) Annually complete and submit the Florida Fire Service



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446 Needs Assessment Survey to the division;
447 (c) Comply with the Florida Firefighters Occupational
448 Safety and Health Act, ss. 633.502-633.536;
449 (d) Comply with any other rule determined by the State Fire
450 Marshal to effectively and efficiently implement, administer,
451 and manage the program; and
452 (e) Meet the definition of the term "fire service provider"
453 in s. 633.102.
454 (4) Funds shall be used to:
455 (a) Provide firefighter training to individuals to obtain a
456 Volunteer Firefighter Certificate of Completion pursuant to s.
457 633.408. Training must be provided at no cost to the fire
458 department or student by a division-approved instructor and must
459 be documented in the division's electronic database.
460 (b) Purchase firefighter personal protective equipment,
461 including structural firefighting protective ensembles and
462 individual ensemble elements such as garments, helmets, gloves,
463 and footwear, that complies with NFPA No. 1851, "Standard on
464 Selection, Care, and Maintenance of Protective Ensembles for
465 Structural Fire Fighting and Proximity Fire Fighting," by the
466 National Fire Protection Association.
467 (c) Purchase self-contained breathing apparatus equipment
468 that complies with NFPA No. 1852, "Standard on Selection, Care,
469 and Maintenance of Open-Circuit Self-Contained Breathing
470 Apparatus."
471 (d) Purchase fire engine pumper apparatus equipment. Funds
472 provided under this paragraph may be used to purchase the
473 equipment or subsidize a federal grant from the Federal
474 Emergency Management Agency to purchase the equipment.



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475 Section 17. Subsection (8) of section 633.208, Florida
476 Statutes, is amended to read:
477 633.208 Minimum firesafety standards.—
478 (8) The provisions of the Life Safety Code, as contained in
479 the Florida Fire Prevention Code, do not apply to ~~newly~~
480 ~~constructed~~ one-family and two-family dwellings. However, fire
481 sprinkler protection may be permitted by local government in
482 lieu of other fire protection-related development requirements
483 for such structures. While local governments may adopt fire
484 sprinkler requirements for one- and two-family dwellings under
485 this subsection, it is the intent of the Legislature that the
486 economic consequences of the fire sprinkler mandate on home
487 owners be studied before the enactment of such a requirement.
488 After the effective date of this act, any local government that
489 desires to adopt a fire sprinkler requirement on one- or two-
490 family dwellings must prepare an economic cost and benefit
491 report that analyzes the application of fire sprinklers to one-
492 or two-family dwellings or any proposed residential subdivision.
493 The report must consider the tradeoffs and specific cost savings
494 and benefits of fire sprinklers for future owners of property.
495 The report must include an assessment of the cost savings from
496 any reduced or eliminated impact fees if applicable, the
497 reduction in special fire district tax, insurance fees, and
498 other taxes or fees imposed, and the waiver of certain
499 infrastructure requirements including the reduction of roadway
500 widths, the reduction of water line sizes, increased fire
501 hydrant spacing, increased dead-end roadway length, and a
502 reduction in cul-de-sac sizes relative to the costs from fire
503 sprinkling. A failure to prepare an economic report shall result



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504 in the invalidation of the fire sprinkler requirement to any
505 one- or two-family dwelling or any proposed subdivision. In
506 addition, a local jurisdiction or utility may not charge any
507 additional fee, above what is charged to a non-fire sprinklered
508 dwelling, on the basis that a one- or two-family dwelling unit
509 is protected by a fire sprinkler system.

510 Section 18. Paragraph (b) of subsection (4) and subsection
511 (8) of section 633.408, Florida Statutes, are amended, and
512 subsection (9) is added to that section, to read:

513 633.408 Firefighter and volunteer firefighter training and
514 certification.—

515 (4) The division shall issue a firefighter certificate of
516 compliance to an individual who does all of the following:

517 (b) Passes the Minimum Standards Course examination within
518 12 months after completing the required courses.

519 (8) (a) Pursuant to s. 590.02(1)(e), the division shall
520 establish a structural fire training program of not less than
521 206 hours. The division shall issue to a person satisfactorily
522 complying with this training program and who has successfully
523 passed an examination as prescribed by the division and who has
524 met the requirements of s. 590.02(1)(e), a Forestry Certificate
525 of Compliance.

526 (b) An individual who holds a current and valid Forestry
527 Certificate of Compliance is entitled to the same rights,
528 privileges, and benefits provided for by law as a firefighter.

529 (9) A Firefighter Certificate of Compliance or a Volunteer
530 Firefighter Certificate of Completion issued under this section
531 expires 4 years after the date of issuance unless renewed as
532 provided in s. 633.414.



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533 Section 19. Subsection (2) of section 633.412, Florida
534 Statutes, is amended to read:

535 633.412 Firefighters; qualifications for certification.—

536 ~~(2) If the division suspends or revokes an individual's~~
537 ~~certificate, the division must suspend or revoke all other~~
538 ~~certificates issued to the individual by the division pursuant~~
539 ~~to this part.~~

540 Section 20. Section 633.414, Florida Statutes, is amended
541 to read:

542 633.414 Retention of firefighter, volunteer firefighter,
543 and fire investigator certifications ~~certification.~~—

544 (1) In order for a firefighter to retain her or his
545 Firefighter Certificate of Compliance, every 4 years he or she
546 must meet the requirements for renewal provided in this chapter
547 and by rule, which must include at least one of the following:

548 (a) Be active as a firefighter. ~~†~~

549 (b) Maintain a current and valid fire service instructor
550 certificate, instruct at least 40 hours during the 4-year
551 period, and provide proof of such instruction to the division,
552 which proof must be registered in an electronic database
553 designated by the division. ~~†~~

554 (c) Within 6 months before the 4-year period expires,
555 successfully complete a Firefighter Retention Refresher Course
556 consisting of a minimum of 40 hours of training to be prescribed
557 by rule. ~~† or~~

558 (d) Within 6 months before the 4-year period expires,
559 successfully retake and pass the Minimum Standards Course
560 examination pursuant to s. 633.408.

561 (2) In order for a volunteer firefighter to retain her or



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562 his Volunteer Firefighter Certificate of Completion, every 4
563 years he or she must:

564 (a) Be active as a volunteer firefighter; or

565 (b) Successfully complete a refresher course consisting of
566 a minimum of 40 hours of training to be prescribed by rule.

567 (3) Subsection (1) does not apply to state-certified
568 firefighters who are certified and employed full-time, as
569 determined by the fire service provider, as firesafety
570 inspectors or fire investigators, regardless of their ~~her or his~~
571 employment status as firefighters or volunteer firefighters a
572 ~~firefighter~~.

573 (4) For the purposes of this section, the term "active"
574 means being employed as a firefighter or providing service as a
575 volunteer firefighter for a cumulative period of 6 months within
576 a 4-year period.

577 (5) The 4-year period begins upon issuance of the
578 certificate or separation from employment;

579 ~~(a) If the individual is certified on or after July 1,~~
580 ~~2013, on the date the certificate is issued or upon termination~~
581 ~~of employment or service with a fire department.~~

582 ~~(b) If the individual is certified before July 1, 2013, on~~
583 ~~July 1, 2014, or upon termination of employment or service~~
584 ~~thereafter.~~

585 (6) A certificate for a firefighter or volunteer
586 firefighter expires if he or she fails to meet the requirements
587 of this section.

588 (7) The State Fire Marshal may deny, refuse to renew,
589 suspend, or revoke the certificate of a firefighter or volunteer
590 firefighter if the State Fire Marshal finds that any of the



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591 following grounds exists:

592 (a) Any cause for which issuance of a certificate could
593 have been denied if it had then existed and had been known to
594 the division.

595 (b) A violation of any provision of this chapter or any
596 rule or order of the State Fire Marshal.

597 (c) Falsification of a record relating to any certificate
598 issued by the division.

599 Section 21. Subsections (1) and (2) of section 633.426,
600 Florida Statutes, are amended to read:

601 633.426 Disciplinary action; standards for revocation of
602 certification.—

603 (1) For purposes of this section, the term:

604 (a) "Certificate" means any of the certificates issued
605 under s. 633.406.

606 (b) "Certification" or "certified" means ~~the act of holding~~
607 a certificate that is current and valid and that meets the
608 requirements for renewal of certification pursuant to this
609 chapter and the rules adopted under this chapter ~~certificate.~~

610 (c) "Convicted" means a finding of guilt, or the acceptance
611 of a plea of guilty or nolo contendere, in any federal or state
612 court or a court in any other country, without regard to whether
613 a judgment of conviction has been entered by the court having
614 jurisdiction of the case.

615 (2) Effective July 1, 2013, an individual who holds a
616 certificate is subject to revocation for any of the following ~~An~~
617 ~~individual is ineligible to apply for certification if the~~
618 ~~individual has, at any time, been:~~

619 (a) Conviction ~~Convicted~~ of a misdemeanor relating to the



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620 certification or to perjury or false statements.

621 (b) Conviction ~~Convicted~~ of a felony or a crime punishable
622 by imprisonment of 1 year or more under the law of the United
623 States or of any state thereof, or under the law of any other
624 country.

625 (c) Dishonorable discharge ~~Dishonorably discharged~~ from any
626 of the Armed Forces of the United States.

627 Section 22. This act shall take effect July 1, 2016.

628
629 ===== T I T L E A M E N D M E N T =====

630 And the title is amended as follows:

631 Delete everything before the enacting clause
632 and insert:

633 A bill to be entitled
634 An act relating to the Department of Financial
635 Services; amending s. 48.151, F.S.; authorizing the
636 Department of Financial Services to create an
637 Internet-based transmission system to accept service
638 of process; amending s. 110.1315, F.S.; removing a
639 requirement that the Executive Office of the Governor
640 review and approve a certain alternative retirement
641 income security program provided by the department;
642 amending s. 112.215, F.S.; authorizing the Chief
643 Financial Officer, with the approval of the State
644 Board of Administration, to include specified
645 employees other than state employees in a deferred
646 compensation plan; conforming a provision to a change
647 made by the act; amending s. 137.09, F.S.; removing a
648 requirement that the department approve certain bonds



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649 of county officers; amending s. 215.97, F.S.; revising
650 and providing definitions; increasing the amount of a
651 certain audit threshold; revising applicability to
652 remove for-profit organizations; exempting specified
653 higher education entities from certain audit
654 requirements; revising the requirements for state-
655 funded contracts or agreements between a state
656 awarding agency and a higher education entity;
657 providing an exception; providing applicability;
658 conforming provisions to changes made by the act;
659 amending s. 322.142, F.S.; authorizing the Department
660 of Highway Safety and Motor Vehicles to provide
661 certain driver license images to the department for
662 the purpose of investigating allegations of violations
663 of the insurance code; amending s. 374.983, F.S.;
664 naming the Board of Commissioners of the Florida
665 Inland Navigation District, rather than the Chief
666 Financial Officer, as the entity that receives and
667 approves certain surety bonds of commissioners;
668 amending s. 509.211, F.S.; revising certain standards
669 for carbon monoxide detector devices in specified
670 spaces or rooms of public lodging establishments;
671 deleting a provision authorizing the State Fire
672 Marshal of the department to exempt a device from such
673 standards; amending s. 624.307, F.S.; conforming
674 provisions to changes made by the act; specifying
675 requirements for the Chief Financial Officer in
676 providing notice of electronic transmission of process
677 documents; amending s. 624.423, F.S.; authorizing



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678 service of process by specified means; reenacting and
679 amending s. 624.502, F.S.; specifying fees to be paid
680 by the requestor to the department or Office of
681 Insurance Regulation for certain service of process on
682 authorized and unauthorized insurers; amending s.
683 626.907, F.S.; requiring a service of process fee for
684 certain service of process made by the Chief Financial
685 Officer; specifying the determination of a defendant's
686 last known principal place of business; amending s.
687 626.921, F.S.; revising membership requirements of the
688 Florida Surplus Lines Service Office board of
689 governors; amending s. 627.7074, F.S.; providing an
690 additional ground for disqualifying a neutral
691 evaluator for disputed sinkhole insurance claims;
692 creating s. 633.107, F.S.; authorizing the department
693 to grant exemptions from disqualification for
694 licensure or certification by the Division of State
695 Fire Marshal under certain circumstances; specifying
696 the information an applicant must provide; providing
697 the manner in which the department must render its
698 decision to grant or deny an exemption; providing
699 procedures for an applicant to contest the decision;
700 providing an exception from certain requirements;
701 authorizing the division to adopt rules; creating s.
702 633.135, F.S.; establishing the Firefighter Assistance
703 Program for certain purposes; requiring the division
704 to administer the program and annually award grants to
705 qualifying fire departments; defining the term
706 "combination fire department"; providing eligibility



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707 requirements; requiring the State Fire Marshal to
708 adopt rules and procedures; providing program
709 requirements; amending s. 633.208, F.S.; revising
710 applicability of the Life Safety Code to exclude one-
711 family and two-family dwellings, rather than only such
712 dwellings that are newly constructed; amending s.
713 633.408, F.S.; revising firefighter and volunteer
714 firefighter certification requirements; specifying the
715 duration of certain firefighter certifications;
716 amending s. 633.412, F.S.; deleting a requirement that
717 the division suspend or revoke all issued certificates
718 if an individual's certificate is suspended or
719 revoked; amending s. 633.414, F.S.; conforming
720 provisions to changes made by the act; revising
721 alternative requirements for renewing specified
722 certifications; providing grounds for denial of, or
723 disciplinary action against, certifications for a
724 firefighter or volunteer firefighter; amending s.
725 633.426, F.S.; revising a definition; providing a date
726 after which an individual is subject to revocation of
727 certification under specified circumstances; providing
728 an effective date.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to the Department of Financial
 3 Services; amending s. 48.151, F.S.; authorizing the
 4 Department of Financial Services to create an
 5 Internet-based transmission system to accept service
 6 of process; amending s. 110.1315, F.S.; removing a
 7 requirement that the Executive Office of the Governor
 8 review and approve a certain alternative retirement
 9 income security program provided by the department;
 10 amending s. 112.215, F.S.; authorizing the Chief
 11 Financial Officer, with the approval of the State
 12 Board of Administration, to include specified
 13 employees other than state employees in a deferred
 14 compensation plan; conforming a provision to a change
 15 made by the act; amending s. 137.09, F.S.; removing a
 16 requirement that the department approve certain bonds
 17 of county officers; amending s. 215.97, F.S.; revising
 18 definitions; raising the amount of a certain audit
 19 threshold; revising applicability to remove for-profit
 20 organizations; exempting a specified higher education
 21 entity from certain audit requirements; revising the
 22 requirements for state-funded contracts or agreements
 23 between a state awarding agency and a higher education
 24 entity; providing an exception; providing
 25 applicability; conforming provisions to changes made
 26 by the act; amending s. 322.142, F.S.; authorizing the
 27 Department of Highway Safety and Motor Vehicles to
 28 provide certain driver license images to the
 29 department for the purpose of investigating

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30 allegations of insurance code misconduct; amending s.
 31 374.983, F.S.; naming the Board of Commissioners of
 32 the Florida Inland Navigation District, rather than
 33 the Chief Financial Officer, as the entity that
 34 receives and approves certain surety bonds of
 35 commissioners; amending s. 509.211, F.S.; revising
 36 certain standards for carbon monoxide detector devices
 37 in specified spaces or rooms of public lodging
 38 establishments; deleting a provision authorizing the
 39 State Fire Marshal of the department to exempt a
 40 device from such standards; amending s. 624.307, F.S.;
 41 conforming provisions to changes made by the act;
 42 specifying requirements for the Chief Financial
 43 Officer in providing notice of electronic transmission
 44 of process documents; amending s. 624.423, F.S.;
 45 authorizing the department to create an Internet-based
 46 transmission system for accepting service of process;
 47 defining the term "insurer"; reenacting and amending
 48 s. 624.502, F.S.; specifying fees to be paid by a
 49 plaintiff to the department or Office of Insurance
 50 Regulation for certain service of process on
 51 authorized and unauthorized insurers; amending s.
 52 626.907, F.S.; requiring a service fee for certain
 53 service of process made by the Chief Financial
 54 Officer; specifying the determination of a defendant's
 55 last known principal place of business; amending s.
 56 627.706, F.S.; specifying a circumstance under which
 57 an insurer is not required to provide coverage for
 58 sinkhole losses; requiring a related inspection of

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59 property only if the location of the risk meets
 60 certain underwriting guidelines; amending s. 627.7074,
 61 F.S.; providing an additional ground for disqualifying
 62 a neutral evaluator for disputed sinkhole insurance
 63 claims; amending s. 633.102, F.S.; redefining the term
 64 "fire service provider"; amending s. 633.208, F.S.;
 65 revising applicability of the Life Safety Code to
 66 exclude one-family and two-family dwellings, rather
 67 than only such dwellings that are newly constructed;
 68 amending s. 633.408, F.S.; requiring an individual to
 69 pass a certain examination by a specified time as part
 70 of certain firefighter certifications; specifying the
 71 duration of certain firefighter certifications;
 72 amending s. 633.412, F.S.; authorizing, rather than
 73 requiring, the Division of State Fire Marshal to
 74 suspend or revoke all issued certificates if an
 75 individual's certificate is suspended or revoked;
 76 amending s. 633.414, F.S.; conforming provisions to
 77 changes made by the act; revising alternative
 78 requirements for renewing specified certifications;
 79 providing that a fire investigator certificate is
 80 valid for a specified period of time; specifying
 81 requirements for renewal; providing grounds for denial
 82 of, or disciplinary action against, certifications for
 83 a firefighter or volunteer firefighter; amending s.
 84 633.426, F.S.; revising a definition; providing a date
 85 after which an individual is ineligible for
 86 certification or renewal under specified
 87 circumstances; providing an effective date.

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88
 89 Be It Enacted by the Legislature of the State of Florida:
 90
 91 Section 1. Subsection (3) of section 48.151, Florida
 92 Statutes, is amended to read:
 93 48.151 Service on statutory agents for certain persons.—
 94 (3) The Chief Financial Officer or his or her assistant or
 95 deputy or another person in charge of the office is the agent
 96 for service of process on all insurers applying for authority to
 97 transact insurance in this state, all licensed nonresident
 98 insurance agents, all nonresident disability insurance agents
 99 licensed pursuant to s. 626.835, any unauthorized insurer under
 100 s. 626.906 or s. 626.937, domestic reciprocal insurers,
 101 fraternal benefit societies under chapter 632, warranty
 102 associations under chapter 634, prepaid limited health service
 103 organizations under chapter 636, and persons required to file
 104 statements under s. 628.461. As an alternative to service of
 105 process made by mail or personal service on the Chief Financial
 106 Officer, on his or her assistant or deputy, or on another person
 107 in charge of the office, the Department of Financial Services
 108 may create an Internet-based transmission system to accept
 109 service of process by electronic transmission of documents.
 110 Section 2. Subsection (1) of section 110.1315, Florida
 111 Statutes, is amended to read:
 112 110.1315 Alternative retirement benefits; other-personal-
 113 services employees.—
 114 (1) ~~Upon review and approval by the Executive Office of the~~
 115 ~~Governor,~~ The Department of Financial Services shall provide an
 116 alternative retirement income security program for eligible

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117 temporary and seasonal employees of the state who are
 118 compensated from appropriations for other personal services. The
 119 Department of Financial Services may contract with a private
 120 vendor or vendors to administer the program under a defined-
 121 contribution plan under ss. 401(a) and 403(b) or s. 457 of the
 122 Internal Revenue Code, and the program must provide retirement
 123 benefits as required under s. 3121(b)(7)(F) of the Internal
 124 Revenue Code. The Department of Financial Services may develop a
 125 request for proposals and solicit qualified vendors to compete
 126 for the award of the contract. A vendor shall be selected on the
 127 basis of the plan that best serves the interest of the
 128 participating employees and the state. The proposal must comply
 129 with all necessary federal and state laws and rules.

130 Section 3. Paragraph (a) of subsection (4) and subsection
 131 (12) of section 112.215, Florida Statutes, are amended to read:

132 112.215 Government employees; deferred compensation
 133 program.—

134 (4)(a) The Chief Financial Officer, with the approval of
 135 the State Board of Administration, shall establish such plan or
 136 plans of deferred compensation for state employees and may
 137 include persons employed by a state university, a special
 138 district, or a water management district, as those terms are
 139 defined in s. 189.012, including all such investment vehicles or
 140 products incident thereto, as may be available through, or
 141 offered by, qualified companies or persons, and may approve one
 142 or more such plans for implementation by and on behalf of the
 143 state and its agencies and employees.

144 (12) The Chief Financial Officer may adopt any rule
 145 necessary to administer and implement this act with respect to

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146 deferred compensation plans for state employees and persons
 147 employed by a state university, a special district, or a water
 148 management district, as those terms are defined in s. 189.012.

149 Section 4. Section 137.09, Florida Statutes, is amended to
 150 read:

151 137.09 Justification and approval of bonds.—Each surety
 152 upon every bond of any county officer shall make affidavit that
 153 he or she is a resident of the county for which the officer is
 154 to be commissioned, and that he or she has sufficient visible
 155 property therein unencumbered and not exempt from sale under
 156 legal process to make good his or her bond. Every such bond
 157 shall be approved by the board of county commissioners ~~and by~~
 158 ~~the Department of Financial Services~~ when the board is ~~they~~ and
 159 ~~it~~ are satisfied in its ~~their~~ judgment that the bond same is
 160 legal, sufficient, and proper to be approved.

161 Section 5. Subsection (2), paragraph (e) of subsection (4),
 162 and subsection (8) of section 215.97, Florida Statutes, are
 163 amended, present subsections (9), (10), and (11) of that section
 164 are redesignated as subsections (10), (11), and (12),
 165 respectively, and a new subsection (9) is added to that section,
 166 to read:

167 215.97 Florida Single Audit Act.—

168 (2) ~~Definitions.~~ As used in this section, the term:

169 (a) "Audit threshold" means the threshold amount used to
 170 determine when a state single audit or project-specific audit of
 171 a nonstate entity shall be conducted in accordance with this
 172 section. Each nonstate entity that expends a total amount of
 173 state financial assistance equal to or in excess of \$750,000
 174 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be

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175 required to have a state single audit, or a project-specific
 176 audit, for such fiscal year in accordance with the requirements
 177 of this section. Every 2 years the Auditor General, after
 178 consulting with the Executive Office of the Governor, the
 179 Department of Financial Services, and all state awarding
 180 agencies, shall review the threshold amount for requiring audits
 181 under this section and may adjust such threshold amount
 182 consistent with the purposes of this section.

183 (b) "Auditing standards" means the auditing standards as
 184 stated in the rules of the Auditor General as applicable to ~~for-~~
 185 ~~profit organizations,~~ nonprofit organizations, or local
 186 governmental entities.

187 (c) "Catalog of State Financial Assistance" means a
 188 comprehensive listing of state projects. The Catalog of State
 189 Financial Assistance shall be issued by the Department of
 190 Financial Services after conferring with the Executive Office of
 191 the Governor and all state awarding agencies. The Catalog of
 192 State Financial Assistance shall include for each listed state
 193 project: the responsible state awarding agency; standard state
 194 project number identifier; official title; legal authorization;
 195 and description of the state project, including objectives,
 196 restrictions, application and awarding procedures, and other
 197 relevant information determined necessary.

198 (d) "Coordinating agency" means the state awarding agency
 199 that provides the predominant amount of state financial
 200 assistance expended by a recipient, as determined by the
 201 recipient's Schedule of Expenditures of State Financial
 202 Assistance. To provide continuity, the determination of the
 203 predominant amount of state financial assistance shall be based

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204 upon state financial assistance expended in the recipient's
 205 fiscal years ending in 2006, 2009, and 2012, and every third
 206 year thereafter.

207 (e) "Financial reporting package" means the nonstate
 208 entities' financial statements, Schedule of Expenditures of
 209 State Financial Assistance, auditor's reports, management
 210 letter, auditee's written responses or corrective action plan,
 211 correspondence on followup of prior years' corrective actions
 212 taken, and such other information determined by the Auditor
 213 General to be necessary and consistent with the purposes of this
 214 section.

215 (f) "Federal financial assistance" means financial
 216 assistance from federal sources passed through the state and
 217 provided to nonstate organizations to carry out a federal
 218 program. The term "Federal financial assistance" includes all
 219 types of federal assistance as defined in applicable United
 220 States Office of Management and Budget circulars.

221 (g) "Higher education entity" means a Florida College
 222 System institution as defined in s. 1000.21 or a state
 223 university as defined in s. 1000.21 ~~"For-profit organization"~~
 224 ~~means any organization or sole proprietor that is not a~~
 225 ~~governmental entity or a nonprofit organization.~~

226 (h) "Independent auditor" means an independent certified
 227 public accountant licensed under chapter 473.

228 (i) "Internal control over state projects" means a process,
 229 effected by a nonstate entity's management and other personnel,
 230 designed to provide reasonable assurance regarding the
 231 achievement of objectives in the following categories:

232 1. Effectiveness and efficiency of operations.

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233 2. Reliability of financial operations.

234 3. Compliance with applicable laws and regulations.

235 (j) "Local governmental entity" means a county as a whole,
236 municipality, or special district or any other entity excluding
237 a district school board or charter school, ~~Florida College~~
238 ~~System institution, or public university~~, however styled, which
239 independently exercises any type of governmental function within
240 the state.

241 (k) "Major state project" means any state project meeting
242 the criteria as stated in the rules of the Department of
243 Financial Services. Such criteria shall be established after
244 consultation with all state awarding agencies and shall consider
245 the amount of state project expenditures and expenses or
246 inherent risks. Each major state project shall be audited in
247 accordance with the requirements of this section.

248 (l) "Nonprofit organization" means any corporation, trust,
249 association, cooperative, or other organization that:

250 1. Is operated primarily for scientific, educational
251 service, charitable, or similar purpose in the public interest.

252 2. Is not organized primarily for profit.

253 3. Uses net proceeds to maintain, improve, or expand the
254 operations of the organization.

255 4. Has no part of its income or profit distributable to its
256 members, directors, or officers.

257 (m) "Nonstate entity" means a local governmental entity,
258 higher education entity, or nonprofit organization, ~~or for-~~
259 ~~profit organization~~ that receives state financial assistance.

260 (n) "Recipient" means a nonstate entity that receives state
261 financial assistance directly from a state awarding agency.

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262 (o) "Schedule of Expenditures of State Financial
263 Assistance" means a document prepared in accordance with the
264 rules of the Department of Financial Services and included in
265 each financial reporting package required by this section.

266 (p) "State awarding agency" means a state agency, as
267 defined in s. 216.011, that is primarily responsible for the
268 operations and outcomes of a state project, regardless of the
269 state agency that actually provides state financial assistance
270 to a nonstate entity.

271 (q) "State financial assistance" means state resources, not
272 including federal financial assistance and state matching on
273 federal programs, provided to a nonstate entity to carry out a
274 state project. The term "State financial assistance" includes
275 the types of state resources stated in the rules of the
276 Department of Financial Services established in consultation
277 with all state awarding agencies. State financial assistance may
278 be provided directly by state awarding agencies or indirectly by
279 nonstate entities. The term "State financial assistance" does
280 not include procurement contracts used to buy goods or services
281 from vendors and contracts to operate state-owned and
282 contractor-operated facilities.

283 (r) "State matching" means state resources provided to a
284 nonstate entity to meet federal financial participation matching
285 requirements.

286 (s) "State program" means a set of special purpose
287 activities undertaken to realize identifiable goals and
288 objectives in order to achieve a state agency's mission and
289 legislative intent requiring accountability for state resources.

290 (t) "State project" means a state program that provides

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291 state financial assistance to a nonstate organization and that
 292 must be assigned a state project number identifier in the
 293 Catalog of State Financial Assistance.

294 (u) "State Projects Compliance Supplement" means a document
 295 issued by the Department of Financial Services, in consultation
 296 with all state awarding agencies. The State Projects Compliance
 297 Supplement shall identify state projects, the significant
 298 compliance requirements, eligibility requirements, matching
 299 requirements, suggested audit procedures, and other relevant
 300 information determined necessary.

301 (v) "State project-specific audit" means an audit of one
 302 state project performed in accordance with the requirements of
 303 subsection (11) ~~(10)~~.

304 (w) "State single audit" means an audit of a nonstate
 305 entity's financial statements and state financial assistance.
 306 Such audits shall be conducted in accordance with the auditing
 307 standards as stated in the rules of the Auditor General.

308 (x) "Subrecipient" means a nonstate entity that receives
 309 state financial assistance through another nonstate entity.

310 (y) "Vendor" means a dealer, distributor, merchant, or
 311 other seller providing goods or services that are required for
 312 the conduct of a state project. These goods or services may be
 313 for an organization's own use or for the use of beneficiaries of
 314 the state project.

315 (4) The Department of Financial Services shall:

316 (e) Make enhancements to the state's accounting system to
 317 provide for the:

318 1. Recording of state financial assistance and federal
 319 financial assistance appropriations and expenditures within the

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320 state awarding agencies' operating funds.

321 2. Recording of state project number identifiers, as
 322 provided in the Catalog of State Financial Assistance, for state
 323 financial assistance.

324 3. Establishment and recording of an identification code
 325 for each financial transaction, including awarding state
 326 agencies' disbursements of state financial assistance and
 327 federal financial assistance, as to the corresponding type or
 328 organization that is a party to the transaction, such as ~~(e.g.,~~
 329 ~~other governmental agencies and,~~ nonprofit organizations, ~~and~~
 330 ~~for-profit organizations),~~ and disbursements of federal
 331 financial assistance, as to whether the party to the transaction
 332 is or is not a nonstate entity.

333 (8) Each recipient or subrecipient of state financial
 334 assistance shall comply with the following:

335 (a) Each nonstate entity that meets the audit threshold
 336 requirements, in any fiscal year of the nonstate entity, stated
 337 in the rules of the Auditor General, shall have a state single
 338 audit conducted for such fiscal year in accordance with the
 339 requirements of this act and with additional requirements
 340 established in rules of the Department of Financial Services and
 341 rules of the Auditor General. If only one state project is
 342 involved in a nonstate entity's fiscal year, the nonstate entity
 343 may elect to have only a state project-specific audit.

344 (b) Each nonstate entity that does not meet the audit
 345 threshold requirements, in any fiscal year of the nonstate
 346 entity, stated in this law or the rules of the Auditor General
 347 is exempt for such fiscal year from the state single audit
 348 requirements of this section. However, such nonstate entity must

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349 meet terms and conditions specified in the written agreement
350 with the state awarding agency or nonstate entity.

351 (c) If a nonstate entity has extremely limited or no
352 required activities related to the administration of a state
353 project, and only acts as a conduit of state financial
354 assistance, none of the requirements of this section apply to
355 the conduit nonstate entity. However, the nonstate entity that
356 is provided state financial assistance by the conduit nonstate
357 entity is subject to the requirements of this section.

358 (d) Regardless of the amount of the state financial
359 assistance, this section does not exempt a nonstate entity from
360 compliance with provisions of law relating to maintaining
361 records concerning state financial assistance to such nonstate
362 entity or allowing access and examination of those records by
363 the state awarding agency, the nonstate entity, the Department
364 of Financial Services, or the Auditor General.

365 (e) Audits conducted pursuant to this section shall be
366 performed annually.

367 (f) Audits conducted pursuant to this section shall be
368 conducted by independent auditors in accordance with auditing
369 standards stated in rules of the Auditor General.

370 (g) Upon completion of the audit required by this section,
371 a copy of the recipient's financial reporting package shall be
372 filed with the state awarding agency and the Auditor General.
373 Upon completion of the audit required by this section, a copy of
374 the subrecipient's financial reporting package shall be filed
375 with the nonstate entity that provided the state financial
376 assistance and the Auditor General. The financial reporting
377 package shall be filed in accordance with the rules of the

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378 Auditor General.

379 (h) All financial reporting packages prepared pursuant to
380 this section shall be available for public inspection.

381 (i) If an audit conducted pursuant to this section
382 discloses any significant audit findings relating to state
383 financial assistance, including material noncompliance with
384 individual state project compliance requirements or reportable
385 conditions in internal controls of the nonstate entity, the
386 nonstate entity shall submit as part of the financial reporting
387 package to the state awarding agency or nonstate entity a plan
388 for corrective action to eliminate such audit findings or a
389 statement describing the reasons that corrective action is not
390 necessary.

391 (j) An audit conducted in accordance with this section is
392 in addition to any audit of federal awards required by the
393 federal Single Audit Act and other federal laws and regulations.
394 To the extent that such federally required audits provide the
395 state awarding agency or nonstate entity with information it
396 requires to carry out its responsibilities under state law or
397 other guidance, the state awarding agency or nonstate entity
398 shall rely upon and use that information.

399 (k) Unless prohibited by law, the costs of audits pursuant
400 to this section are allowable charges to state projects.
401 However, any charges to state projects should be limited to
402 those incremental costs incurred as a result of the audit
403 requirements of this section in relation to other audit
404 requirements. The nonstate entity should allocate such
405 incremental costs to all state projects for which it expended
406 state financial assistance.

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407 (l) Audit costs may not be charged to state projects when
 408 audits required by this section have not been made or have been
 409 made but not in accordance with this section. If a nonstate
 410 entity fails to have an audit conducted consistent with this
 411 section, a state awarding agency or nonstate entity may take
 412 appropriate corrective action to enforce compliance.

413 (m) This section does not prohibit the state awarding
 414 agency or nonstate entity from including terms and conditions in
 415 the written agreement which require additional assurances that
 416 state financial assistance meets the applicable requirements of
 417 laws, regulations, and other compliance rules.

418 (n) A state awarding agency or nonstate entity that
 419 conducts or arranges for audits of state financial assistance
 420 that are in addition to the audits conducted under this act,
 421 including audits of nonstate entities that do not meet the audit
 422 threshold requirements, shall, consistent with other applicable
 423 law, arrange for funding the full cost of such additional
 424 audits.

425 (o) A higher education entity is exempt from the
 426 requirements in paragraph (2) (a) and this subsection ~~A contract~~
 427 ~~involving the State University System or the Florida College~~
 428 ~~System funded by state financial assistance may be in the form~~
 429 ~~of:~~

430 ~~1. A fixed-price contract that entitles the provider to~~
 431 ~~receive full compensation for the fixed contract amount upon~~
 432 ~~completion of all contract deliverables;~~

433 ~~2. A fixed rate per unit contract that entitles the~~
 434 ~~provider to receive compensation for each contract deliverable~~
 435 ~~provided;~~

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436 ~~3. A cost-reimbursable contract that entitles the provider~~
 437 ~~to receive compensation for actual allowable costs incurred in~~
 438 ~~performing contract deliverables; or~~

439 ~~4. A combination of the contract forms described in~~
 440 ~~subparagraphs 1., 2., and 3.~~

441 (9) This subsection applies to any contract or agreement
 442 between a state awarding agency and a higher education entity
 443 that is funded by state financial assistance.

444 (a) The contract or agreement must comply with ss.
 445 215.971(1) and 216.3475 and must be in the form of one or a
 446 combination of the following:

447 1. A fixed-price contract that entitles the provider to
 448 receive compensation for the fixed contract amount upon
 449 completion of all contract deliverables.

450 2. A fixed-rate-per-unit contract that entitles the
 451 provider to receive compensation for each contract deliverable
 452 provided.

453 3. A cost-reimbursable contract that entitles the provider
 454 to receive compensation for actual allowable costs incurred in
 455 performing contract deliverables.

456 (b) If a higher education entity has extremely limited or
 457 no required activities related to the administration of a state
 458 project and acts only as a conduit of state financial
 459 assistance, none of the requirements of this section apply to
 460 the conduit higher education entity. However, the subrecipient
 461 that is provided state financial assistance by the conduit
 462 higher education entity is subject to this subsection.

463 (c) Regardless of the amount of the state financial
 464 assistance, this subsection does not exempt a higher education

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465 entity from compliance with provisions of law that relate to
 466 maintaining records concerning state financial assistance to the
 467 higher education entity or that allow access and examination of
 468 those records by the state awarding agency, the higher education
 469 entity, the Department of Financial Services, or the Auditor
 470 General.

471 (d) This subsection does not prohibit the state awarding
 472 agency from including terms and conditions in the contract or
 473 agreement which require additional assurances that the state
 474 financial assistance meets the applicable requirements of laws,
 475 regulations, and other compliance rules.

476 Section 6. Subsection (4) of section 322.142, Florida
 477 Statutes, is amended to read:

478 322.142 Color photographic or digital imaged licenses.—

479 (4) The department may maintain a film negative or print
 480 file. The department shall maintain a record of the digital
 481 image and signature of the licensees, together with other data
 482 required by the department for identification and retrieval.
 483 Reproductions from the file or digital record are exempt from
 484 the provisions of s. 119.07(1) and may be made and issued only:

485 (a) For departmental administrative purposes;

486 (b) For the issuance of duplicate licenses;

487 (c) In response to law enforcement agency requests;

488 (d) To the Department of Business and Professional
 489 Regulation and the Department of Health pursuant to an
 490 interagency agreement for the purpose of accessing digital
 491 images for reproduction of licenses issued by the Department of
 492 Business and Professional Regulation or the Department of
 493 Health;

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494 (e) To the Department of State pursuant to an interagency
 495 agreement to facilitate determinations of eligibility of voter
 496 registration applicants and registered voters in accordance with
 497 ss. 98.045 and 98.075;

498 (f) To the Department of Revenue pursuant to an interagency
 499 agreement for use in establishing paternity and establishing,
 500 modifying, or enforcing support obligations in Title IV-D cases;

501 (g) To the Department of Children and Families pursuant to
 502 an interagency agreement to conduct protective investigations
 503 under part III of chapter 39 and chapter 415;

504 (h) To the Department of Children and Families pursuant to
 505 an interagency agreement specifying the number of employees in
 506 each of that department's regions to be granted access to the
 507 records for use as verification of identity to expedite the
 508 determination of eligibility for public assistance and for use
 509 in public assistance fraud investigations;

510 (i) To the Agency for Health Care Administration pursuant
 511 to an interagency agreement for the purpose of authorized
 512 agencies verifying photographs in the Care Provider Background
 513 Screening Clearinghouse authorized under s. 435.12;

514 (j) To the Department of Financial Services pursuant to an
 515 interagency agreement to facilitate the location of owners of
 516 unclaimed property, the validation of unclaimed property claims,
 517 ~~and~~ the identification of fraudulent or false claims, and the
 518 investigation of allegations of violation of the insurance code
 519 by a licensee or other person;

520 (k) To district medical examiners pursuant to an
 521 interagency agreement for the purpose of identifying a deceased
 522 individual, determining cause of death, and notifying next of

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523 kin of any investigations, including autopsies and other
524 laboratory examinations, authorized in s. 406.11; or

525 (1) To the following persons for the purpose of identifying
526 a person as part of the official work of a court:

527 1. A justice or judge of this state;

528 2. An employee of the state courts system who works in a
529 position that is designated in writing for access by the Chief
530 Justice of the Supreme Court or a chief judge of a district or
531 circuit court, or by his or her designee; or

532 3. A government employee who performs functions on behalf
533 of the state courts system in a position that is designated in
534 writing for access by the Chief Justice or a chief judge, or by
535 his or her designee.

536 Section 7. Subsection (2) of section 374.983, Florida
537 Statutes, is amended to read:

538 374.983 Governing body.—

539 (2) The present board of commissioners of the district
540 shall continue to hold office until their respective terms shall
541 expire. Thereafter the members of the board shall continue to be
542 appointed by the Governor for a term of 4 years and until their
543 successors shall be duly appointed. Specifically, commencing on
544 January 10, 1997, the Governor shall appoint the commissioners
545 from Broward, Indian River, Martin, St. Johns, and Volusia
546 Counties and on January 10, 1999, the Governor shall appoint the
547 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm
548 Beach, and St. Lucie Counties. The Governor shall appoint the
549 commissioner from Nassau County for an initial term that
550 coincides with the period remaining in the current terms of the
551 commissioners from Broward, Indian River, Martin, St. Johns, and

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552 Volusia Counties. Thereafter, the commissioner from Nassau
553 County shall be appointed to a 4-year term. Each new appointee
554 must be confirmed by the Senate. Whenever a vacancy occurs among
555 the commissioners, the person appointed to fill such vacancy
556 shall hold office for the unexpired portion of the term of the
557 commissioner whose place he or she is selected to fill. Each
558 commissioner under this act before he or she assumes office
559 shall be required to give a good and sufficient surety bond in
560 the sum of \$10,000 payable to the Governor and his or her
561 successors in office, conditioned upon the faithful performance
562 of the duties of his or her office, such bond to be approved by
563 and filed with the board of commissioners of the district ~~Chief~~
564 ~~Financial Officer~~. Any and all premiums upon such surety bonds
565 shall be paid by the board of commissioners of such district as
566 a necessary expense of the district.

567 Section 8. Subsection (4) of section 509.211, Florida
568 Statutes, is amended to read:

569 509.211 Safety regulations.—

570 (4) Every enclosed space or room that contains a boiler
571 regulated under chapter 554 which is fired by the direct
572 application of energy from the combustion of fuels and that is
573 located in any portion of a public lodging establishment that
574 also contains sleeping rooms shall be equipped with one or more
575 carbon monoxide ~~detector sense~~ devices that bear the
576 certification mark from a testing and certification organization
577 accredited in accordance with ISO/IEC Guide 65, General
578 Requirements for Bodies Operating Product Certification Systems,
579 ~~label of a nationally recognized testing laboratory and that~~
580 have been tested and listed as complying with the most recent

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581 Underwriters Laboratories, Inc., Standard ~~2075~~ 2034, or its
 582 equivalent, ~~unless it is determined that carbon monoxide hazards~~
 583 ~~have otherwise been adequately mitigated as determined by the~~
 584 ~~Division of State Fire Marshal of the Department of Financial~~
 585 ~~Services~~. Such devices shall be integrated with the public
 586 lodging establishment's fire detection system. Any such
 587 installation or determination shall be made in accordance with
 588 rules adopted by the Division of State Fire Marshal.

589 Section 9. Subsection (9) of section 624.307, Florida
 590 Statutes, is amended to read:

591 624.307 General powers; duties.-

592 (9) Upon receiving service of legal process issued in any
 593 civil action or proceeding in this state against any regulated
 594 person or any unauthorized insurer under s. 626.906 or s.
 595 626.937 which is required to appoint the Chief Financial Officer
 596 as its attorney to receive service of all legal process, the
 597 Chief Financial Officer, as attorney, may, in lieu of sending
 598 the process by registered or certified mail, send the process or
 599 make it available by any other verifiable means, including, but
 600 not limited to, making the documents available by electronic
 601 transmission from a secure website established by the department
 602 to the person last designated by the regulated person or the
 603 unauthorized insurer to receive the process. When process
 604 documents are made available electronically, the Chief Financial
 605 Officer shall send a notice of receipt of service of process to
 606 the person last designated by the regulated person or
 607 unauthorized insurer to receive legal process. The notice shall
 608 state the date and manner in which the copy of the process was
 609 made available to the regulated person or unauthorized insurer

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610 being served and contain a hyperlink to obtain a copy of the
 611 process.

612 Section 10. Section 624.423, Florida Statutes, is amended
 613 to read:

614 624.423 Serving process.-

615 (1) Service of process upon the Chief Financial Officer as
 616 process agent of the insurer ~~(under s. 624.422)~~ shall be made by
 617 serving a copy of the process upon the Chief Financial Officer
 618 or upon her or his assistant, deputy, or other person in charge
 619 of her or his office. As an alternative to service of process
 620 made by mail or personal service on the Chief Financial Officer,
 621 on her or his assistant or deputy, or on another person in
 622 charge of her or his office, the department may create an
 623 Internet-based transmission system to accept service of process
 624 by electronic transmission of documents. Upon receiving such
 625 service, the Chief Financial Officer shall retain a record copy
 626 and promptly forward one copy of the process by registered or
 627 certified mail or by other verifiable means, as provided under
 628 s. 624.307(9), to the person last designated by the insurer to
 629 receive the same, as provided under s. 624.422(2). For purposes
 630 of this section, records may be retained as paper or electronic
 631 copies.

632 (2) ~~If where~~ process is served upon the Chief Financial
 633 Officer as an insurer's process agent, the insurer ~~is shall~~ not
 634 ~~be~~ required to answer or plead except within 20 days after the
 635 date upon which the Chief Financial Officer sends or makes
 636 available by other verifiable means ~~mailed~~ a copy of the process
 637 served upon her or him as required by subsection (1).

638 (3) Process served upon the Chief Financial Officer and

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639 sent or made available in accordance with this section and s.
 640 624.307(9) copy thereof forwarded as in this section provided
 641 shall for all purposes constitute valid and binding service
 642 thereof upon the insurer.

643 (4) As used in this section, the term "insurer" includes
 644 any unauthorized insurer under s. 626.906 or s. 626.937.

645 Section 11. Notwithstanding the expiration date contained
 646 in section 41 of chapter 2015-222, Laws of Florida, section
 647 624.502, Florida Statutes, as amended by chapter 2013-41, Laws
 648 of Florida, is reenacted and amended to read:

649 624.502 Service of process fee.—In all instances as
 650 provided in any section of the insurance code and s. 48.151(3)
 651 in which service of process is authorized to be made upon the
 652 Chief Financial Officer or the director of the office, the
 653 plaintiff shall pay to the department or office a fee of \$15 for
 654 such service of process on an authorized insurer or \$25 for such
 655 service of process on an unauthorized insurer, which fee shall
 656 be deposited into the Administrative Trust Fund.

657 Section 12. Subsection (1) of section 626.907, Florida
 658 Statutes, is amended to read:

659 626.907 Service of process; judgment by default.—

660 (1) Service of process upon an insurer or person
 661 representing or aiding such insurer pursuant to s. 626.906 shall
 662 be made by delivering to and leaving with the Chief Financial
 663 Officer or some person in apparent charge of his or her office
 664 two copies thereof and the service fee as required in s.
 665 624.502. The Chief Financial Officer shall forthwith mail by
 666 registered mail one of the copies of such process to the
 667 defendant at the defendant's last known principal place of

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668 business as provided by the party submitting the documents and
 669 shall keep a record of all process so served upon him or her.
 670 The service of process is sufficient, provided notice of such
 671 service and a copy of the process are sent within 10 days
 672 thereafter by registered mail by plaintiff or plaintiff's
 673 attorney to the defendant at the defendant's last known
 674 principal place of business, and the defendant's receipt, or
 675 receipt issued by the post office with which the letter is
 676 registered, showing the name of the sender of the letter and the
 677 name and address of the person to whom the letter is addressed,
 678 and the affidavit of the plaintiff or plaintiff's attorney
 679 showing a compliance herewith are filed with the clerk of the
 680 court in which the action is pending on or before the date the
 681 defendant is required to appear, or within such further time as
 682 the court may allow.

683 Section 13. Paragraph (b) of subsection (1) of section
 684 627.706, Florida Statutes, is amended to read:

685 627.706 Sinkhole insurance; catastrophic ground cover
 686 collapse; definitions.—

687 (1)

688 (b) The insurer shall make available, for an appropriate
 689 additional premium, coverage for sinkhole losses on any
 690 structure, including the contents of personal property contained
 691 therein, to the extent provided in the form to which the
 692 coverage attaches, unless the location of the risk does not meet
 693 the underwriting guidelines for sinkhole coverage filed by the
 694 insurer with the office. If the risk meets the underwriting
 695 guidelines for sinkhole coverage filed with the office, the
 696 insurer may require an inspection of the property before

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697 issuance of sinkhole loss coverage. Such inspection is not
 698 required if the location of the risk does not meet the insurer's
 699 underwriting guidelines for sinkhole coverage. A policy for
 700 residential property insurance may include a deductible amount
 701 applicable to sinkhole losses equal to 1 percent, 2 percent, 5
 702 percent, or 10 percent of the policy dwelling limits, with
 703 appropriate premium discounts offered with each deductible
 704 amount.

705 Section 14. Paragraph (a) of subsection (7) of section
 706 627.7074, Florida Statutes, is amended to read:

707 627.7074 Alternative procedure for resolution of disputed
 708 sinkhole insurance claims.—

709 (7) Upon receipt of a request for neutral evaluation, the
 710 department shall provide the parties a list of certified neutral
 711 evaluators. The department shall allow the parties to submit
 712 requests to disqualify evaluators on the list for cause.

713 (a) The department shall disqualify neutral evaluators for
 714 cause based only on any of the following grounds:

715 1. A familial relationship within the third degree exists
 716 between the neutral evaluator and either party or a
 717 representative of either party.

718 2. The proposed neutral evaluator has, in a professional
 719 capacity, previously represented either party or a
 720 representative of either party in the same or a substantially
 721 related matter.

722 3. The proposed neutral evaluator has, in a professional
 723 capacity, represented another person in the same or a
 724 substantially related matter and that person's interests are
 725 materially adverse to the interests of the parties. The term

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726 "substantially related matter" means participation by the
 727 neutral evaluator on the same claim, property, or adjacent
 728 property.

729 4. The proposed neutral evaluator has, within the preceding
 730 5 years, worked as an employer or employee of any party to the
 731 case.

732 5. The proposed neutral evaluator has, within the preceding
 733 5 years, worked for the entity that performed the testing as
 734 prescribed in s. 627.7072.

735 Section 15. Subsection (13) of section 633.102, Florida
 736 Statutes, is amended to read:

737 633.102 Definitions.—As used in this chapter, the term:

738 (13) "Fire service provider" means a municipality or
 739 county, the state, the division, or any political subdivision of
 740 the state, including authorities and special districts, which
 741 employs ~~employing~~ firefighters or uses ~~utilizing~~ volunteer
 742 firefighters to provide fire extinguishment or fire prevention
 743 services for the protection of life and property. The term
 744 includes any organization under contract or other agreement with
 745 such entity to provide such services.

746 Section 16. Subsection (8) of section 633.208, Florida
 747 Statutes, is amended to read:

748 633.208 Minimum firesafety standards.—

749 (8) The provisions of the Life Safety Code, as contained in
 750 the Florida Fire Prevention Code, do not apply to ~~newly~~
 751 ~~constructed~~ one-family and two-family dwellings. However, fire
 752 sprinkler protection may be permitted by local government in
 753 lieu of other fire protection-related development requirements
 754 for such structures. While local governments may adopt fire

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755 sprinkler requirements for one- and two-family dwellings under
 756 this subsection, it is the intent of the Legislature that the
 757 economic consequences of the fire sprinkler mandate on home
 758 owners be studied before the enactment of such a requirement.
 759 After the effective date of this act, any local government that
 760 desires to adopt a fire sprinkler requirement on one- or two-
 761 family dwellings must prepare an economic cost and benefit
 762 report that analyzes the application of fire sprinklers to one-
 763 or two-family dwellings or any proposed residential subdivision.
 764 The report must consider the tradeoffs and specific cost savings
 765 and benefits of fire sprinklers for future owners of property.
 766 The report must include an assessment of the cost savings from
 767 any reduced or eliminated impact fees if applicable, the
 768 reduction in special fire district tax, insurance fees, and
 769 other taxes or fees imposed, and the waiver of certain
 770 infrastructure requirements including the reduction of roadway
 771 widths, the reduction of water line sizes, increased fire
 772 hydrant spacing, increased dead-end roadway length, and a
 773 reduction in cul-de-sac sizes relative to the costs from fire
 774 sprinkling. A failure to prepare an economic report shall result
 775 in the invalidation of the fire sprinkler requirement to any
 776 one- or two-family dwelling or any proposed subdivision. In
 777 addition, a local jurisdiction or utility may not charge any
 778 additional fee, above what is charged to a non-fire sprinklered
 779 dwelling, on the basis that a one- or two-family dwelling unit
 780 is protected by a fire sprinkler system.

781 Section 17. Paragraph (b) of subsection (4) and subsection
 782 (8) of section 633.408, Florida Statutes, are amended, and
 783 subsection (9) is added to that section, to read:

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784 633.408 Firefighter and volunteer firefighter training and
 785 certification.—

786 (4) The division shall issue a firefighter certificate of
 787 compliance to an individual who does all of the following:

788 (b) Passes the Minimum Standards Course examination within
 789 6 months after completing the Minimum Standards Course.

790 (8) (a) Pursuant to s. 590.02(1)(e), the division shall
 791 establish a structural fire training program of not less than
 792 206 hours. The division shall issue to a person satisfactorily
 793 complying with this training program and who has successfully
 794 passed an examination as prescribed by the division and who has
 795 met the requirements of s. 590.02(1)(e), a Forestry Certificate
 796 of Compliance.

797 (b) An individual who holds a current and valid Forestry
 798 Certificate of Compliance is entitled to the same rights,
 799 privileges, and benefits provided for by law as a firefighter.

800 (9) A Certificate of Compliance or a Certificate of
 801 Completion issued under this section expires 4 years after the
 802 date of issuance unless renewed as provided in s. 633.414.

803 Section 18. Subsection (2) of section 633.412, Florida
 804 Statutes, is amended to read:

805 633.412 Firefighters; qualifications for certification.—

806 (2) If the division suspends or revokes an individual's
 807 certificate, the division may, in accordance with standards
 808 provided by rule, ~~must~~ suspend or revoke all other certificates
 809 issued to the individual by the division pursuant to this part.

810 Section 19. Section 633.414, Florida Statutes, is amended
 811 to read:

812 633.414 Retention of firefighter, volunteer firefighter,

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813 ~~and fire investigator certifications certification.-~~

814 (1) In order for a firefighter to retain her or his
815 Firefighter Certificate of Compliance, every 4 years he or she
816 must meet the requirements for renewal provided in this chapter
817 and by rule, which must include at least one of the following:

818 (a) Be active as a firefighter.~~+~~

819 (b) Maintain a current and valid fire service instructor
820 certificate, instruct at least 40 hours during the 4-year
821 period, and provide proof of such instruction to the division,
822 which proof must be registered in an electronic database
823 designated by the division.~~+~~

824 (c) Within 6 months before the 4-year period expires,
825 successfully complete a Firefighter Retention Refresher Course
826 consisting of a minimum of 40 hours of training to be prescribed
827 by rule.~~+~~

828 (d) Within 6 months before the 4-year period expires,
829 successfully retake and pass the Minimum Standards Course
830 examination pursuant to s. 633.408.

831 (2) In order for a volunteer firefighter to retain her or
832 his Volunteer Firefighter Certificate of Completion, every 4
833 years he or she must:

834 (a) Be active as a volunteer firefighter; or

835 (b) Successfully complete a refresher course consisting of
836 a minimum of 40 hours of training to be prescribed by rule.

837 (3) A fire investigator certificate is valid for a period
838 of 4 years after the date of issuance. Renewal of certification
839 is subject to completion of an application for renewal and
840 meeting all of the requirements for renewal imposed under this
841 chapter and by rule, which must include completion of up to 40

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842 hours of continuing education during the preceding 4-year
843 period.

844 (4)~~(3)~~ Subsection (1) does not apply to state-certified
845 firefighters or volunteer firefighters who are certified and
846 employed full-time, as determined by the fire service provider,
847 as firesafety inspectors or fire investigators, regardless of
848 their her or his employment status as firefighters or volunteer
849 firefighters a firefighter.

850 (5)~~(4)~~ For the purposes of this section, the term "active"
851 means being employed as a firefighter or providing service as a
852 volunteer firefighter for a cumulative period of 6 months within
853 a 4-year period.

854 (6)~~(5)~~ The 4-year period begins upon the issuance of the
855 certificate or termination of employment:

856 (a) If the individual is certified on or after July 1,
857 2013, on the date the certificate is issued or upon termination
858 of employment or service with a fire department.

859 (b) If the individual is certified before July 1, 2013, on
860 July 1, 2014, or upon termination of employment or service
861 thereafter.

862 (7) A certificate for a firefighter, volunteer firefighter,
863 or fire investigator expires if he or she fails to meet the
864 requirements of this section.

865 (8) The State Fire Marshal may deny, refuse to renew,
866 suspend, or revoke the certificate of a firefighter or volunteer
867 firefighter if the State Fire Marshal finds that any of the
868 following grounds exists:

869 (a) Any cause for which issuance of a certificate could
870 have been denied if it had then existed and had been known to

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871 the division.872 (b) A violation of any provision of this chapter or any
873 rule or order of the State Fire Marshal.874 (c) Falsification of a record relating to any certificate
875 issued by the division.876 Section 20. Subsections (1) and (2) of section 633.426,
877 Florida Statutes, are amended to read:878 633.426 Disciplinary action; standards for revocation of
879 certification.-

880 (1) For purposes of this section, the term:

881 (a) "Certificate" means any of the certificates issued
882 under s. 633.406.883 (b) "Certification" or "certified" means ~~the act of holding~~
884 a certificate that is current and valid and that meets the
885 requirements for renewal of certification pursuant to this
886 chapter and the rules adopted under it certificate.887 (c) "Convicted" means a finding of guilt, or the acceptance
888 of a plea of guilty or nolo contendere, in any federal or state
889 court or a court in any other country, without regard to whether
890 a judgment of conviction has been entered by the court having
891 jurisdiction of the case.892 (2) An individual is ineligible to apply for certification
893 or for renewal of certification after July 1, 2013, if the
894 individual has, ~~at any time,~~ been:895 (a) Convicted of a misdemeanor relating to the
896 certification or to perjury or false statements.897 (b) Convicted of a felony or a crime punishable by
898 imprisonment of 1 year or more under the law of the United
899 States or of any state thereof, or under the law of any other

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900 country.

901 (c) Dishonorably discharged from any of the Armed Forces of
902 the United States.

903 Section 21. This act shall take effect July 1, 2016.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-14
Meeting Date

SB 992
Bill Number (if applicable)

Topic SB 992

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N Monroe St
Street

Phone 850-413-2863

Tallahassee FL 32399
City State Zip

Email elizabeth.boyd@myfloridafco.com

Speaking: For Against Information

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

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: December 14, 2015

I respectfully request that **Senate Bill #992**, relating to **Department of Financial Services**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 632

INTRODUCER: Senator Richter

SUBJECT: Civil Remedies Against Insurers

DATE: January 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 632 provides a 45 day window in which an insurer can act to avoid liability for failing to attempt to settle a claim in good faith. A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage. A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant.

This bill provides that before a third-party bad faith action for failure to settle a liability insurance claim may be filed, the claimant must provide the insurer a written notice of loss. To avoid bad faith liability for failing to attempt to settle a claim in good faith, the insurer must comply with a request for a disclosure statement and, within 45 days after receipt of the written notice of loss, offer to pay the claimant the lesser of the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss or the limits of liability coverage applicable to the claimant's insurance claim. If the insurer complies with these conditions, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

II. Present Situation:

Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court

against a third party with respect to a claim within the scope of the insurance contract.¹ The Florida Supreme Court explained the difference between indemnity policies and liability policies:

Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.²

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.³ As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.⁴

Common Law and Statutory Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.⁵ The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.⁶ This is known as a third-party claim of bad faith.

At common law, the insured cannot raise a bad faith claim against the insurer outside of the third-party claim context.⁷ In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155, F.S., provides that any party may bring a bad faith civil action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or

¹ See 16 Williston on Contracts s. 49:103 (4th Ed.).

² See *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).

³ *Id.*

⁴ *Id.*

⁵ See *Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).

⁶ See *Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).

⁷ See *Laforet*, 658 So.2d at 58-59.

- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.⁸

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation.⁹ The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.¹⁰ Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.¹¹ Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.¹²

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.¹³ If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.¹⁴ Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.¹⁵

Third-Party Claims of Bad Faith

A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.¹⁶ The Florida Supreme Court has described an insurer's duty to its insureds:

An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable

⁸ See s. 624.155(1)(b)1.-3., F.S.

⁹ See s. 624.155(3)(a), F.S. The notice must be on a form approved by the Department of Financial Services. If the Department returns the notice for lack of specificity, the day period does not begin until a proper notice is filed. The notice form can be found at <https://apps.fldfs.com/CivilRemedy/> (last accessed on January 11, 2016).

¹⁰ See s. 624.155(3)(d), F.S.

¹¹ See *Talat Enterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).

¹² See *Macola v. Government Employees Insurance Company*, 953 So.2d 451 (Fla. 2006).

¹³ See *Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).

¹⁴ *Id.*

¹⁵ See *DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).

¹⁶ See *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Because the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith. The question of failure to act in good faith with due regard for the interests of the insured is for the jury.¹⁷

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.¹⁸ Whether an insurer acted in bad faith is determined by the totality of the circumstances:

In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.¹⁹

The focus in a bad faith case is on the conduct of the insurer but the conduct of the claimant is relevant to whether there was a realistic opportunity for settlement.²⁰ A court, for example, will look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that “[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle limiting acceptance to 10 days made it virtually impossible to make an intelligent acceptance.”²¹ Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

In *Berges*, dissenting justices expressed concern that there “is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met.”²² It was argued that it is a “common practice for a party contemplating litigation to submit a settlement offer that remains outstanding for only a finite period and that a person injured by a policyholder may set any deadlines he desires—even an

¹⁷ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).

¹⁸ See *Berges v. Infinity Insurance Company*, 896 So.2d 665, 677 (Fla. 2005)(explaining that “the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured”).

¹⁹ See *Berges*, 896 So.2d at 680 (internal quotations and citations omitted).

²⁰ See *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

²¹ *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).

²² *Berges*, 896 So.2d at 685 (Wells, J., dissenting).

arbitrary or unreasonable one.”²³ Justice Wells concluded that set time periods in which all insurers must make decisions on claims and issue payments are needed.²⁴

The majority in *Berges* held that courts must look to the totality of the circumstances. “The question of bad faith in this case extends to [the insurer’s] entire conduct in the handling of the claim, including the acts or omissions [of the insurer] in failing to ensure payment of the policy limits within the time demands.”²⁵ Another court argued that setting a “minimum amount of time before any finding of bad faith is possible runs counter to the analysis of ordinary care and prudent business practice... Juries are empaneled to apply the appropriate criteria to the particular facts of a given situation and to decide whether the insurer acted prudently.”²⁶

Disclosure Statements

Section 627.4137, F.S., requires an insurer to provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer’s claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

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

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant’s attorney, must disclose the name and coverage of each known insurer to the claimant and shall forward such request for information on all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

III. Effect of Proposed Changes:

This bill provides that, as a condition precedent to a third-party statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or anyone on behalf of the insured or the claimant must provide the insurer a written notice of loss. This bill does not change the requirements for first-party bad faith claims.

If the insurer complies with a request for a disclosure statement as described in s. 627.4137, F.S., and, within 45 days after receipt of the written notice of loss, offers to pay the claimant the lesser of the limits of liability coverage applicable to the claimant’s insurance claim or the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability

²³ *Id.* at 692 (Cantero, J., dissenting).

²⁴ *Id.* at 686 (Wells, J., dissenting).

²⁵ *Berges*, 896 So.2d at 627.

²⁶ *Snowden ex. rel. Estate of Snowden v. Lumbermans Mutual Casualty Company*, 358 F.Supp.2d 1125, 1129 (N.D. Fla. 2003).

arising from the incident reported in the written notice loss, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

Current law provides that bad faith is determined based on the totality of the circumstances. This bill would provide that an insurer is not liable for bad faith failure to settle if the insurer complies with the provisions of this bill.

This bill is effective July 1, 2016.

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 private sector fiscal impact of this bill is indeterminate. This bill will create a 45 day window for insurers to avoid bad faith claims.

C. Government Sector Impact:

The government sector fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.155 of the Florida Statutes.

This bill reenacts section 766.1185 of the Florida Statutes.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

By Senator Richter

23-00002-16

2016632__

A bill to be entitled

An act relating to civil remedies against insurers; amending s. 624.155, F.S.; requiring an insured, a claimant, or a person acting on behalf of an insured or a claimant to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common-law action for a third-party bad faith action for failure to settle an insurance claim; providing that an insurer is not liable for such claim if certain conditions are met; reenacting s. 766.1185(3), F.S., relating to bad faith actions, to incorporate the amendment made to s. 624.155, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 624.155, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

(3) (a) Except as provided in subsection (10), as a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period ~~does shall~~ not begin until a proper notice is filed.

(10) As a condition precedent to bringing a third-party statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or any

Page 1 of 2

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

23-00002-16

2016632__

person acting on behalf of the insured or the claimant must have provided the insurer with a written notice of loss. An insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for a bad faith failure to settle under this section or common law if the insurer:

(a) Complies with a request for a disclosure statement as described in s. 627.4137.

(b) Offers, within 45 days after receipt of the written notice of loss, to pay the claimant the lesser of the amount that the claimant is willing to accept or the limits of liability coverage applicable to the claimant's insurance claim in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss.

Section 2. For the purpose of incorporating the amendment made by this act to section 624.155, Florida Statutes, in a reference thereto, subsection (3) of section 766.1185, Florida Statutes, is reenacted to read:

766.1185 Bad faith actions.—In all actions for bad faith against a medical malpractice insurer relating to professional liability insurance coverage for medical negligence, and in determining whether the insurer could and should have settled the claim within the policy limits had it acted fairly and honestly towards its insured with due regard for her or his interest, whether under statute or common law:

(3) The provisions of s. 624.155 shall be applicable in all cases brought pursuant to that section unless specifically controlled by this section.

Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: November 5, 2015

I respectfully request that **Senate Bill #632**, relating to Civil Remedies Against Insurers, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

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 774

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Liability Insurance Coverage

DATE: January 20, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 774 authorizes a company employee adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by s. 627.4137, F.S. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer. Section 627.4137, F.S., requires a liability insurer to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

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

This bill allows a company employee adjuster to provide the sworn statement. If a company employee adjuster provides the disclosure statement required by s. 627.4137, F.S., the adjuster must consult with appropriate personnel in the insurance company's claims department and underwriting department to verify the information disclosed in the statement.

II. Present Situation:

Section 627.4137, F.S., requires a liability insurer¹ to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

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

The required statement must be under oath by a corporate officer or the insurer's claims manager or superintendent. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

A review of insurance information required under s. 627.4137, F.S., allows a claimant to evaluate the damages that could be paid by the tortfeasor. Florida courts have explained that the purpose of the disclosure requirements in s. 627.4137, F.S., is to allow a claimant to make an informed decision whether to settle a case.²

III. Effect of Proposed Changes:

This bill authorizes a company employee adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by s. 627.4137, F.S. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer. If a company employee adjuster³ provides the disclosure statement required by s. 627.4137, F.S., the adjuster must consult with appropriate personnel in the insurance company's claims department and underwriting department to verify the information disclosed in the statement.

This bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹ Section 627.4137, F.S., does not apply to PIP insurance. See *Progressive American Ins. Co. v. Rural/Metro Corp. of Florida*, 994 So.2d 1202 (Fla. 5th DCA 2008).

² See *Cheverie v. Geisser*, 783 So.2d 1115 (Fla. 4th DCA 2001)(rejecting the argument that compliance with s. 627.4137, F.S., is a technicality and explaining the Legislature recognized the importance to claimants of access to the information required by statute in making settlement decisions); *Gira v. Wolfe*, 115 So.3d 414, 417 (Fla. 2d DCA 2013)(explaining that "the legislature has recognized the importance of a claimant's access to the type of insurance information covered in the statute in order for a claimant to make settlement decisions").

³ Section 626.856, F.S., defines a "company employee adjuster" as a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

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:

This bill will allow more persons to provide required disclosures to claimants and could reduce insurance company administrative costs. Claimants would only be impacted if the accuracy of such sworn statements is decreased by allowing company employee adjusters to provide them.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4137 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on January 19, 2016:**

The committee substitute replaces the term “licensed company adjuster” with “company employee adjuster,” a term defined in current law. It also requires a company employee adjuster providing the required disclosure to verify the information provided with appropriate personnel in the company’s claims and underwriting departments.

B. Amendments:

None.

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



572854

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 19
and insert:
superintendent, or a company employee adjuster setting forth the

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

And the title is amended as follows:

Delete line 3

and insert:



572854

11

amending s. 627.4137, F.S.; adding company employee



594046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 30

and insert:

If the person providing the statement required under this subsection is the company employee adjuster, the adjuster must consult with the appropriate personnel in the company's underwriting department and claims department to verify the information disclosed in the statement. In addition, the insured, or her or his insurance agent, upon



594046

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

And the title is amended as follows:

Delete line 6

and insert:

liability insurance coverage; requiring a company
employee adjuster who provides a specified statement
to consult with certain personnel within the company
to verify information disclosed in the statement;
providing an effective

By Senator Montford

3-01046A-16

2016774__

1 A bill to be entitled
2 An act relating to liability insurance coverage;
3 amending s. 627.4137, F.S.; adding licensed company
4 adjusters to the list of persons who may respond to a
5 claimant's written request for information relating to
6 liability insurance coverage; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (1) of section 627.4137, Florida
12 Statutes, is amended to read:

13 627.4137 Disclosure of certain information required.—

14 (1) Each insurer that provides ~~which does~~ or may provide
15 liability insurance coverage to pay all or a portion of a any
16 claim ~~that which~~ might be made shall provide, within 30 days
17 after ~~of~~ the written request of the claimant, a statement, under
18 oath, of a corporate officer, ~~of~~ the insurer's claims manager or
19 superintendent, or a licensed company adjuster setting forth the
20 following information with regard to each known policy of
21 insurance, including excess or umbrella insurance:

- 22 (a) The name of the insurer.
23 (b) The name of each insured.
24 (c) The limits of the liability coverage.
25 (d) A statement of any policy or coverage defense that the
26 ~~which such~~ insurer reasonably believes is available to the such
27 insurer at the time of filing such statement.
28 (e) A copy of the policy.
29

Page 1 of 2

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3-01046A-16

2016774__

30 In addition, the insured, or her or his insurance agent, upon
31 written request of the claimant or the claimant's attorney,
32 shall disclose the name and coverage of each known insurer to
33 the claimant and shall forward such request for information as
34 required by this subsection to all affected insurers. The
35 insurer shall then supply the information required in this
36 subsection to the claimant within 30 days after ~~of~~ receipt of
37 such request.

38 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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)

19 JAN 2016
Meeting Date

774
Bill Number (if applicable)

Topic DISCLOSURE OF COVERAGE

Amendment Barcode (if applicable)

Name PAUL JESS

Job Title

Address 218 S. MONROE ST
Street

Phone 850-224-9403

TALLAHASSEE FL 32301
City State Zip

Email

Speaking: For Against Information

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

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD

3rd District

November 19, 2015

Senator Lizbeth Benacquisto, Chair
Senate Banking & Insurance Committee
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Benacquisto:

I respectfully request that SB 774 be scheduled for a hearing before the Senate Banking & Insurance Committee. SB 774 would add licensed company adjusters to the list of people who can respond to a claimant's request for liability insurance coverage information.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: James Knudson, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 966

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Unclaimed Property

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 requires life insurers to determine whether their life or endowment insurance policyholders, annuitants, and retained asset account holders have died by annually comparing them against the United States Social Security Administration Death Master File (DMF). The requirement applies to all life or endowment insurance policies, annuity contracts, and retained asset accounts that were in force on or after January 1, 1992. If a death is indicated, the bill requires the insurer to verify the death, verify if the deceased had other products with the company, determine if benefits are due, and attempt to locate and contact beneficiaries. If the policy or contract proceeds remain unclaimed 5 years after the date of death of the insured, annuitant, or account holder, the property escheats to the state as unclaimed property. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the Department of Financial Services (DFS) Bureau of Unclaimed Property no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers 5 years to comply with the requirements of the bill.

The bill applies to all life insurers requirements agreed to by many of the largest life insurers in settlement agreements with the DFS, the Office of the Attorney General, and the Office of Insurance Regulation (OIR), often as part of multi-state settlement agreements. The settlement agreements are related to examinations that often find insurers use information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but do not use such information to search for beneficiaries of a life insurance policy. According to the

Office of Insurance Regulation, these settlement agreements have resulted in the return of over \$5 billion to beneficiaries directly by the companies nationwide and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries. The bill is effective upon becoming law.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.¹ Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.² A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.³ As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

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

¹ Section 624.602, F.S.

² The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.

³ Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (click on link for types of policies)(last visited January 8, 2015).

regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred.

An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a “life only” annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.⁴ Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single “lump sum” payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary’s death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).⁵ The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers’ checks, uncashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.⁶ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder’s business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.⁷ Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the

⁴ National Association of Insurance Commissioners, *Retained Asset Accounts and Life Insurance: What Consumers Need to Know About Life Insurance Benefit Payment Options*, http://www.naic.org/documents/consumer_alert_raa.htm (January 8, 2016).

⁵ Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

⁶ ss. 717.104 – 717.116, F.S.

⁷ s. 717.102(1), F.S.

apparent owners within 180 days after an account becomes inactive.⁸ Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.⁹ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.¹⁰

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹¹ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.¹² The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.¹³

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹⁴ The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.¹⁵

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.¹⁶

Unclaimed Property Owing Under Life Insurance Policies

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more than 5 years¹⁷ after the funds became due and payable as established by records of the insurance company owing the funds.¹⁸

⁸ s. 717.117(4), F.S.

⁹ s. 717.117, F.S.

¹⁰ s. 717.119, F.S.

¹¹ s. 717.1201, F.S.

¹² ss. 717.117 and 717.124, F.S.

¹³ s. 717.124, F.S.

¹⁴ s. 717.123, F.S.

¹⁵ Id.

¹⁶ Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

¹⁷ If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.

¹⁸ s. 717.107(1), F.S.

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Regulatory Examination of Life Settlement Claim Practices

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.¹⁹

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.²⁰ Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, an examination has been concluded or a settlement reached for 22 of the 40 have reached settlements or concluded an examination.²¹

Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often as part of multi-state settlement agreements.²² Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation. According to the Office of Insurance Regulation, these life claim settlement agreements have resulted in the

¹⁹ Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, <http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm> (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).

²⁰ National Association of Insurance Commissioners, *News Release: Regulators to Review Life Insurance Payment Practices*, (May 17, 2011)(last visited January 8, 2016).

²¹ Florida Office of Insurance Regulation, *Top 40 Nationally Significant Groups Writing Direct Life, Annuity and Other Considerations*, <http://www.floir.com/siteDocuments/Top40LifeGroups.pdf> (last visited January 8, 2016).

²² Office of Insurance Regulation, *Life Claim Settlement Practices*, http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited January 8, 2016).

return of over \$5 billion to beneficiaries directly by the companies and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF.²³ For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within 5 years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs.²⁴ The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually an extract of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual's social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

Trivent Financial for Lutherans v. State of Florida

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus

²³ See Florida Office of Insurance Regulation, *Florida's Regulatory Life Claim Settlement Agreements*, <http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf> (follow hyperlinks to regulatory settlement agreements)(last visited January 8, 2016).

²⁴ Social Security Administration, *Requesting the Death Master File*, https://www.ssa.gov/dataexchange/request_dmf.html (last visited January 7, 2016).

triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.²⁵ Thrivent had appealed a DFS declaratory statement finding that life insurance funds are “due and payable” under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds “become due and payable as established by the records of the insurance company.” Because s. 627.461, F.S., requires each life insurance contract to provide that payment “shall be made upon receipt of due proof of death and surrender of the policy” the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts “not matured by actual proof of the death of the insured or the annuitant” according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to dearch death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns “must be addressed by the Legislature.”

III. Effect of Proposed Changes:

Section 1 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer’s policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The Thrivent decision found that currently the DFS lacks the

²⁵ *Thrivent Financial for Lutherans v. State of Florida, Department of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

authority to require such a search under s. 717.107, F.S. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. An insurer may perform the comparison using any database or service that the DFS determines is at least as comprehensive as the DMF for the purpose of indicating a person has died.

The bill establishes that an insured, annuitant, or retained asset account holder is presumed deceased if that person's date of death is indicated on the DMF, unless the insurer has in its records competent, substantial evidence that the person is living. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The following are exempted from the bill's requirements:

- An annuity issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.
- A policy of credit life or accidental death insurance.
- A joint and survivor annuity contract, if an annuitant is still living.
- A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions that provide the insurer with access to, for each individual insured, the social security number or name and date of birth, beneficiary designation information, coverage eligibility, the benefit amount, and premium payment status.

The bill requires an insurer, no later than 120 days after learning of a death through a DMF match, to complete and document an effort to confirm the death of the insured, annuitant, or retained asset account holder. The insurer must review its records to determine if that person purchased other products from the insurer. The insurer must also determine whether benefits are due. Finally, the insurer must complete and document an effort to locate and contact the beneficiary or authorized representative unless such person communicates with the insurer before the expiration of the 120-day period. The effort to locate the beneficiary or authorized representative must include sending that person information concerning the insurer's claim process, including notice of any requirement in a policy, annuity, or retained asset account to provide a certified original or copy of the death certificate.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to

provide insurers 5 years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of CS/SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁶ A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.²⁷ If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.²⁸

Representatives of some life insurers argue that the application of the bill's requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*²⁹ (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including "policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years."³⁰ The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States

²⁶ *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).

²⁷ *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

²⁸ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

²⁹ 333 U.S. 541 (1948).

³⁰ *Moore*, 333 U.S. 541 at 543.

Constitution.³¹ The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.³²

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.³³ The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances “far exceeding \$100 million, from unknown and unclaimed life insurance benefits” that insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally 5 years) expiring.

³¹ *Moore*, 333 U.S. 541 at 545.

³² *Moore*, 333 U.S. 541 at 546.

³³ *Moore*, 333 U.S. 541 at 546.

³⁴ *Moore*, 333 U.S. 541 at 547.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 of the Florida Statutes.

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

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

CS by Banking and Insurance on January 19, 2016:

The CS requires insurers, within 120 days after learning of the death of an insured, annuitant, or retained asset account holder, to complete an effort to confirm the death, review its records to determine if the person has other products from the insurer, determine, whether benefits are due, and complete an effort to locate and contract a beneficiary that has not contacted the insurer. The effort must include providing information regarding the claim process and the requirements for submitting a claim.

The CS also:

- Exempts from the bill credit life policies and joint and survivor annuities where an annuitant is still living.
- Allows insurers to disclose minimal personal information about an insured, annuitant, or account holder to outside parties in an effort to locate a beneficiary, to the extent allowed by law.
- Allows the insurer to use an alternate database or service that DFS determines is at least as comprehensive as the Death Master File for purposes of indicating a person has died.
- Clarifies that an insurer may use competent, substantial evidence to show that a person presumed dead by the Death Master File is actually alive.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 112 - 157
and insert:
insurer shall compare the records of its insureds' life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992, against the United States Social Security Administration Death Master File to determine if the death of an insured, an annuitant, or a retained asset



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11 account holder is indicated. The comparison must use the name
12 and social security number or date of birth of the insured,
13 annuitant, or retained asset account holder. The comparison must
14 be made on at least an annual basis before August 31 of each
15 year. If an insurer performs such a comparison regarding its
16 annuities or other books of business more frequently than once a
17 year, the insurer must also make a comparison regarding its life
18 insurance policies, annuity contracts that provide a death
19 benefit, and retained asset accounts at the same frequency as is
20 made regarding its annuities or other books or lines of
21 business. An insurer may perform the comparison required by this
22 paragraph using any database or service that the department
23 determines is at least as comprehensive as the United States
24 Social Security Administration Death Master File for the purpose
25 of indicating that a person has died.

26 (b) An insured, an annuitant, or a retained asset account
27 holder is presumed deceased if the date of his or her death is
28 indicated by the comparison required under paragraph (a), unless
29 the insurer has in its records competent and substantial
30 evidence that the person is living, including, but not limited
31 to, a contact made by the insurer with such person or his or her
32 legal representative. The insurer shall account for common
33 variations in data and for any partial names, social security
34 numbers, dates of birth, and addresses of the insured, the
35 annuitant, or the retained asset account holder which would
36 otherwise preclude an exact match.

37 (c) For purposes of this section, a policy, an annuity
38 contract, or a retained asset account is deemed to be in force
39 if it has not lapsed, has not been cancelled, or has not been



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40 terminated at the time of death of the insured, the annuitant,
41 or the retained asset account holder.

42 (d) This subsection does not apply to an insurer with
43 respect to benefits payable under:

44 1. An annuity that is issued in connection with an
45 employment-based plan subject to the Employee Retirement Income
46 Security Act of 1974 or that is issued to fund an employment-
47 based retirement plan, including any deferred compensation plan.

48 2. A policy of credit life or accidental death insurance.

49 3. A joint and survivor annuity contract, if an annuitant
50 is still living.

51 4. A policy issued to a group master policy owner for which
52 the insurer does not perform recordkeeping functions. As used in
53 this subparagraph, the term "recordkeeping" means those
54 circumstances under which the insurer has agreed through a group
55 policyholder to be responsible for obtaining, maintaining, and
56 administering, in its own or its agents' systems, information
57 about each individual insured under a group insurance policy or
58 a line of coverage thereunder, including at least the following:

59 a. The social security number, or name and date of birth;

60 b. Beneficiary designation information;

61 c. Coverage eligibility;

62 d. The benefit amount; and

63 e. Premium payment status.

64 (9) No later than 120 days after learning of the death of
65 an insured, an annuitant, or a retained asset account holder
66 through a comparison under subsection (8), an insurer shall:

67 (a) Complete and document an effort to confirm the death of
68 the insured, annuitant, or retained asset account holder against



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69 other available records and information.

70 (b) Review its records to determine whether the insured,
71 annuitant, or retained asset account holder purchased other
72 products from the insurer.

73 (c) Determine whether benefits may be due under a policy,
74 an annuity, or a retained asset account.

75 (d) Complete and document an effort to locate and contact
76 the beneficiary or authorized representative under a policy, an
77 annuity, or a retained asset account, if such person has not
78 communicated with the insurer before the expiration of the 120-
79 day period. The effort must include:

80 1. Sending to the beneficiary or authorized representative
81 information concerning the claim process of the insurer.

82 2. Notice of any requirement to provide a certified
83 original or copy of the death certificate, if applicable under
84 the policy, annuity, or retained asset account.

85 (10) An insurer may, to the extent permitted by law,
86 disclose the minimum necessary personal information about an
87 insured, an annuitant, a retained asset account owner, or a
88 beneficiary to an individual or entity reasonably believed by
89 the insurer to possess the ability to assist the insurer in
90 locating the beneficiary or another individual or entity that is
91 entitled to payment of the claim proceeds.

92 (11) An insurer, or any agent or third party that it
93 engages or that works on its behalf, may not charge insureds,
94 annuitants, retained asset account holders, beneficiaries, or
95 the estates of insureds, annuitants, retained asset

96
97 ===== T I T L E A M E N D M E N T =====



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98 And the title is amended as follows:

99 Delete lines 9 - 19

100 and insert:

101 requiring an insurer to compare records of certain
102 insurance policies, annuity contracts, and retained
103 asset accounts of its insureds against the United
104 States Social Security Administration Death Master
105 File or a certain database or service to determine if
106 a death is indicated; providing requirements for the
107 comparison; providing for a presumption of death for
108 certain individuals; providing an exception; requiring
109 an insurer to account for certain variations in data
110 and partial information; providing the circumstances
111 under which a policy, a contract, or an account is
112 deemed to be in force; providing applicability;
113 defining a term; requiring an insurer to follow
114 certain procedures after learning of a death through a
115 specified comparison; authorizing an insurer to
116 disclose certain personal information to specified
117 persons for certain purposes; prohibiting an insurer
118 and

By Senator Benacquisto

30-00996B-16

2016966__

A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to perform a comparison of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File to determine if a death is indicated; providing when such comparisons must be made; providing for a rebuttable presumption of death of certain individuals; requiring an insurer to account for certain variations in data and partial information; providing applicability; providing an exception; defining a term; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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

Section 1. Section 717.107, Florida Statutes, is amended to read:

Page 1 of 6

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

30-00996B-16

2016966__

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder funds became due and payable as established from the records of the insurance company holding or ~~owing the funds,~~ but property described in paragraph (3) (d) ~~(3) (b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, ~~the or~~ annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured, ~~the or~~ annuitant, or the retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:

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30-00996B-16

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59 (a) The company knows that the insured, ~~the~~ ~~or~~ annuitant,
60 ~~or the retained asset account holder~~ has died. ~~or~~

61 (b) A presumption of death made in accordance with
62 paragraph (8) (b) has not been rebutted.

63 (c) The policy or contract has reached its maturity date.

64 ~~(d) (b)~~ 1. The insured has attained, or would have attained
65 if he or she were living, the limiting age under the mortality
66 table on which the reserve is based;

67 2. The policy was in force at the time the insured
68 attained, or would have attained, the limiting age specified in
69 subparagraph 1.; and

70 3. Neither the insured nor any other person appearing to
71 have an interest in the policy within the preceding 2 years,
72 according to the records of the company, has assigned,
73 readjusted, or paid premiums on the policy; subjected the policy
74 to a loan; corresponded in writing with the company concerning
75 the policy; or otherwise indicated an interest as evidenced by a
76 memorandum or other record on file prepared by an employee of
77 the company.

78 (4) For purposes of this chapter, the application of an
79 automatic premium loan provision or other nonforfeiture
80 provision contained in an insurance policy does not prevent the
81 policy from being matured or terminated under subsection (1) if
82 the insured has died or the insured or the beneficiaries of the
83 policy otherwise have become entitled to the proceeds thereof
84 before the depletion of the cash surrender value of a policy by
85 the application of those provisions.

86 (5) If the laws of this state or the terms of the life
87 insurance policy require the company to give notice to the

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

30-00996B-16

2016966__

88 insured or owner that an automatic premium loan provision or
89 other nonforfeiture provision has been exercised and the notice,
90 given to an insured or owner whose last known address according
91 to the records of the company is in this state, is
92 undeliverable, the company shall make a reasonable search to
93 ascertain the policyholder's correct address to which the notice
94 must be mailed.

95 (6) Notwithstanding any other provision of law, if the
96 company learns of the death of the insured, ~~the~~ ~~or~~ annuitant, ~~or~~
97 the retained asset account holder and the beneficiary has not
98 communicated with the insurer within 4 months after the death,
99 the company shall take reasonable steps to pay the proceeds to
100 the beneficiary.

101 (7) Commencing 2 years after July 1, 1987, every change of
102 beneficiary form issued by an insurance company under any life
103 or endowment insurance policy or annuity contract to an insured
104 or owner who is a resident of this state must request the
105 following information:

106 (a) The name of each beneficiary, or if a class of
107 beneficiaries is named, the name of each current beneficiary in
108 the class.

109 (b) The address of each beneficiary.

110 (c) The relationship of each beneficiary to the insured.

111 (8) (a) Notwithstanding any other provision of law, an
112 insurer shall perform a comparison of its insureds' life or
113 endowment insurance policies, annuity contracts that provide a
114 death benefit, and retained asset accounts that were in force at
115 any time on or after January 1, 1992, against the United States
116 Social Security Administration Death Master File to determine if

Page 4 of 6

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

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2016966__

117 the death of an insured, an annuitant, or a retained asset
 118 account holder is indicated. The comparison must be made on at
 119 least an annual basis before August 31 of each year. If an
 120 insurer performs such a comparison regarding its annuities or
 121 other books of business more frequently than once a year, the
 122 insurer must also make a comparison regarding its life insurance
 123 policies, annuity contracts that provide a death benefit, and
 124 retained asset accounts at the same frequency as is made
 125 regarding its annuities or other books or lines of business.

126 (b) There is a rebuttable presumption that an insured, an
 127 annuitant, or a retained asset account holder is deceased if the
 128 date of the insured's, annuitant's, or retained asset account
 129 holder's death is indicated on the United States Social Security
 130 Administration Death Master File. The insurer shall account for
 131 common variations in data and for any partial names, social
 132 security numbers, dates of birth, and addresses of the insured,
 133 the annuity owner, or the retained asset account holder which
 134 would otherwise preclude an exact match.

135 (c) For purposes of this section, a policy, a contract, or
 136 a retained asset account is deemed to be in force if it has not
 137 lapsed, has not been cancelled, or has not been terminated at
 138 the time of death of the insured, the annuity owner, or the
 139 retained asset account holder.

140 (d) This subsection does not apply to an annuity contract
 141 that is issued in connection with an employment-based plan
 142 subject to the Employee Retirement Income Security Act of 1974
 143 or that is issued to fund an employment-based retirement plan,
 144 including any deferred compensation plans.

145 (9) An insurer is not required to confirm the possible

30-00996B-16

2016966__

146 death of an insured with respect to benefits payable under
 147 accidental death or when the insurer does not perform
 148 recordkeeping functions. For purposes of this subsection, the
 149 term "recordkeeping" means maintaining, or being legally or
 150 contractually responsible for maintaining, either directly or
 151 through a third party, the information necessary to process a
 152 claim or having access to information necessary to process a
 153 claim.

154 (10) An insurer, or any agent or third party that it
 155 engages or that works on its behalf, may not charge insureds,
 156 annuity owners, retained asset account holders, beneficiaries,
 157 or the estates of insureds, annuity owners, retained asset
 158 account holders, or the beneficiaries of an estate any fees or
 159 costs associated with any search, verification, claim, or
 160 delivery of funds conducted pursuant to this section.

161 Section 2. The amendments made by this act are remedial in
 162 nature and apply retroactively. Fines, penalties, or additional
 163 interest may not be imposed due to the failure to report and
 164 remit an unclaimed life or an endowment insurance policy, a
 165 retained asset account, or an annuity contract with a death
 166 benefit if any unclaimed life or endowment insurance policy,
 167 retained asset account, or annuity contract proceeds are
 168 reported and remitted to the Department of Financial Services on
 169 or before May 1, 2021.

170 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

966
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic Unclaimed Properties

Name Kevin McCarty

Job Title Commissioner

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Office of Insurance 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/2016
Meeting Date

S.966
Bill Number (if applicable)

Topic UNCLM'D PROPERTY

Amendment Barcode (if applicable)

Name CURT LEONARD

Job Title REGIONAL V.P., STATE RELATIONS

Address 150 S. MONROE ST.
Street

Phone 850-274-1422

TALCAHASSEE FL 32301
City State Zip

Email curtleonard@acli.com

Speaking: For Against Information

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

Representing AMERICAN COUNCIL OF LIFE INSURERS

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)

1-19-16

Meeting Date

SB 966
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 S. Monroe St

Phone 880-222-7200

Street

Tallahassee, FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FIC - Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-16

Meeting Date

SB 966

Bill Number (if applicable)

Topic SB 966

Amendment Barcode (if applicable)

Name CFO Jeff Atwater

Job Title Chief Financial Officer

Address 400 N Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

City

State

Zip

Email Jeff.atwater@myfloridaefo.com

Speaking: For Against Information

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

Representing Himself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 1118

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Transportation Network Company Insurance

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies (TNCs). Transportation network companies use smartphone technology to connect individuals who want to ride with private drivers for a fee. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee.

This bill requires transportation network companies or drivers to maintain primary automobile liability insurance of at least \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, and \$50,000 for property damage. The bill creates two time periods during which the insurance is required. The first time period is during the time when a driver is logged on to the transportation network company's digital network but not providing a prearranged ride. The second time period is during a prearranged ride. The bill also subjects TNC drivers to a requirement to maintain liability insurance of at least \$25,000 for death and bodily injury per person, \$50,000 for death and bodily injury per incident, and \$10,000 for property damage. Such coverage would apply at all times other than during a prearranged ride or when the driver is logged on to the TNC digital network but not providing a prearranged ride. The bill also requires that coverage meeting the requirements of the Florida Motor Vehicle No-Fault Law be maintained at all times.

The insurance required by this bill may be offered by authorized insurers which are members of the Florida Insurance Guaranty Association or by eligible surplus lines insurers if the surplus

lines insurer is rated superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation.

The bill allows insurers that provide personal automobile insurance policies to exclude from coverage loss or injury when a driver is engaged in a prearranged ride or logged on to the transportation network company network. Insurers are allowed to offer such coverage by contract or endorsement.

The bill requires drivers to carry proof of transportation network company insurance and provide information to law enforcement and other parties in the event of an accident. A transportation network company is required to assist in claims investigations by providing information relating to times a driver is logged on to the network.

It preempts any local ordinances imposing insurance requirements on transportation network companies.

This bill takes effect July 1, 2017.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as “transportation network companies” (TNCs), rather than as vehicles for hire.

Transportation Network Companies

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. At least 29 states have enacted legislation regarding transportation network companies.¹

Drivers generally use their personal vehicles and most personal automobile policies contain a “livery” exclusion that excludes coverage if the vehicle is carrying passengers for hire.²

Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises that its policy provides from the moment a driver accepts a trip to its conclusion, \$1 million of liability per incident, \$1 million of uninsured/underinsured motorist coverage per incident, and

¹See <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited January 12, 2016).

² The “livery” exclusion in Florida is mentioned in the definition of “motor vehicle insurance” contained in s. 627.041, F.S.

comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the vehicle.³ Coverage provided by ridesharing companies is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In 2015, stakeholders agreed to model legislation called the TNC Insurance Compromise Model Bill and have sought passage of model legislation throughout the country.⁴

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage.⁵

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for TNCs and TNC drivers. Many of the provisions of this bill are found in the National Association of Insurance Commissioners TNC Insurance Compromise Model Bill.⁶ This bill defines a TNC as an entity which uses a digital network⁷ to connect TNC riders⁸ with TNC drivers⁹ who provide prearranged rides. A TNC does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

The bill requires TNCs or TNC drivers to carry insurance. The coverage can be maintained by the TNC or by the TNC driver or by a combination of both. The coverage must obligate the TNC to defend the claim. The coverage may not be contingent on the denial of the claim by the TNC driver's personal policy. That is, the insurance must be primary.

The bill creates two time periods during which the insurance must provide coverage and provides different coverage requirements for each time period. The first time period includes when a TNC driver is engaged in a prearranged ride and when a TNC driver is logged on to a TNC's digital network but not engaged in a prearranged ride. A "prearranged ride" begins when the driver

³ See Uber, *Insurance for Uberx with Ridesharing*, (February 10, 2014) <http://blog.uber.com/ridesharinginsurance> (last visited January 12, 2016).

⁴ See <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/> (last visited January 12, 2016).

⁵ See s. 324.032(1), F.S.

⁶ See http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf (last visited January 12, 2016).

⁷ The bill defines "digital network" as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

⁸ The bill defines TNC "rider" as an individual who directly or indirectly uses a TNC's digital network to connect with a TNC driver who provides transportation services in the TNC driver's personal vehicle. The bill defines personal vehicle as a vehicle used by the TNC driver in connection with providing TNC services and which is owned, leased, or otherwise authorized for use by the TNC driver. The bill provides that a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

⁹ The bill defines TNC "driver" as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

accepts a request for a ride by a rider through a digital network controlled by a TNC. It continues while the driver transports the rider and ends when the last rider departs from the vehicle.¹⁰ During this time period the TNC driver, or the TNC on the driver's behalf, must maintain liability coverage of at least \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, \$50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.¹¹ If the insurance maintained by the TNC driver does not provide the required coverage or the coverage lapses, the TNC must maintain the required coverage beginning with the first dollar of the claim.

The second time period is when a TNC driver is not logged on to the TNC digital network. During that time period, the following insurance requirements apply:

- Primary automobile insurance liability coverage of at least \$25,000 for death and bodily injury per person;
- Primary automobile insurance liability coverage of at least \$50,000 for death and bodily injury per incident;
- Property damage coverage of at least \$10,000; and
- Coverage that meets the requirements of the Florida Motor Vehicle No-Fault Law.

It is the driver's responsibility to maintain this coverage. If it lapses, the transportation network company is not required to maintain the coverage.

If a driver carries insurance as required by this bill, the driver is deemed to meet the insurance requirements of ch. 324, F.S., and s. 627.733, F.S.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose to a TNC driver the type and limits of insurance coverage provided by the TNC and the type of automobile insurance coverage that the TNC driver must maintain before the TNC driver may accept a request for a prearranged ride. The TNC must inform the driver that the provision of rides for compensation not covered by the bill subjects the driver to the coverage requirements pursuant to s. 324.032(1), F.S. (relating to insurance coverage to taxis, limousines, jitneys and other for-hire vehicles) and that failure to comply with such requirements subjects the driver to penalties.

The bill requires the TNC driver to carry proof of insurance required under the bill at all times during the TNC driver's use of a personal vehicle. In the event of an accident, the bill requires:

- The TNC driver to provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application controlled by a TNC;
- The TNC driver to disclose, upon request, to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the TNC driver was logged on to the TNC digital network or engaged in a prearranged ride at the time of the accident.

¹⁰ A prearranged ride does not include transportation provided by a taxi, jitney, limousine, for-hire vehicle as defined in s. 320.01(15), F.S., or street hail service.

¹¹ See ss. 627.730-627.7405, F.S.

Insurer Exclusions

The bill provides that an insurer that provides personal automobile insurance policies may exclude from coverage any loss or injury that occurs while a TNC driver is logged into the TNC's digital network or while a driver is engaged in a prearranged ride. The right to exclude coverage includes:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision damage coverage.

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2017. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

The bill does not require a personal automobile insurance policy to provide coverage while the driver is logged into the TNC digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. The bill allows an insurer to provide coverage by contract or endorsement when a personal vehicle is used for such purposes.

Claims Investigations

The bill requires a TNC and any insurer potentially providing coverage for a claim to cooperate to facilitate the exchange of information. The information must provide the precise times that a driver logged on and off the TNC's digital network during the 12 hour periods immediately before and after the accident and provide a clear description of automobile insurance maintained.

Preemption

The bill provides that TNC insurance requirements are governed exclusively by the provisions of the bill and any rules adopted by the Financial Services Commission. A political subdivision may not adopt ordinances imposing insurance requirements on TNCs or TNC drivers. Any existing ordinances are preempted.

Other Provisions

Section 316.066, F.S., requires law enforcement officers to submit crash reports to the Department of Highway Safety and Motor Vehicles after an accident. The reports must include information relating to drivers, passengers, witnesses, and insurance. This bill amends s. 316.066, F.S., to require crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers to include a statement as to whether any driver was provided a prearranged ride or logged into a TNC's digital network at the time of the accident. A

driver that provides a false statement in connection with such information commits a second degree misdemeanor.

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a “superior,” “excellent,” “exceptional,” or equivalent rating by a rating agency acceptable to the Office of Insurance Regulation.

If the TNC’s insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC’s insurer must issue payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC’s digital network.

The bill provides that the Financial Services Commission may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

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 imposes insurance requirements on TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs onto their customers.

C. Government Sector Impact:

There could be an indeterminate workload impact on the Office of Insurance Regulation dealing with form filings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 316.066 of the Florida Statutes.

This bill creates section 627.748 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on January 19, 2016:

The CS changes the required insurance requirements to \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, \$50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law for time periods in which the driver is logged on to the TNC's digital network and for time periods in which the driver is providing a prearranged ride. At all other times, the coverage requirements are \$25,000 for death and bodily injury per person, \$50,000 for death and bodily injury per incident, \$10,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.

The CS provides that information about whether a driver is logged on a digital network must be included in crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers.

The CS removed a reference to A.M. Best Company and gave the Office of Insurance Regulation the discretion to rely on other rating agencies to determine financial strength ratings of surplus lines insurers.

B. Amendments:

None.



390508

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/19/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 49 - 250

and insert:

Section 1. Paragraphs (b) and (c) of subsection (1) of section 316.066, Florida Statutes, are amended, and paragraph (e) is added to subsection (3) of that section, to read:

316.066 Written reports of crashes.—

(1)

(b) The Florida Traffic Crash Report, Long Form must



390508

11 include:

12 1. The date, time, and location of the crash.

13 2. A description of the vehicles involved.

14 3. The names and addresses of the parties involved,
15 including all drivers and passengers, and the identification of
16 the vehicle in which each was a driver or a passenger.

17 4. The names and addresses of witnesses.

18 5. The name, badge number, and law enforcement agency of
19 the officer investigating the crash.

20 6. The names of the insurance companies for the respective
21 parties involved in the crash.

22 7. A statement as to whether, at the time of the accident,
23 any driver was providing a prearranged ride or logged into a
24 digital network of a transportation network company, as those
25 terms are defined in s. 627.748.

26 (c) In any crash for which a Florida Traffic Crash Report,
27 Long Form is not required by this section and which occurs on
28 the public roadways of this state, the law enforcement officer
29 shall complete a short-form crash report or provide a driver
30 exchange-of-information form, to be completed by all drivers and
31 passengers involved in the crash, which requires the
32 identification of each vehicle that the drivers and passengers
33 were in. The short-form report must include:

34 1. The date, time, and location of the crash.

35 2. A description of the vehicles involved.

36 3. The names and addresses of the parties involved,
37 including all drivers and passengers, and the identification of
38 the vehicle in which each was a driver or a passenger.

39 4. The names and addresses of witnesses.



390508

40 5. The name, badge number, and law enforcement agency of
41 the officer investigating the crash.

42 6. The names of the insurance companies for the respective
43 parties involved in the crash.

44 7. A statement as to whether, at the time of the accident,
45 any driver was providing a prearranged ride or logged into a
46 digital network of a transportation network company, as those
47 terms are defined in s. 627.748.

48 (3)

49 (e) Any driver who provides a false statement to a law
50 enforcement officer in connection with the information that is
51 required to be reported under subparagraph (1) (b) 7. or
52 subparagraph (1) (c) 7. commits a misdemeanor of the second
53 degree, punishable as provided in s. 775.082 or s. 775.083.

54 Section 2. Section 627.748, Florida Statutes, is created to
55 read:

56 627.748 Transportation network company insurance.—

57 (1) It is the intent of the Legislature to provide for
58 statewide uniformity of laws governing the insurance
59 requirements imposed on transportation network companies and
60 transportation network company drivers.

61 (2) For purposes of this section, the term:

62 (a) "Digital network" means an online application,
63 software, website, or system offered or used by a transportation
64 network company which enables the prearrangement of rides with
65 transportation network company drivers.

66 (b) "Personal vehicle" means a vehicle, however titled,
67 which is used by a transportation network company driver in
68 connection with providing transportation network company service



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69 and which:

70 1. Is owned, leased, or otherwise authorized for use by the
71 transportation network company driver; and

72 2. Is not a taxi, jitney, limousine, or for-hire vehicle as
73 that term is defined in s. 320.01(15).

74
75 Notwithstanding any other law, a vehicle that is let or rented
76 to another for consideration may be used as a personal vehicle.

77 (c) "Prearranged ride" means the provision of
78 transportation by a driver to or on behalf of a rider, beginning
79 when a driver accepts a request for a ride by a rider through a
80 digital network controlled by a transportation network company,
81 continuing while the driver transports the rider, and ending
82 when the last rider departs from the personal vehicle. A
83 prearranged ride does not include transportation provided using
84 a taxi, jitney, limousine, for-hire vehicle as defined in s.
85 320.01(15), or street hail service.

86 (d) "Transportation network company" or "company" means a
87 corporation, partnership, sole proprietorship, or other entity
88 operating in this state which uses a digital network to connect
89 transportation network company riders to transportation network
90 company drivers who provide prearranged rides. A transportation
91 network company does not include an individual, corporation,
92 partnership, sole proprietorship, or other entity arranging
93 nonemergency medical transportation for individuals qualifying
94 for Medicaid or Medicare pursuant to a contract with the state
95 or a managed care organization.

96 (e) "Transportation network company driver" or "driver"
97 means an individual who:



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98 1. Receives connections to potential riders and related
99 services from a transportation network company in exchange for
100 any form of compensation, including payment of a fee to the
101 transportation network company; and

102 2. Uses a personal vehicle to offer or provide a
103 prearranged ride to riders upon connection through a digital
104 network controlled by a transportation network company in return
105 for compensation, including payment of a fee.

106 (f) "Transportation network company rider" or "rider" means
107 an individual who directly or indirectly uses a transportation
108 network company's digital network to connect with a
109 transportation network company driver who provides
110 transportation services to the individual in the driver's
111 personal vehicle.

112 (3) (a) A transportation network company driver, or a
113 transportation network company on the driver's behalf, shall
114 maintain primary automobile insurance that recognizes that the
115 driver is a transportation network company driver or that the
116 driver otherwise uses a personal vehicle to transport riders for
117 compensation. Such primary automobile insurance must cover the
118 driver as required under this section, including while the
119 driver is logged on to the transportation network company's
120 digital network and is engaged in a prearranged ride.

121 (b) The following automobile insurance coverage
122 requirements apply while a transportation network company driver
123 is logged on to the transportation network company's digital
124 network and is available to receive transportation requests, but
125 is not engaged in a prearranged ride:

126 1. Primary automobile liability insurance coverage of at



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127 least \$50,000 for death and bodily injury per person, \$100,000
128 for death and bodily injury per incident, and \$25,000 for
129 property damage; and

130 2. Primary automobile insurance coverage that meets the
131 minimum requirements under ss. 627.730-627.7405.

132 (c) While engaged in a prearranged ride, a transportation
133 network company driver must be covered by primary automobile
134 liability insurance coverage of at least \$1 million for death
135 and bodily injury and property damage.

136 (d) The coverage requirements of paragraphs (b) and (c) may
137 be satisfied by automobile insurance maintained by the
138 transportation network company driver, by the transportation
139 network company, or by a combination of both.

140 (e) If the insurance maintained by a driver under paragraph
141 (b) or paragraph (c) lapses or does not provide the required
142 coverage, the transportation network company must maintain
143 insurance that provides the coverage required by this section
144 beginning with the first dollar of a claim and must obligate the
145 insurer to defend such a claim in this state.

146 (f) Coverage under an automobile insurance policy
147 maintained by the transportation network company may not be
148 contingent on a denial of a claim under the driver's personal
149 automobile liability insurance policy, nor shall a personal
150 automobile insurer be required to first deny a claim.

151 (g) Automobile insurance required by this section must be
152 provided by an insurer authorized to do business in this state
153 which is a member of the Florida Insurance Guaranty Association
154 or an eligible surplus lines insurer that is rated "A-" or
155 higher by A.M. Best Company.



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156 (h) Automobile insurance that satisfies the requirements of
157 this section is deemed to satisfy the financial responsibility
158 requirements imposed under chapter 324 and the security
159 requirements imposed under s. 627.733. However, the provision of
160 transportation to persons for compensation that is not covered
161 under this section subjects a vehicle and driver to the
162 requirements of chapters 320 and 324.

163 (i) A transportation network company driver shall carry
164 proof of insurance coverage that meets the requirements of
165 paragraphs (b) and (c) at all times during his or her use of a
166 personal vehicle. In the event of an accident:

167 1. The driver shall provide the insurance coverage
168 information to the directly involved parties, automobile
169 insurers, and investigating law enforcement officers. Proof of
170 financial responsibility may be provided through a digital
171 telephone application under s. 316.646 which is controlled by a
172 transportation network company.

173 2. Upon request, the driver shall disclose to the directly
174 involved parties, automobile insurers, and investigating law
175 enforcement officers whether the driver, at the time of the
176 accident, was logged on to the transportation network company's
177 digital network or engaged in a prearranged ride.

178 (j) Before a driver may accept a request for a prearranged
179 ride on the transportation network company's digital network,
180 the transportation network company shall disclose in writing to
181 each transportation network company driver:

182 1. The type and limits of insurance coverage provided by
183 the transportation network company;

184 2. The type of automobile insurance coverage that the



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185 driver must maintain while the driver uses a personal vehicle in
186 connection with the transportation network company; and

187 3. That the provision of rides for compensation, whether
188 prearranged or otherwise, which is not covered by this section
189 subjects the driver to the coverage requirements imposed by s.
190 324.032(1) and that failure to meet such limits subjects the
191 driver to penalties provided in s. 324.221, up to and including
192 a misdemeanor of the second degree.

193 (k) An insurer that provides personal automobile insurance
194 policies under this part may exclude from coverage under a
195 policy issued to an owner or operator of a personal vehicle any
196 loss or injury that occurs while a driver is logged on to a
197 transportation network company's digital network or while a
198 driver is engaged in a prearranged ride. Such right to exclude
199 coverage applies to any coverage under an automobile insurance
200 policy, including, but not limited to:

201 1. Liability coverage for bodily injury and property
202 damage.

203 2. Personal injury protection coverage.

204 3. Uninsured and underinsured motorist coverage.

205 4. Medical payments coverage.

206 5. Comprehensive physical damage coverage.

207 6. Collision physical damage coverage.

208 (l) The exclusions authorized under paragraph (k) apply
209 notwithstanding any financial responsibility requirements under
210 chapter 324. This section does not require that a personal
211 automobile insurance policy provide coverage while the driver is
212 logged on to the transportation network company's digital
213 network, while the driver is engaged in a prearranged ride, or



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214 while the driver otherwise uses a personal vehicle to transport
215 riders for compensation. However, an insurer may elect to
216 provide coverage by contract or endorsement for such driver's
217 personal vehicle used for such purposes.

218 (m) An insurer that excludes coverage as authorized under
219 paragraph (k):

220 1. Does not have a duty to defend or indemnify an excluded
221 claim. This section does not invalidate or limit an exclusion
222 contained in a policy, including any policy in use or approved
223 for use in this state before July 1, 2017.

224 2. Has a right of contribution against other insurers that
225 provide automobile insurance to the same driver in satisfaction
226 of the coverage requirements of this section at the time of
227 loss, if the insurer defends or indemnifies a claim against a
228 driver which is excluded under the terms of its policy.

229 (n) In a claims investigation, a transportation network
230 company and any insurer providing coverage for a claim under
231 this section shall cooperate to facilitate the exchange of
232 relevant information with directly involved parties and insurers
233 of the transportation network company driver, if applicable.

234 Such information must provide:

235 1. The precise times that a driver logged on and off the
236 transportation network company's digital network during the 12-
237 hour period immediately before and immediately after the
238 accident.

239 2. A clear description of the coverage, any exclusions, and
240 the limits provided under automobile insurance maintained under
241 this section.

242 (o) If a transportation network company's insurer makes a



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243 payment for a claim covered under comprehensive coverage or
244 collision coverage, the transportation network company shall
245 cause its insurer to issue the payment directly to the entity
246 repairing the vehicle or jointly to the owner of the vehicle and
247 the primary lienholder on the covered vehicle.

248 (4) Unless agreed to in a written contract, a
249 transportation network company is not deemed to control, direct,
250 or manage the personal vehicles that, or the transportation
251 network company drivers who, connect to its digital network.

252 (5) The Financial Services Commission may adopt rules to
253 administer this section.

254 Section 3. PREEMPTION.—Notwithstanding any other law,
255 transportation network company insurance requirements are
256 governed exclusively by this section and any rules adopted by
257 the Financial Services Commission to administer this section.

258
259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete lines 3 - 42

262 and insert:

263 insurance; amending s. 316.066, F.S.; requiring a
264 statement in certain crash reports as to whether any
265 driver at the time of the accident was providing a
266 prearranged ride or logged into a digital network of a
267 transportation network company; providing a criminal
268 penalty for a driver who provides a false statement to
269 a law enforcement officer in connection with certain
270 information; creating s. 627.748, F.S.; providing
271 legislative intent; defining terms; requiring a



272 transportation network company driver or such company
273 on the driver's behalf, or a combination thereof, to
274 maintain primary automobile insurance issued by
275 specified insurers with certain coverages in specified
276 amounts during certain timeframes; requiring a
277 transportation network company driver to maintain
278 primary automobile insurance issued by specified
279 insurers with certain coverages in specified amounts
280 during certain timeframes; requiring the
281 transportation network company to provide automobile
282 insurance in the event insurance maintained by the
283 transportation network company driver lapses or does
284 not provide the required coverage; requiring a
285 transportation network company driver to carry proof
286 of certain insurance coverage at all times during his
287 or her use of a personal vehicle and to disclose
288 specified information in the event of an accident;
289 requiring a transportation network company to make
290 certain disclosures to transportation network company
291 drivers; authorizing insurers to exclude certain
292 coverages during specified periods for policies issued
293 to transportation network company drivers for personal
294 vehicles; requiring a transportation network company
295 and certain insurers to cooperate during a claims
296 investigation to facilitate the exchange of specified
297 information; requiring a transportation network
298 company to cause its insurer to issue payments for
299 claims directly to specified entities under certain
300 circumstances; providing that unless agreed to in a



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301 written contract, a transportation network company is
302 not deemed to control, direct, or manage the personal
303 vehicles or transportation network company drivers
304 that connect to its digital network; authorizing the
305 Financial Services Commission to adopt rules;
306 providing for



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
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	.	
	.	

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

1 **Senate Substitute for Amendment (390508) (with title**
2 **amendment)**

3
4 Delete lines 49 - 250
5 and insert:

6 Section 1. Paragraphs (b) and (c) of subsection (1) of
7 section 316.066, Florida Statutes, are amended, and paragraph
8 (e) is added to subsection (3) of that section, to read:

9 316.066 Written reports of crashes.—
10 (1)



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11 (b) The Florida Traffic Crash Report, Long Form must
12 include:

- 13 1. The date, time, and location of the crash.
- 14 2. A description of the vehicles involved.
- 15 3. The names and addresses of the parties involved,
16 including all drivers and passengers, and the identification of
17 the vehicle in which each was a driver or a passenger.
- 18 4. The names and addresses of witnesses.
- 19 5. The name, badge number, and law enforcement agency of
20 the officer investigating the crash.
- 21 6. The names of the insurance companies for the respective
22 parties involved in the crash.
- 23 7. A statement as to whether, at the time of the accident,
24 any driver was providing a prearranged ride or logged into a
25 digital network of a transportation network company, as those
26 terms are defined in s. 627.748.

27 (c) In any crash for which a Florida Traffic Crash Report,
28 Long Form is not required by this section and which occurs on
29 the public roadways of this state, the law enforcement officer
30 shall complete a short-form crash report or provide a driver
31 exchange-of-information form, to be completed by all drivers and
32 passengers involved in the crash, which requires the
33 identification of each vehicle that the drivers and passengers
34 were in. The short-form report must include:

- 35 1. The date, time, and location of the crash.
- 36 2. A description of the vehicles involved.
- 37 3. The names and addresses of the parties involved,
38 including all drivers and passengers, and the identification of
39 the vehicle in which each was a driver or a passenger.



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40 4. The names and addresses of witnesses.

41 5. The name, badge number, and law enforcement agency of
42 the officer investigating the crash.

43 6. The names of the insurance companies for the respective
44 parties involved in the crash.

45 7. A statement as to whether, at the time of the accident,
46 any driver was providing a prearranged ride or logged into a
47 digital network of a transportation network company, as those
48 terms are defined in s. 627.748.

49 (3)

50 (e) Any driver who provides a false statement to a law
51 enforcement officer in connection with the information that is
52 required to be reported under subparagraph (1)(b)7. or
53 subparagraph (1)(c)7. commits a misdemeanor of the second
54 degree, punishable as provided in s. 775.082 or s. 775.083.

55 Section 2. Section 627.748, Florida Statutes, is created to
56 read:

57 627.748 Transportation network company insurance.—

58 (1) It is the intent of the Legislature to provide for
59 statewide uniformity of laws governing the insurance
60 requirements imposed on transportation network companies and
61 transportation network company drivers.

62 (2) For purposes of this section, the term:

63 (a) "Digital network" means an online application,
64 software, website, or system offered or used by a transportation
65 network company which enables the prearrangement of rides with
66 transportation network company drivers.

67 (b) "Personal vehicle" means a vehicle, however titled,
68 which is used by a transportation network company driver in



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69 connection with providing transportation network company service
70 and which:

71 1. Is owned, leased, or otherwise authorized for use by the
72 transportation network company driver; and

73 2. Is not a taxi, jitney, limousine, or for-hire vehicle as
74 that term is defined in s. 320.01(15).

75
76 Notwithstanding any other law, a vehicle that is let or rented
77 to another for consideration may be used as a personal vehicle.

78 (c) "Prearranged ride" means the provision of
79 transportation by a driver to or on behalf of a rider, beginning
80 when a driver accepts a request for a ride by a rider through a
81 digital network controlled by a transportation network company,
82 continuing while the driver transports the rider, and ending
83 when the last rider departs from the personal vehicle. A
84 prearranged ride does not include transportation provided using
85 a taxi, jitney, limousine, for-hire vehicle as defined in s.
86 320.01(15), or street hail service.

87 (d) "Transportation network company" or "company" means a
88 corporation, partnership, sole proprietorship, or other entity
89 operating in this state which uses a digital network to connect
90 transportation network company riders to transportation network
91 company drivers who provide prearranged rides. A transportation
92 network company does not include an individual, corporation,
93 partnership, sole proprietorship, or other entity arranging
94 nonemergency medical transportation for individuals qualifying
95 for Medicaid or Medicare pursuant to a contract with the state
96 or a managed care organization.

97 (e) "Transportation network company driver" or "driver"



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98 means an individual who:

99 1. Receives connections to potential riders and related
100 services from a transportation network company in exchange for
101 any form of compensation, including payment of a fee to the
102 transportation network company; and

103 2. Uses a personal vehicle to offer or provide a
104 prearranged ride to riders upon connection through a digital
105 network controlled by a transportation network company in return
106 for compensation, including payment of a fee.

107 (f) "Transportation network company rider" or "rider" means
108 an individual who directly or indirectly uses a transportation
109 network company's digital network to connect with a
110 transportation network company driver who provides
111 transportation services to the individual in the driver's
112 personal vehicle.

113 (3) (a) A transportation network company driver, or a
114 transportation network company on the driver's behalf, shall
115 maintain primary automobile insurance that recognizes that the
116 driver is a transportation network company driver or that the
117 driver otherwise uses a personal vehicle to transport riders for
118 compensation. Such primary automobile insurance must cover the
119 driver as required under this section, including while the
120 driver is logged on to the transportation network company's
121 digital network but is not engaged in a prearranged ride, and
122 while the driver is engaged in a prearranged ride.

123 (b) The following automobile insurance coverage
124 requirements apply while a transportation network company driver
125 is logged on to the transportation network company's digital
126 network but is not engaged in a prearranged ride, and while the



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127 driver is engaged in a prearranged ride:

128 1. Primary automobile liability insurance coverage of at
129 least \$125,000 for death and bodily injury per person, \$250,000
130 for death and bodily injury per incident, and \$50,000 for
131 property damage; and

132 2. Primary automobile insurance coverage that meets the
133 minimum requirements under ss. 627.730-627.7405.

134 (c) At all times other than the periods specified in
135 paragraph (b), the following automobile insurance requirements
136 apply if a driver has an agreement with a transportation network
137 company to provide any form of transportation service to riders:

138 1. Primary automobile liability insurance coverage of at
139 least \$25,000 for death and bodily injury per person, \$50,000
140 for death and bodily injury per incident, and \$10,000 for
141 property damage; and

142 2. Primary automobile insurance that provides the minimum
143 requirements under ss. 627.730-627.7405.

144 (d) The coverage requirements of paragraphs (b) and (c) may
145 be satisfied by automobile insurance maintained by the
146 transportation network company driver, by the transportation
147 network company, or by a combination of both.

148 (e) If the insurance maintained by a driver under paragraph
149 (b) lapses or does not provide the required coverage, the
150 transportation network company must maintain insurance that
151 provides the coverage required by this section beginning with
152 the first dollar of a claim and must obligate the insurer to
153 defend such a claim in this state.

154 (f) Coverage under an automobile insurance policy
155 maintained by the transportation network company may not be



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156 contingent on a denial of a claim under the driver's personal
157 automobile liability insurance policy, nor shall a personal
158 automobile insurer be required to first deny a claim.

159 (g) Automobile insurance required by this section must be
160 provided by an insurer authorized to do business in this state
161 which is a member of the Florida Insurance Guaranty Association
162 or an eligible surplus lines insurer that has a superior, an
163 excellent, an exceptional, or an equivalent financial strength
164 rating by a rating agency acceptable to the office.

165 (h) Automobile insurance that satisfies the requirements of
166 this section is deemed to satisfy the financial responsibility
167 requirements imposed under chapter 324 and the security
168 requirements imposed under s. 627.733. However, the provision of
169 transportation to persons for compensation that is not covered
170 under this section subjects a vehicle and driver to the
171 requirements of chapters 320 and 324.

172 (i) A transportation network company driver shall carry
173 proof of insurance coverage that meets the requirements of
174 paragraphs (b) and (c) at all times during his or her use of a
175 personal vehicle. In the event of an accident:

176 1. The driver shall provide the insurance coverage
177 information to the directly involved parties, automobile
178 insurers, and investigating law enforcement officers. Proof of
179 financial responsibility may be provided through a digital
180 telephone application under s. 316.646 which is controlled by a
181 transportation network company.

182 2. Upon request, the driver shall disclose to the directly
183 involved parties, automobile insurers, and investigating law
184 enforcement officers whether the driver, at the time of the



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185 accident, was logged on to the transportation network company's
186 digital network or engaged in a prearranged ride.

187 (j) Before a driver may accept a request for a prearranged
188 ride on the transportation network company's digital network,
189 the transportation network company shall disclose in writing to
190 each transportation network company driver:

191 1. The type and limits of insurance coverage provided by
192 the transportation network company;

193 2. The type of automobile insurance coverage that the
194 driver must maintain while the driver uses a personal vehicle in
195 connection with the transportation network company; and

196 3. That the provision of rides for compensation, whether
197 prearranged or otherwise, which is not covered by this section
198 subjects the driver to the coverage requirements imposed by s.
199 324.032(1) and that failure to meet such limits subjects the
200 driver to penalties provided in s. 324.221, up to and including
201 a misdemeanor of the second degree.

202 (k) An insurer that provides personal automobile insurance
203 policies under this part may exclude from coverage under a
204 policy issued to an owner or operator of a personal vehicle any
205 loss or injury that occurs while a driver is logged on to a
206 transportation network company's digital network or while a
207 driver is engaged in a prearranged ride. Such right to exclude
208 coverage applies to any coverage under an automobile insurance
209 policy, including, but not limited to:

210 1. Liability coverage for bodily injury and property
211 damage.

212 2. Personal injury protection coverage.

213 3. Uninsured and underinsured motorist coverage.



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214 4. Medical payments coverage.

215 5. Comprehensive physical damage coverage.

216 6. Collision physical damage coverage.

217 (l) The exclusions authorized under paragraph (k) apply
218 notwithstanding any financial responsibility requirements under
219 chapter 324. This section does not require that a personal
220 automobile insurance policy provide coverage while the driver is
221 logged on to the transportation network company's digital
222 network, while the driver is engaged in a prearranged ride, or
223 while the driver otherwise uses a personal vehicle to transport
224 riders for compensation. However, an insurer may elect to
225 provide coverage by contract or endorsement for such driver's
226 personal vehicle used for such purposes.

227 (m) An insurer that excludes coverage as authorized under
228 paragraph (k):

229 1. Does not have a duty to defend or indemnify an excluded
230 claim. This section does not invalidate or limit an exclusion
231 contained in a policy, including any policy in use or approved
232 for use in this state before July 1, 2017.

233 2. Has a right of contribution against other insurers that
234 provide automobile insurance to the same driver in satisfaction
235 of the coverage requirements of this section at the time of
236 loss, if the insurer defends or indemnifies a claim against a
237 driver which is excluded under the terms of its policy.

238 (n) In a claims investigation, a transportation network
239 company and any insurer providing coverage for a claim under
240 this section shall cooperate to facilitate the exchange of
241 relevant information with directly involved parties and insurers
242 of the transportation network company driver, if applicable.



243 Such information must provide:

244 1. The precise times that a driver logged on and off the
245 transportation network company's digital network during the 12-
246 hour period immediately before and immediately after the
247 accident.

248 2. A clear description of the coverage, any exclusions, and
249 the limits provided under automobile insurance maintained under
250 this section.

251 (o) If a transportation network company's insurer makes a
252 payment for a claim covered under comprehensive coverage or
253 collision coverage, the transportation network company shall
254 cause its insurer to issue the payment directly to the entity
255 repairing the vehicle or jointly to the owner of the vehicle and
256 the primary lienholder on the covered vehicle.

257 (4) Unless agreed to in a written contract, a
258 transportation network company is not deemed to control, direct,
259 or manage the personal vehicles that, or the transportation
260 network company drivers who, connect to its digital network.

261 (5) The Financial Services Commission may adopt rules to
262 administer this section.

263 Section 3. PREEMPTION.—Notwithstanding any other law,
264 transportation network company insurance requirements are
265 governed exclusively by this section and any rules adopted by
266 the Financial Services Commission to administer this section.

267
268 ===== T I T L E A M E N D M E N T =====

269 And the title is amended as follows:

270 Delete lines 3 - 42

271 and insert:



272 insurance; amending s. 316.066, F.S.; requiring a
273 statement in certain crash reports as to whether any
274 driver at the time of the accident was providing a
275 prearranged ride or logged into a digital network of a
276 transportation network company; providing a criminal
277 penalty for a driver who provides a false statement to
278 a law enforcement officer in connection with certain
279 information; creating s. 627.748, F.S.; providing
280 legislative intent; defining terms; requiring a
281 transportation network company driver, or the
282 transportation network company on the driver's behalf,
283 to maintain certain primary automobile insurance under
284 certain circumstances; providing coverage requirements
285 under specified circumstances; requiring a
286 transportation network company to maintain certain
287 insurance and obligate the insurer to defend a certain
288 claim if specified insurance by the driver lapses or
289 does not provide the required coverage; providing that
290 certain coverage may not be contingent on a claim
291 denial; specifying requirements for insurers who
292 provide certain automobile insurance; requiring a
293 transportation network company driver to carry proof
294 of certain insurance coverage at all times during his
295 or her use of a personal vehicle and to disclose
296 specified information in the event of an accident;
297 requiring a transportation network company to make
298 certain disclosures to transportation network company
299 drivers; authorizing insurers to exclude certain
300 coverages during specified periods for policies issued



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301 to transportation network company drivers for personal
302 vehicles; requiring a transportation network company
303 and certain insurers to cooperate during a claims
304 investigation to facilitate the exchange of specified
305 information; requiring a transportation network
306 company to cause its insurer to issue payments for
307 claims directly to specified entities under certain
308 circumstances; providing that unless agreed to in a
309 written contract, a transportation network company is
310 not deemed to control, direct, or manage the personal
311 vehicles or transportation network company drivers
312 that connect to its digital network; authorizing the
313 Financial Services Commission to adopt rules;
314 providing for

By Senator Simmons

10-00629-16

20161118__

1 A bill to be entitled
 2 An act relating to transportation network company
 3 insurance; creating s. 627.748, F.S.; providing
 4 legislative intent; defining terms; requiring a
 5 transportation network company driver or such company
 6 on the driver's behalf, or a combination thereof, to
 7 maintain primary automobile insurance issued by
 8 specified insurers with certain coverages in specified
 9 amounts during certain timeframes; requiring a
 10 transportation network company driver to maintain
 11 primary automobile insurance issued by specified
 12 insurers with certain coverages in specified amounts
 13 during certain timeframes; requiring the
 14 transportation network company to provide automobile
 15 insurance in the event insurance maintained by the
 16 transportation network company driver lapses or does
 17 not provide the required coverage; requiring a
 18 transportation network company driver to carry proof
 19 of certain insurance coverage at all times during his
 20 or her use of a personal vehicle and to disclose
 21 specified information in the event of an accident;
 22 requiring a transportation network company to make
 23 certain disclosures to transportation network company
 24 drivers; authorizing insurers to exclude certain
 25 coverages during specified periods for policies issued
 26 to transportation network company drivers for personal
 27 vehicles; requiring a transportation network company
 28 and certain insurers to cooperate during a claims
 29 investigation to facilitate the exchange of specified
 30 information; requiring a transportation network
 31 company to determine whether an individual's personal
 32 vehicle is subject to a lien before allowing the

Page 1 of 9

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

10-00629-16

20161118__

33 individual to act as a driver and, if the vehicle is
 34 subject to a lien, to verify that the insurance
 35 required by this section provides coverage to the
 36 lienholder during specified periods; providing that
 37 unless agreed to in a written contract, a
 38 transportation network company is not deemed to
 39 control, direct, or manage the personal vehicles or
 40 transportation network company drivers that connect to
 41 its digital network; authorizing the Office of
 42 Insurance Regulation to adopt rules; providing for
 43 preemption of local laws and regulations pertaining to
 44 transportation network company insurance; providing an
 45 effective date.

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

47

48 Section 1. Section 627.748, Florida Statutes, is created to
 49 read:50 627.748 Transportation network company insurance.-51 (1) It is the intent of the Legislature to provide for
 52 statewide uniformity of laws governing the insurance
 53 requirements imposed on transportation network companies and
 54 transportation network company drivers.55 (2) For purposes of this section, the term:56 (a) "Digital network" means an online application,
 57 software, website, or system offered or used by a transportation
 58 network company which enables the prearrangement of rides with
 59 transportation network company drivers.60 (b) "Personal vehicle" means a vehicle, however titled,
 61

Page 2 of 9

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

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62 which is used by a transportation network company driver in
 63 connection with providing transportation network company service
 64 and which:

65 1. Is owned, leased, or otherwise authorized for use by the
 66 transportation network company driver; and

67 2. Is not a taxi, jitney, limousine, or for-hire vehicle as
 68 that term is defined in s. 320.01(15).

69 (c) "Prearranged ride" means the provision of
 70 transportation by a driver to or on behalf of a rider, beginning
 71 when a driver accepts a request for a ride by a rider through a
 72 digital network controlled by a transportation network company,
 73 continuing while the driver transports the rider, and ending
 74 when the last rider departs from the personal vehicle. A
 75 prearranged ride does not include transportation provided using
 76 a taxi, jitney, limousine, for-hire vehicle as defined in s.
 77 320.01(15), or street hail service.

78 (d) "Transportation network company" or "company" means a
 79 corporation, partnership, sole proprietorship, or other entity
 80 operating in this state which uses a digital network to connect
 81 transportation network company riders to transportation network
 82 company drivers who provide prearranged rides. A transportation
 83 network company does not include an individual, corporation,
 84 partnership, sole proprietorship, or other entity arranging
 85 nonemergency medical transportation for individuals qualifying
 86 for Medicaid or Medicare pursuant to a contract with the state
 87 or a managed care organization.

88 (e) "Transportation network company driver" or "driver"
 89 means an individual who:

90 1. Receives connections to potential riders and related

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91 services from a transportation network company in exchange for
 92 any form of compensation, including payment of a fee to the
 93 transportation network company; and

94 2. Uses a personal vehicle to offer or provide a
 95 prearranged ride to riders upon connection through a digital
 96 network controlled by a transportation network company in return
 97 for compensation, including payment of a fee.

98 (f) "Transportation network company rider" or "rider" means
 99 an individual who directly or indirectly uses a transportation
 100 network company's digital network to connect with a
 101 transportation network company driver who provides
 102 transportation services to the individual in the driver's
 103 personal vehicle.

104 (3) (a) A transportation network company driver, or a
 105 transportation network company on the driver's behalf, shall
 106 maintain primary automobile insurance that recognizes that the
 107 driver is a transportation network company driver or that the
 108 driver otherwise uses a personal vehicle to transport riders for
 109 compensation. Such primary automobile insurance must cover the
 110 driver as required under this section, including while the
 111 driver is logged on to the transportation network company's
 112 digital network and is engaged in a prearranged ride.

113 (b) The following automobile insurance coverage
 114 requirements apply while a transportation network company driver
 115 is logged on to the transportation network company's digital
 116 network and is available to receive transportation requests, but
 117 is not engaged in a prearranged ride:

118 1. Primary automobile liability insurance coverage of at
 119 least \$50,000 for death and bodily injury per person, \$100,000

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120 for death and bodily injury per incident, and \$25,000 for
 121 property damage; and

122 2. Primary automobile insurance coverage that meets the
 123 minimum requirements under ss. 627.730-627.7405.

124 (c) While engaged in a prearranged ride, a transportation
 125 network company driver must be covered by primary automobile
 126 liability insurance coverage of at least \$1 million for death
 127 and bodily injury and \$50,000 for property damage.

128 (d) The coverage requirements of paragraphs (b) and (c) may
 129 be satisfied by automobile insurance maintained by the
 130 transportation network company driver, by the transportation
 131 network company, or by a combination of both.

132 (e) If the insurance maintained by a driver under paragraph
 133 (b) or paragraph (c) lapses or does not provide the required
 134 coverage, the transportation network company must maintain
 135 insurance that provides the coverage required by this section
 136 beginning with the first dollar of a claim and must obligate the
 137 insurer to defend such a claim in this state.

138 (f) Coverage under an automobile insurance policy
 139 maintained by the transportation network company may not be
 140 contingent on a denial of a claim under the driver's personal
 141 automobile liability insurance policy.

142 (g) Automobile insurance required by this section must be
 143 provided by an insurer authorized to do business in this state
 144 which is a member of the Florida Insurance Guaranty Association
 145 or an eligible surplus lines insurer that is rated "A-" or
 146 higher by A.M. Best Company.

147 (h) Automobile insurance that satisfies the requirements of
 148 this section is deemed to satisfy the financial responsibility

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149 requirements imposed under chapter 324 and the security
 150 requirements imposed under s. 627.733. However, the provision of
 151 transportation to persons for compensation that is not covered
 152 under this section subjects a vehicle and driver to the
 153 requirements of chapters 320 and 324.

154 (i) A transportation network company driver shall carry
 155 proof of insurance coverage that meets the requirements of
 156 paragraphs (b) and (c) at all times during his or her use of a
 157 personal vehicle. In the event of an accident:

158 1. The driver shall provide the insurance coverage
 159 information to the directly involved parties, automobile
 160 insurers, and investigating law enforcement officers. Proof of
 161 financial responsibility may be provided through a digital
 162 telephone application under s. 316.646 which is controlled by a
 163 transportation network company.

164 2. Upon request, the driver shall disclose to the directly
 165 involved parties, automobile insurers, and investigating law
 166 enforcement officers whether the driver, at the time of the
 167 accident, was logged on to the transportation network company's
 168 digital network or engaged in a prearranged ride.

169 (j) Before a driver may accept a request for a prearranged
 170 ride on the transportation network company's digital network,
 171 the transportation network company shall disclose in writing to
 172 each transportation network company driver:

173 1. The type and limits of insurance coverage provided by
 174 the transportation network company;

175 2. The type of automobile insurance coverage that the
 176 driver must maintain while the driver uses a personal vehicle in
 177 connection with the transportation network company; and

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178 3. That the provision of rides for compensation, whether
 179 prearranged or otherwise, which is not covered by this section
 180 subjects the driver to the coverage requirements imposed by s.
 181 324.032(1) and that failure to meet such limits subjects the
 182 driver to penalties provided in s. 324.221, up to and including
 183 a misdemeanor of the second degree.

184 (k) An insurer that provides personal automobile insurance
 185 policies under this part may exclude from coverage under a
 186 policy issued to an owner or operator of a personal vehicle any
 187 loss or injury that occurs while a driver is logged on to a
 188 transportation network company's digital network or while a
 189 driver is engaged in a prearranged ride. Such right to exclude
 190 coverage applies to any coverage under an automobile insurance
 191 policy, including, but not limited to:

192 1. Liability coverage for bodily injury and property
 193 damage.

194 2. Personal injury protection coverage.

195 3. Uninsured and underinsured motorist coverage.

196 4. Medical payments coverage.

197 5. Comprehensive physical damage coverage.

198 6. Collision physical damage coverage.

199 (l) The exclusions authorized under paragraph (k) apply
 200 notwithstanding any financial responsibility requirements under
 201 chapter 324. This section does not require that a personal
 202 automobile insurance policy provide coverage while the driver is
 203 logged on to the transportation network company's digital
 204 network, while the driver is engaged in a prearranged ride, or
 205 while the driver otherwise uses a personal vehicle to transport
 206 riders for compensation. However, an insurer may elect to

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207 provide coverage by contract or endorsement for such driver's
 208 personal vehicle used for such purposes.

209 (m) An insurer that excludes coverage as authorized under
 210 paragraph (k):

211 1. Does not have a duty to defend or indemnify an excluded
 212 claim. This section does not invalidate or limit an exclusion
 213 contained in a policy, including any policy in use or approved
 214 for use in this state before July 1, 2016.

215 2. Has a right of contribution against other insurers that
 216 provide automobile insurance to the same driver in satisfaction
 217 of the coverage requirements of this section at the time of
 218 loss, if the insurer defends or indemnifies a claim against a
 219 driver which is excluded under the terms of its policy.

220 (n) In a claims investigation, a transportation network
 221 company and any insurer potentially providing coverage for a
 222 claim under this section shall cooperate to facilitate the
 223 exchange of relevant information with directly involved parties
 224 and insurers of the transportation network company driver, if
 225 applicable. Such information must provide:

226 1. The precise times that a driver logged on and off the
 227 transportation network company's digital network during the 12-
 228 hour period immediately before and immediately after the
 229 accident.

230 2. A clear description of the coverage, any exclusions, and
 231 the limits provided under automobile insurance maintained under
 232 this section.

233 (o) Before allowing an individual to act as a driver on its
 234 digital network, a transportation network company shall
 235 determine whether the driver's personal vehicle is subject to a

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236 lien. If the personal vehicle is subject to a lien, the
237 transportation network company shall verify that the insurance
238 required by this section provides coverage to the lienholder
239 while the driver is logged into the transportation network
240 company's digital network and while the driver is providing a
241 prearranged ride.

242 (4) Unless agreed to in a written contract, a
243 transportation network company is not deemed to control, direct,
244 or manage the personal vehicles that, or the transportation
245 network company drivers who, connect to its digital network.

246 (5) The office may adopt rules to administer this section.

247 Section 2. PREEMPTION.—Notwithstanding any other law,
248 transportation network company insurance requirements are
249 governed exclusively by this section and any rules adopted by
250 the Department of Financial Services to administer this section.
251 A political subdivision of this state may not adopt any
252 ordinance imposing insurance requirements on a transportation
253 network company or driver. All such ordinances, whether existing
254 or proposed, are preempted and superseded by general law.

255 Section 3. This act shall take effect January 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16

Meeting Date

1118

Bill Number (if applicable)

Topic SB 1118 - TNC Ins. Coverage

382418

Amendment Barcode (if applicable)

Name Katie Webb

Job Title Attorney

Address 215 S. Monroe St

Street

Phone 850 228 6010

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Property Casualty Insurers Association of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/19/2016

Meeting Date

1118

Bill Number (if applicable)

Topic TNC Insurance

Amendment Barcode (if applicable)

Name John Camillo

Job Title President

Address 221 West Oakland PK Blvd

Phone 954 565 8900

FT Land FL 33311

City State Zip

Email scamill@blservizetel.com

Speaking: For Against Information

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

Representing Yellow Cab Broward + Tallahassee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19-16

Meeting Date

1118

Bill Number (if applicable)

Topic SB 1118

Amendment Barcode (if applicable)

Name BROCK ROSAYN

Job Title _____

Address 1730 S. FED HWY

Phone 561 702-9055

Street

Delray Beach

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Metro Taxi Palm Beach Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1.19.14

Meeting Date

SB1118

Bill Number (if applicable)

Topic TRANSPORTATION NETWORK COMPANY

Amendment Barcode (if applicable)

Name INSURANCE MEGAN SIRJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757

Phone 850-701-3655

Street

TALLAHASSEE FL 32301

Email MSIRJANESAMPLES

City

State

Zip

@FLCITIES.COM

Speaking: For Against Information

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

Representing FLORIDA LEAGUE OF CITIES

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)

1/19/16
Meeting Date

SB 1118
Bill Number (if applicable)

Topic SB 1118 Insert

Amendment Barcode (if applicable)

Name Louis Minardi

Job Title _____

Address 4413 N. Hesperides St
Street

Phone (813) 917-9446

Tampa FL 33614
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Taxical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-19
Meeting Date

1118
Bill Number (if applicable)

Topic TNC

Amendment Barcode (if applicable)

Name Roger Chapin

Job Title VP

Address 324 W. Gove St
Street

Phone _____

Orl FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing Mears

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)

1/19/2014
Meeting Date

SR 1118
Bill Number (if applicable)

Topic TNC / INSURANCE

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title STATE DIRECTOR

Address PO Box 10577

Phone (305) 608-4200

Street YALAHASSEE FL 32302

Email CCAMARA@R8STREET.ORG

City State Zip

Speaking: For Against Information

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

Representing R STREET INST.

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

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 8, 2016

I respectfully request that **Senate Bill 1118**, relating to Transportation Network Company Insurance, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

Senator David Simmons
Florida Senate, District 10

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 562

INTRODUCER: Banking and Insurance Committee and Senator Stargel

SUBJECT: Consumer Debt Collection

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			CM	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 562 amends a provision of the Florida Consumer Collection Practices Act (act), which regulates consumer collection agencies and prohibits many of the same debt collection practices prohibited by the federal Fair Debt Collection Practices Act (FDCPA). Under Florida law, in collecting consumer debts, a person is prohibited from communicating with a debtor if the person knows that a debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address. However, current law contains three exceptions to this prohibition, thus allowing the communication under the following circumstances: 1) the debtor's attorney fails to respond within 30 days to a communication from the person; 2) the debtor's attorney consents to a direct communication with the debtor; or 3) the debtor initiates the communication.

The bill provides that the prohibition against an original creditor contacting the debtor would not apply if the debtor's attorney fails to provide notice of representation by certified mail to the address designated on the billing statement by the original creditor or to the registered agent of the original creditor. Such notice must state the debtor is represented by an attorney with respect to such debt, and disclose the attorney's name and address. A debtor's attorney may also provide notice of representation to an original creditor by virtue of pleadings and other filings in a filed action.

II. Present Situation:

Consumer debt covers personal debt such as mortgages, credit cards, medical debts, and other debts mainly for individual, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged off” corporate accounts. Typically, then the charged-off debt is either assigned or sold to a third-party collection agency or collection law firm, which use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to nonpayment by borrowers, and help ensure the availability and affordability of consumer credit.

Between 2001 and 2013, on average 10.1 percent of outstanding credit card debt was reported as being more than 90 days delinquent. In contrast, for the same period, 8.0 percent of student loans and 3.8 percent of mortgage loans were reported as being more than 90 days delinquent.¹ In 2013, the proportion of American consumers with at least one account in third-party collections stood at 14 percent and the total amount collected from them by third-party debt collectors was approximately \$55 billion.²

In 2014, the federal Consumer Financial Protection Bureau processed over 88,300 debt collection complaints, positioning debt collection as the leading source of consumer complaints.³ Approximately 2 percent of these complaints related to a consumer being contacted directly, instead of the debt collector contacting their attorney.⁴

State and Federal Debt Collection Regulations

State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

Federal Regulation

Federal Fair Debt Collection Practices Act - The Federal Trade Commission (FTC)⁵ and the Consumer Financial Protection Bureau⁶ are the primary federal enforcement agencies of the Fair Debt Collection Practices Act (FDCPA).⁷ The intent of the FDCPA is to protect consumers from harmful debt collection practices and to protect ethical collectors from an unfair competitive disadvantage. The FDCPA establishes standards of conduct for the collection industry by prohibiting abusive, deceptive, and unfair debt collection practices. The FDCPA applies to third-

¹ Viktor Fedaseyev, WORKING PAPER NO. 15-23, DEBT COLLECTION AGENCIES AND THE SUPPLY OF CONSUMER CREDIT (Federal Reserve Bank of Philadelphia 2014).

² Viktor Fedaseyev and Robert Hunt, WORKING PAPER NO. 15-43 THE ECONOMICS OF DEBT COLLECTION: ENFORCEMENT OF CONSUMER CREDIT CONTRACTS, (Federal Reserve Bank of Philadelphia 2015).

³ Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act, Annual Report 2014* (March 2015).

⁴ *Id.*

⁵ 15 U.S.C. s. 41 *et seq.*

⁶ 12 U.S.C. s. 5481 *et seq.*

⁷ 15 U.S.C. s. 1692 *et seq.*

party collectors, which includes contingency agencies, collection law firms, and debt buyers. Each violation of the FDCPA carries a penalty of at least \$1,000 per violation.

State Regulation

At the state level, the Florida Consumer Collection Practices Act (act)⁸ prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Office of Financial Regulation (OFR). The OFR is responsible for the registration of consumer collection agencies (CCAs) unless specifically exempted from registration.⁹ Further, the act authorizes the Attorney General to initiate enforcement actions against out-of-state consumer debt collectors that violate the act.¹⁰

The act defines “consumer collection agency” as “any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted under the act. A “debt collector” is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collections or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.¹¹ Both the federal and state acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies¹² to debtors for violations; if successful, the consumer may recover actual and statutory damages and reasonable attorney’s fees and costs.¹³ If the court finds that the suit fails to raise justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney’s fees incurred by the defendant.

Florida law and the federal act prohibit certain collection practices. The prohibited acts under s. 559.72, F.S., apply to any person, rather than only debt collectors, as provided under FDCPA. For example, Florida law and the FDCPA generally prohibit a debt collector from contacting a consumer the debt collector knows is represented by an attorney.¹⁴ The FDCPA prohibits direct communication with a borrower when “the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector.” Section 559.72(18), F.S., prohibits *any person* in collecting consumer debts from communicating with a debtor if:

⁸ Part VI of ch. 559, F.S.

⁹ Persons exempt from registration include original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies that are authorized to do business in this state. [Section 559.553(3), F.S.]

¹⁰ Section 559.565, F.S.

¹¹ Section 559.55(7), F.S.

¹² Section 559.77(1), F.S., provides that any person who fails to comply with any provision of this section is liable for actual damages and additional statutory damages as the court may allow, but not exceeding \$1,000, together with court costs and reasonable attorney fees incurred by the plaintiff. In determining the defendant’s liability for additional statutory damages, the court must consider the nature of the defendant’s noncompliance, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. Section 559.77(1), F.S., also addresses class action lawsuits.

¹³ 15 U.S.C. s. 1692j and Section 559.77, F.S., respectively. Section 559.77(3), F.S., provides that a person is not liable in any action under this section if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid such errors.

¹⁴ 15 U.S.C. 1692c.

the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

Therefore, current law contains three exceptions to this prohibition, thus allowing the aforementioned communication under the following circumstances: 1) the debtor's attorney fails to respond within 30 days to a communication from the person; 2) the debtor's attorney consents to a direct communication with the debtor; or 3) the debtor initiates the communication.

III. Effect of Proposed Changes:

Section 1 amends s. 559.72(18), F.S., to provide that an original creditor collecting a debt is not liable for violating the requirements of the subsection if the debtor or the debtor's attorney fails to provide the original creditor with notice of representation by certified mail. The notice must be sent to the address designated on the billing statements from the original creditor or to the registered agent of the original creditor. Such notice must state the debtor is represented by an attorney with respect to such debt, and disclose the attorney's name and address. A debtor's attorney may also provide notice of representation to an original creditor by virtue of pleadings and other filings in a filed action.

The current FDCPA provides that a debt collector is prohibited from communicating with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.¹⁵

Section 2 provides the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ 15 U.S.C. s. 1692(c).

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

None.

B. Private Sector Impact:

Debtors may incur additional costs associated with the requirement to use certified mail to provide the notice of attorney representation. Original creditors may benefit by having notice of attorney representation delivered by certified mail, which will ensure the notice is received at the proper address; thus, they will be less likely to violate the statute and incur associated fines.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The term, “original creditor,” is not defined in part VI of ch. 559.72, F.S. The terms, “creditor” and “debt collector” are defined.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.72 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on January 19, 2016:**

The CS provides the following changes;

- Reinstates current law, which provides a prohibition on contacting a debtor when the person collecting the debt knows that the debtor is represented by an attorney with respect to the debt and, though lacking actual knowledge of the name and address of the debtor’s attorney, the person is otherwise able to “*readily ascertain*” the name and address of the debtor's attorney.
- Provides that the prohibition against an original creditor contacting the debtor would also not apply if the debtor’s attorney fails to provide notice of representation by certified mail at the address designated on the billing statement by the original creditor or to the registered agent of the original creditor. A debtor’s attorney may also provide notice of representation to an original creditor by virtue of pleadings and other filings in a filed action.

- Eliminates the provision allowing the Office of Financial Regulation to adopt rules for notice of representation and receipt of response.

B. Amendments:

None.

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



517062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 20 - 35
and insert:
to such debt and has knowledge of, or can readily ascertain,
such attorney's name and address, unless the debtor's attorney
fails to respond within 30 days to a communication from the
person, ~~unless~~ the debtor's attorney consents to a direct
communication with the debtor, or ~~unless~~ the debtor initiates
the communication. Furthermore, an original creditor is not



517062

11 liable for a violation of this subsection if the debtor's
12 attorney fails to provide written notice of representation by
13 certified mail to the address designated on the billing
14 statements from the original creditor or to the registered agent
15 of the original creditor. Such written notice of representation
16 must state that the debtor is represented by an attorney with
17 respect to such debt and disclose the attorney's name and
18 address. A debtor's attorney may also provide notice of
19 representation to an original creditor by virtue of pleadings
20 and other filings in a filed action.

21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete lines 7 - 9

25 and insert:

26 or information; requiring specified information to be
27 included in the written notice; authorizing a debtor's
28 attorney to provide written notice to an original
29 creditor under certain circumstances; providing an

By Senator Stargel

15-00486A-16

2016562__

1 A bill to be entitled
 2 An act relating to consumer debt collection; amending
 3 s. 559.72, F.S.; providing that a person attempting to
 4 collect a debt is not liable for a violation of
 5 prohibited communication practices if the debtor or
 6 the debtor's attorney fails to provide certain notice
 7 or information; authorizing the Office of Financial
 8 Regulation to adopt rules for certain notices
 9 delivered by electronic communication; providing an
 10 effective date.

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

13
 14 Section 1. Subsection (18) of section 559.72, Florida
 15 Statutes, is amended to read:

16 559.72 Prohibited practices generally.—In collecting
 17 consumer debts, no person shall:

18 (18) Communicate with a debtor if the person has knowledge
 19 ~~knows~~ that the debtor is represented by an attorney with respect
 20 to such debt and has knowledge of, ~~or can readily ascertain,~~
 21 such attorney's name and address, unless the debtor's attorney
 22 fails to respond within 30 days to a communication from the
 23 person, the debtor's attorney fails to provide notice of
 24 representation to the address that the person designates to
 25 receive communication regarding the debt, unless the debtor's
 26 attorney consents to a direct communication with the debtor, ~~or~~
 27 ~~unless~~ the debtor initiates the communication. A person is not
 28 liable for a violation of this subsection if the debtor or the
 29 debtor's attorney fails to provide the person with notice by

Page 1 of 2

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

15-00486A-16

2016562__

30 certified mail to the address that the person designates which
 31 states that the debtor is represented by an attorney with
 32 respect to such debt and which discloses the attorney's name and
 33 address. As an alternative to notice by certified mail, the
 34 office may adopt rules for notice of representation and receipt
 35 of response by a secure form of electronic communication.

36 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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)

1/19/16
Meeting Date

562
Bill Number (if applicable)

Topic Debt Collection

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 858 556 3121

Tallahassee, FL 32303
City State Zip

Email

Speaking: For Against Information

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

Representing Florida Alliance for Consumer Protection

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)

1/19/15

Meeting Date

SB 562

Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Tammy Perdue

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee FL 32301

Email tperdue@aif.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan 19

Meeting Date

562

Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Toni Large

Job Title

Address 519 E. Park Ave.

Phone (850) 556-1461

Tallahassee, FL 32308

Email toni@sulaw.net

Speaking: [X] For [] Against [] Information

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

Representing Florida Orthopedic Society - orthopedic surgeons

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16

Meeting Date

~~566~~ 562

Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Clint Shouppe

Job Title State Government Relations Manager

Address 2986 Drew St

Phone _____

Street

Clearwater FL

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing BayCare

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16

Meeting Date

562

Bill Number (if applicable)

Topic CONSUMER DEBT COLLECTION

Amendment Barcode (if applicable)

Name AARON SWIFT, ESQ.

Job Title ATTORNEY AT LEAVEN LAW

Address 3900 FIRST ST. N. SUITE 100
Street

Phone 727-515-9090

ST. PETERSBURG FL 33703
City State Zip

Email aswift@leavenlaw.com

Speaking: For Against Information

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

Representing LEAVENGOOD, DAVAL, BOYLE, & MEYER P.A. AND MY CLIENTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/16
Meeting Date

562
Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd,
Street

Phone 850-509-2085

Miami FL 33137
City State Zip

Email arthur@floridalegal.org

Speaking: For Against Information

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

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16

Meeting Date

~~562~~ 562

Bill Number (if applicable)

517062

Amendment Barcode (if applicable)

Topic Consumer Debt Collection

Name Clint Shouppe

Job Title State Government Relations Manager

Address 2985 Drew St

Street

Phone _____

Clearwater

City

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing BayCare

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16

Meeting Date

562

Bill Number (if applicable)

517062

Amendment Barcode (if applicable)

Topic CONSUMER DEBT COLLECTION

Name AARON M. SWIFT, ESQ.

Job Title ATTORNEY

Address 3900 FIRST STREET N. SUITE 100

Street

Phone 727-515-9090

ST. PETERSBURG FL 33703

City

State

Zip

Email aswift@leavenlaw.com

Speaking: [] For [X] Against [] Information

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

Representing LEAVEN LAW AND MY CLIENTS

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [] Yes [X] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/19/10
Meeting Date

562
Bill Number (if applicable)

Topic Amendment

517062
Amendment Barcode (if applicable)

Name Frank Meiners

Job Title _____

Address PO Box 1433
Street

Phone 591-0177

Tall FL 32302
City State Zip

Email frank@chymail.com

Speaking: For Against Information

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

Representing FL Collectors 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/16
Meeting Date

562
Bill Number (if applicable)

517062
Amendment Barcode (if applicable)

Topic Amendment

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Dunwoody Rd

Phone 228-2265

Tallahassee FL 32303
City State Zip

Email adimarco@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

October 26, 2015

The Honorable Lizbeth Benacquisto
Senate Banking and Insurance Committee, Chair
326 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 562, related to *Consumer Debt Collection*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: James Knudson/ Staff Director
Sheri Green/ AA

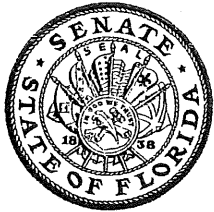
REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

January 19, 2016

The Honorable Lizbeth Benacquisto
Committee on Banking and Insurance
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I respectfully ask to be excused from the Committee on Banking and Insurance being held on Tuesday, January 19, 2016 at 4:00 pm. I will not be able to attend due to being ill.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill

CC: James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:
Judge:

Caption: Senate Banking and Insurance Committee

Started: 1/19/2016 4:05:49 PM

Ends: 1/19/2016 5:53:45 PM

Length: 01:47:57

4:05:54 PM Meeting called to order
4:05:59 PM Roll call - quorum present
4:06:41 PM TAB 3 - SB 632 -- TP'd
4:06:54 PM Chair given to Sen. Richter
4:08:06 PM TAB 5 - SB 966 - Unclaimed Property
4:09:08 PM Sen. Benacquisto recognized to present the bill
4:09:40 PM Amd. 332402 - Sen. Benacquisto - explanation of amendment
4:11:44 PM Amd. 332402 - Sen. Benacquisto - explanation of amendment
4:11:45 PM Favorable w/o objection
4:18:01 PM Curt Leonard, American Council of Life Insurers
4:19:01 PM Paul Sanford - Florida Insurance Council
4:23:41 PM Jeff Atwater, Chief Financial Officer
4:28:40 PM Sen. Benacquisto recognized to close on bill.
4:29:05 PM Roll call on CS/SB 966 --Favorable
4:29:45 PM Chair given back to Sen. Benacquisto
4:30:11 PM TAB 6 - SB 1118 - Transportation Network Company Insurance
4:30:48 PM Senator Simmons recognized to present the bill
4:34:31 PM Late Filed Substitute Amend. 382418
4:35:29 PM Senator Simmons explains the substitute amendment
4:45:17 PM Kate Webb - Property Casualty Insurers Assoc. -- speaking on amd. 382418
4:46:32 PM Amendment adopted without objection
4:47:24 PM Amendment adopted without objection
4:49:09 PM John Camilte
4:50:09 PM Sen. Negrón recognized for comments on bill
4:51:13 PM Sen. Lee recognized for comment on bill.
4:53:47 PM Sen. Simmons recognized to close on bill.
4:54:41 PM Roll call on CS/SB 1118 - Favorable
4:55:21 PM TAB 2 - SB 992 - Dept. of Financial Services
4:56:14 PM Sen. Brandes presents the bill
4:56:21 PM Amd. 715350 - Adopted w/o objection
4:56:56 PM Roll call on CS/SB 992 -- Favorable
4:57:23 PM TAB 7 SB 562 - Consumer Debt Collection
4:57:52 PM Senator Stargel recognized to present the bill.
5:01:14 PM Amd. 517062 (Richter) --
5:02:15 PM Aaron Swift, Attorney
5:07:22 PM Clint Shoupe - State Government Relations Manager - Bay Care
5:11:45 PM Amd. 517062 adopted without objection
5:11:55 PM Alice Vickers, FL Alliance for Consumer Protection
5:18:07 PM Toni Large, FL Orthopedic Society
5:22:36 PM Clint Shoupe, Bay Care
5:23:19 PM Aaron Swift, Attorney
5:24:24 PM Aaron Swift, Attorney
5:24:51 PM Senator Stargel recognized to answer questions
5:25:51 PM Senator Stargel recognized to close on bill.
5:26:29 PM Roll call on CS/SB 562 -- Favorable
5:27:01 PM Roll call on CS/SB 562 -- Favorable
5:27:02 PM TAB 4 - SB 774 - Liability Insurance Coverage
5:27:30 PM Senator Montford recognized to present the bill.
5:27:52 PM Amd. 572854- Montford - technical amendment -- fwo - adopted
5:28:45 PM Amd. 594046 - Montford - Favorable w/o objection
5:29:25 PM Paul Jess, FL Justice Association
5:34:52 PM Senator Montford recognized to close on bill

5:35:32 PM Roll call on CS/SB 992 - Favorable
5:36:12 PM TAB 1 - SB 1084 - Health Care Protocols
5:36:34 PM Senator Gaetz recognized to present the bill.
5:38:35 PM Amd. 398542 (Montford)
5:38:47 PM Sen. Gaetz to explain the amendment - fwo objection -- adopted
5:39:16 PM Amd. 641538 (Montford)
5:39:36 PM Sen. Gaetz explain amd. -- amend. adopted w/o objection
5:40:59 PM Audrey Brown, FL Association of Health Plans
5:42:58 PM Paul Sanford - FIC
5:43:34 PM Brittney Hunt, FL Chamber of Commerce
5:44:10 PM Pam Langford, HEALS of the South
5:46:11 PM Joy Ryan, AHIP, Prime Therapeutics
5:47:56 PM Tammy Perdue, Associated Industries of Florida
5:48:59 PM Dr. Bob Levin,, FL Society of Rheumatology
5:51:56 PM Sen. Detert recognized for comment
5:52:40 PM Roll call on CS/SB 1084 -- Favorable
5:53:04 PM Meeting adjourned.