

**Tab 1 CS/SB 132 by HP, Grimsley (CO-INTRODUCERS) Gaetz;** (Similar to CS/CS/H 0037) Direct Primary Care

**Tab 2 CS/CS/CS/SB 260 by RC, JU, BI, Smith (CO-INTRODUCERS) Richter;** (Similar to CS/CS/1ST ENG/H 0145) Financial Transactions

825714	A	S	RCS	BI, Smith	Delete L.71 - 85.	02/09 11:23 AM
121654	T	S	RCS	BI, Smith	In title, delete L.24 -	02/09 11:23 AM

**Tab 3 SB 970 by Richter;** (Similar to CS/H 0783) Unclaimed Property

260196	D	S	RS	BI, Richter	Delete everything after	02/09 11:23 AM
888618	SD	S	RCS	BI, Richter	Delete everything after	02/09 11:23 AM

**Tab 4 SB 1104 by Flores;** (Compare to CS/H 0897) Service of Process on Financial Institutions

801266	D	S	L RCS	BI, Lee	Delete everything after	02/09 11:23 AM
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**Tab 5 SB 1274 by Latvala;** (Similar to CS/H 1327) Sinkhole Insurance

657620	D	S	RCS	BI, Margolis	Delete everything after	02/09 11:23 AM
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

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

**MEETING DATE:** Tuesday, February 9, 2016  
**TIME:** 10:00 a.m.—12:00 noon  
**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	<b>CS/SB 132</b> Health Policy / Grimsley (Similar CS/CS/H 37)	Direct Primary Care; Specifying that a direct primary care agreement does not constitute insurance and is not subject to provisions relating to prepaid limited health service organizations and discount medical plan organizations, or any other chapter of the Florida Insurance Code; providing that certain certificates of authority and licenses are not required to market, sell, or offer to sell a direct primary care agreement, etc.  HP     02/01/2016 Fav/CS BI     02/09/2016 Favorable FP	Favorable Yeas 9 Nays 1
2	<b>CS/CS/CS/SB 260</b> Rules / Judiciary / Banking and Insurance / Smith (Similar CS/CS/H 145)	Financial Transactions; Providing that a convenience fee imposed upon a student or family paying certain fees by credit card to a private school is not considered a surcharge; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; reducing the time limit for a mortgagee or an assignee to cancel a mortgage, except in cases where the loan is an open-end mortgage, etc.  BI     01/11/2016 Fav/CS JU     01/20/2016 Fav/CS RC     01/27/2016 Fav/CS BI     02/09/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
3	<b>SB 970</b> Richter (Similar CS/H 783)	Unclaimed Property; Providing that certain unclaimed property shall escheat to the state for certain purposes; revising requirements for the estimation of certain amounts due; revising requirements for contracts to acquire ownership of or entitlement to property, etc.  BI     02/09/2016 Fav/CS JU AP	Fav/CS Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, February 9, 2016, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1104</b> Flores (Compare CS/H 897)	Service of Process on Financial Institutions; Revising provisions for service of process made on a financial institution; authorizing a financial institution to designate a central location within the state which is the sole location where service of process on the financial institution and its branches may be made within the state; specifying types of service of process to be made at the central location; revising the individuals who may receive service of process if a central location is not designated, etc.  BI      02/09/2016 Fav/CS JU RC	Fav/CS Yeas 10 Nays 0
5	<b>SB 1274</b> Latvala (Similar CS/H 1327)	Sinkhole Insurance; Specifying an initial minimum surplus requirement for certain new sinkhole insurers; adding projected sinkhole losses to a list of factors that must be considered by the Office of Insurance Regulation in reviewing certain rate filings; authorizing certain insurers to offer sinkhole insurance in this state, etc.  BI      02/09/2016 Fav/CS AGG FP	Fav/CS Yeas 10 Nays 0
Other Related Meeting Documents			

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

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

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/SB 132

INTRODUCER: Health Policy Committee and Senators Grimsley and Gaetz

SUBJECT: Direct Primary Care

DATE: February 8, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Fav/CS</b>
2.	Johnson	Knudson	BI	<b>Favorable</b>
3.			FP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 132 provides that a direct primary care agreement is not insurance and is not subject to the Florida Insurance Code. Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee to the primary care provider for defined primary care services. The bill specifies certain provisions that must be included in a direct primary care agreement.

**II. Present Situation:**

**Direct Primary Care**

Direct primary care is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between \$50 and \$100 per individual,<sup>1</sup> to the primary care provider for defined primary care services, such as access at all times to the patient's primary care provider. Other primary care services may include:

- Office visits;
- Annual physical examination;

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<sup>1</sup> Approximately two thirds of DPC practices charge less than \$135 per month. Jen Wieczner, *Is Obamacare Driving Doctors to Refuse Insurance?*, WALL ST. J. MARKETWATCH, Nov. 12, 2013, available at <http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12> (last visited Jan. 27, 2016).

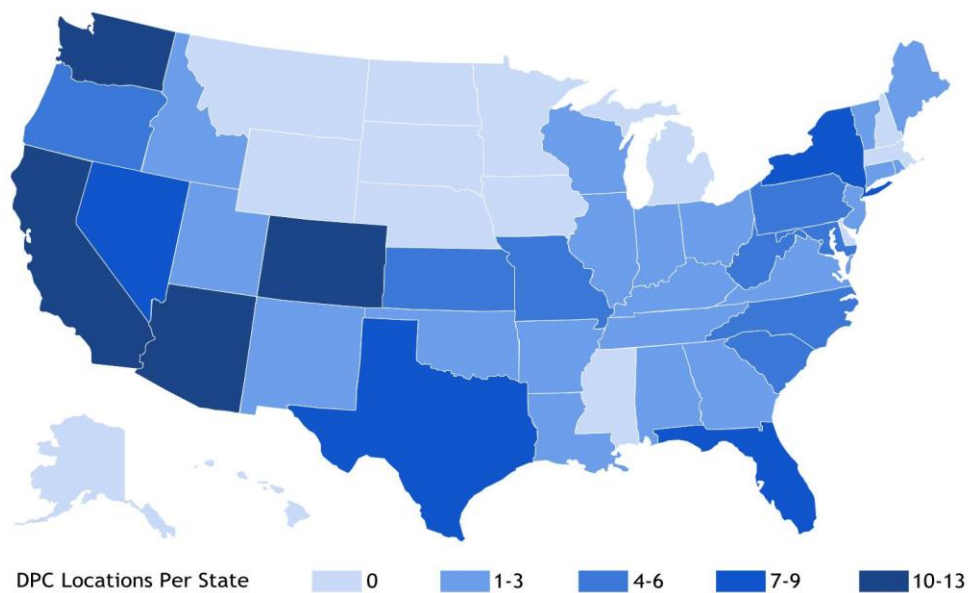
- Routine laboratory tests;
- Vaccinations;
- Wound care;
- Splinting or casting of fractured or broken bones;
- Other routine testing, e.g. echocardiogram and colon cancer screening; or
- Other medically necessary primary care procedures.

After paying the fee, a patient can access all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, like lab tests, mammograms, Pap screenings, and vaccinations. A primary care provider DPC model can be designed to address most health care issues, including women’s health services, pediatric care, urgent care, wellness education, and chronic disease management.

In the DPC practice model, the primary care provider eliminates practice overhead costs associated with filing claims, coding, refiling claims, write-offs, appealing denials, and employing billing staff. The cost and time savings can be reinvested in the practice, allowing more time with patients to address their primary care needs.

The following chart illustrates the concentration of DPC practices in the United States:<sup>2</sup>

### Direct Primary Care Practice Distribution



In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients,

<sup>2</sup> Jay Keese, Executive Director, Direct Primary Care Coalition, *Direct Primary Care*, PowerPoint presentation before the House Health Innovation Subcommittee (Feb. 17, 2015), slide 4, available at [http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2859&Session=2015&DocumentType=Meeting Packets&FileName=his 2-17-15.pdf](http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2859&Session=2015&DocumentType=Meeting%20Packets&FileName=his%202-17-15.pdf) (last visited Jan. 27, 2016).

outside of standard insurance coverage.<sup>3</sup> The AAPP said that number has increased around 25 percent per year since 2010.<sup>4</sup>

### **DPC and Health Care Reform**

The Patient Protection and Affordable Care Act (PPACA)<sup>5</sup> addresses the DPC practice model as part of health care reform. A qualified health plan under PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.<sup>6</sup> Patients who are enrolled in a DPC medical home plan are exempt from the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, like cancer, or severe injuries that require lengthy hospital stays and rehabilitation.<sup>7</sup> In Colorado and Washington, qualified health plans are offering DPC medical home coverage on each state-based health insurance exchange.<sup>8</sup>

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

The bill creates s. 624.27, F.S., relating to the application of the Florida Insurance Code (code) to direct primary care agreements. Several new definitions are created under this section:

- *Direct primary care agreement* means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- *Primary care provider* means a licensed health care practitioner under chapter 458 (medical doctor or physician assistant), chapter 459 (osteopathic doctor or physician assistant), chapter 460 (chiropractic physician), or chapter 464 (nurses), or a primary care group practice who provides medical services which are commonly provided without referral from another health care provider.
- *Primary care service* means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

The bill provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. The bill exempts both the agreement and the activity from the code. Through the exemption, the bill eliminates any authority of OIR to regulate a direct primary care agreement or the act of entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the code to market, sell, or offer to sell a direct primary care agreement.

The bill requires a direct primary care agreement to:

- Be in writing;

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<sup>3</sup> David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, FAMILY PRACTICE MGMT, No. 3, (May-June 2014), <http://www.aafp.org/fpm/2014/0500/p10.html> (last visited Jan. 27, 2016).

<sup>4</sup> Id.

<sup>5</sup> Pub. Law No. 111-148, H.R. 3590, 111<sup>th</sup> Cong. (Mar. 23, 2010).

<sup>6</sup> 42 U.S.C. s. 1802 (a)(3); 45 C.F.R. s. 156.245.

<sup>7</sup> 42 U.S.C. s. 18021(a)(3).

<sup>8</sup> Robleto, *Supra* note 1, slide 2.

- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative, or an employer;
- Allow either party to terminate the agreement by written notice followed by a waiting period as specified in the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for primary care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason;
- State that the agreement is not health insurance and the primary care provider will not file any claims against any health insurance or reimbursement plans the patient may have for any primary care services covered by the agreement; and
- State that the agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act.

The effective date of the bill is 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:

CS/SB 132 removes regulatory uncertainty for health care providers as to whether the direct primary care agreement is insurance. Additional primary care providers may elect to pursue this option and establish direct primary care practices in this state which could increase access to affordable primary care services.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 624.27 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 Health Policy on February 1, 2016:**

The CS expands the definition of a primary care provider to include a chiropractic physician and conforms the description of the licensed persons to health care practitioners as opposed to health care providers.

- B. Amendments:

None.



By the Committee on Health Policy; and Senators Grimsley and Gaetz

588-02883-16

2016132c1

A bill to be entitled

An act relating to direct primary care; creating s. 624.27, F.S.; defining terms; specifying that a direct primary care agreement does not constitute insurance and is not subject to ch. 636, F.S., relating to prepaid limited health service organizations and discount medical plan organizations, or any other chapter of the Florida Insurance Code; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to ch. 636, F.S., or any other chapter of the code; providing that certain certificates of authority and licenses are not required to market, sell, or offer to sell a direct primary care agreement; specifying requirements for a direct primary care agreement; providing an effective date.

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

Section 1. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

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

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which meets the requirements specified under subsection (4) and does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care practitioner licensed under chapter 458, chapter 459, chapter

Page 1 of 3

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

588-02883-16

2016132c1

460, or chapter 464, or a primary care group practice that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under chapter 636 or any other chapter of the Florida Insurance Code to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.

(c) Allow a party to terminate the agreement by written notice to the other party after a period specified in the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.

Page 2 of 3

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

588-02883-16

2016132c1

61 (e) Specify the monthly fee and any fees for primary care  
62 services not covered by the monthly fee.

63 (f) Specify the duration of the agreement and any automatic  
64 renewal provisions.

65 (g) Offer a refund to the patient of monthly fees paid in  
66 advance if the primary care provider ceases to offer primary  
67 care services for any reason.

68 (h) State that the agreement is not health insurance and  
69 that the primary care provider will not file any claims against  
70 the patient's health insurance policy or plan for reimbursement  
71 for any primary care services covered by the agreement.

72 (i) State that the agreement does not qualify as minimum  
73 essential coverage to satisfy the individual shared  
74 responsibility provision of the Patient Protection and  
75 Affordable Care Act pursuant to 26 U.S.C. s. 5000A.

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Communications, Energy, and Public Utilities, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Health Policy  
Transportation

## JOINT COMMITTEES:

Joint Administrative Procedures Committee  
Joint Legislative Budget Commission

## SENATOR DENISE GRIMSLEY

*Deputy Majority Leader*  
21st District

February 5, 2016

The Honorable Lizbeth Benacquisto, Chair  
Senate Committee on Banking & Insurance  
320 Knott Building  
402 S. Monroe Street  
Tallahassee, FL 32399-1300

Dear Madame Chair,

I respectfully request that Marty Mielke, my legislative assistant, be permitted to present Senate Bill 132, relating to Direct Primary Care, at your committee meeting on Tuesday, February 9, 2016. I will be attending the Health Policy committee meeting.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Denise Grimsley".

Denise Grimsley  
Senator, District 21

DG/mm

## REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/14

Meeting Date

SB132

Bill Number (if applicable)

Topic Health care Choice

Amendment Barcode (if applicable)

Name Alex Switzer

Job Title President

Address 9851 SR 54

Phone 813 315 0513

Street

NPR

City

FL

State

34665

Zip

Email Alex.Switzer@gmail.com

Speaking:  For  Against  Information

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

Representing Liberty First Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 9, 2016  
Meeting Date

SB132  
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Kristen Butler

Job Title Communications Director

Address 110 E. Jefferson St.  
Street

Phone 681-0416

TLH FL 32301  
City State Zip

Email Kristen.butler@nhb.org

Speaking:  For  Against  Information

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

Representing National Federation of Independent Business

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)

2/9/16  
Meeting Date

132  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name PAUL LAMBERT

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

Address 263 Rosehill Drive North  
Street  
Tallahassee, FL 32312  
City State Zip

Phone 850 597-2696  
Email plambert@paul Lambert Law.com

Speaking:  For  Against  Information

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

Representing Florida Chiropractic 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)

2/9/16

Meeting Date

132

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Nuland

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

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville, FL

32204

Email nulandlaw@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 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.

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)

2/9/16  
Meeting Date

132  
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr. E

Phone 850 224 6496

Street

Tallahassee FL 32303

City

State

Zip

Email MThomas@flmedical.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.*

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



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

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

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

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BILL: CS/CS/CS/CS/SB 260

INTRODUCER: Banking and Insurance Committee; Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Smith and others

SUBJECT: Financial Transactions

DATE: February 9, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>
4.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/CS/SB 260 revises various laws on financial transactions.

**Remittance Transfers**

This bill clarifies that ch. 670, F.S., applies to funds transfers that are remittance transfers under the federal Electronic Funds Transfer Act (EFTA), unless the remittance transfer is also an electronic funds transfer under the EFTA. The bill also provides that the federal EFTA will preempt ch. 670, F.S., in the event any inconsistency exists between ch. 670, F.S., and the EFTA regarding a funds transfer.

**Cancellation of Mortgages**

This bill reduces the period for cancellation of a mortgage from 60 days to 45 days after full payment of the amount due under a promissory note secured by a mortgage. The bill provides an additional requirement for open-end mortgages, requiring written notice from the borrower that he or she intends to close the mortgage. The provisions on mortgage cancellation do not apply to an open-end mortgage existing before July 1, 2016, if the loan agreement included procedures for cancelling the mortgage.

## **Consumer Finance Loans**

The Florida Consumer Finance Act, administered by the Office of Financial Regulation, prohibits and imposes disciplinary action on any person who compensates another person for referring a loan applicant to a licensed consumer finance lender. This bill provides an exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower.

## **Convenience Fees on Credit Cards**

Current law authorizes certain private colleges to impose a convenience fee on credit card payments made to the school for tuition, fees, and other student expenses. This bill extends the authority to charge a convenience fee to private schools offering K-12 education.

The effective date of the bill is July 1, 2016.

## **II. Present Situation:**

### **Federal Electronic Funds Transfer Act**

In 1978, Congress enacted the federal Electronic Funds Transfers Act (EFTA) to protect individual consumers who are parties to electronic funds transfers.<sup>1</sup> Under the EFTA, an electronic funds transfer means any transfer of funds initiated through certain electronic means that authorize a financial institution to debit or credit a consumer's account.<sup>2</sup> Electronic funds transfers include:

- Transfers through automated teller machines (ATMs);
- Point-of-sale (POS) terminals;
- Automated clearinghouse (ACH) systems;
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- Remote banking programs; and
- Remittance transfers.

However, electronic funds transfers do not include transactions originated by paper instruments, such as checks, and certain other transfers set forth in the EFTA. The EFTA covers topics such as disclosure of fees and limits, error resolution procedures, liability, preauthorized transfers, and receipts.

### **Uniform Commercial Code Article 4A and Chapter 670, F.S.**

In 1989, the Uniform Law Commission adopted Uniform Commercial Code (UCC) Article 4A for the states' enactment, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment orders. At the time the original UCC Article 4A was drafted, the intent was to govern large, rapid money transfers, such as wire transfers, between the

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<sup>1</sup> The EFTA is codified at 15 U.S.C. s. 1693 et seq. The EFTA is implemented in Regulation E at 12 C.F.R. pt. 1005.

<sup>2</sup> 15 U.S.C. s. 1693(7).

commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.<sup>3</sup>

A majority of the states have adopted UCC Article 4A. In 1991, the Florida Legislature adopted the UCC Article 4A through the enactment of ch. 670, F.S. (act), relating to funds transfers.<sup>4</sup> The act defines “funds transfers” as a series of transactions that begin with the originator’s payment order (an unconditional instruction to a bank to pay a fixed amount), made for making payment to the beneficiary of the order.<sup>5</sup> The funds transfer transaction includes the relationship between intermediary banks that execute and settle the payment order, and concludes upon the ultimate, actual payment to the beneficiary.

Frequently, the EFTA may partially apply to a funds transfer because the transfer is intended to credit a consumer’s account in a financial institution. In these cases, the act does not apply to the funds transfer to the extent it is governed and preempted by the EFTA.<sup>6</sup>

### **Remittance Transfers**

Consumers transfer tens of billions of dollars from the United States each year.<sup>7</sup> In the United States, remittance transfers sent by nondepository money transmitters, depository institutions, and credit unions are generally subject to federal anti-money laundering laws and restrictions on transfers to or from certain persons. Although remittances can be sent through depository institutions (such as an ACH transaction or a wire transfer), a large number of U.S. remittance transfers are sent through money transmitters, which are regulated primarily by state regulators. Chapter 560, F.S., governs nondepository money services businesses, which include “money transmitters” who receive and transmit currency or monetary value through a broad range of means within the U.S. or to or from the U.S.<sup>8</sup> However, ch. 560, F.S., is a regulatory statute administered by the Office of Financial Regulation and does not contain specific consumer protections or private remedies.<sup>9</sup>

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>10</sup> was signed into law. Among many changes, Dodd-Frank amended the EFTA to create new compliance requirements for remittance

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<sup>3</sup> 15 U.S.C. s.1693(b). *See also* Uniform Law Commission, *Why States Should Adopt UCC Article 4A*, at <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%204A>

<sup>4</sup> Ch. 91-70, Laws of Fla.

<sup>5</sup> Sections 670.103(1)(c) and 670.104(1), F.S.

<sup>6</sup> Section 670.108, F.S., Business Law Section of the Florida Bar, *White Paper in Support of the Proposed Amendment to UCC Section 670.108* (on file with the Senate Committee on Judiciary).

<sup>7</sup> 77 FR 6194 (Feb. 11, 2012).

<sup>8</sup> Section 560.103(23), F.S.

<sup>9</sup> Ch. 560, F.S., requires money transmitter licensees to maintain a corporate surety bond or a collateral deposit to ensure a source of recovery for aggrieved claimants. Section 560.209, F.S.

<sup>10</sup> Pub. L. 111-203, H.R. 4173, commonly referred to as “Dodd-Frank.”

transfers.<sup>11</sup> The rule defines a “remittance transfer” to mean the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is an electronic fund transfer.<sup>12</sup> Similar to the other consumer protections in the EFTA, these new remittance regulations require certain protections for the sending consumer, including disclosures, error resolution procedures, cancellation and refund policies, and a remittance transfer provider’s liability for the acts of its agents.

Under the EFTA, not all remittance transfers qualify as an “electronic funds transfer,” raising questions about the applicability of the EFTA. This could occur, for example, if the transfer permits payment in cash and does not instruct nor authorize a financial institution to credit a consumer account in a financial institution. The Uniform Law Commission expressed concern that absent a change to UCC Article 4A, there could be legal uncertainty for some remittance transfers currently governed by Article 4A, particularly for industry participants.<sup>13</sup> The Consumer Financial Protection Bureau, in its proposed remittance transfer rules (Regulation E), also noted the uncertainty raised for traditional cash-based remittances sent through money transmitters (which have not been covered by the EFTA) and international wire transfers, which are not electronic funds transfers.<sup>14</sup>

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4. A majority of states have adopted this amendment.<sup>15</sup> The amendment provides an affirmative statement of the act’s applicability to remittance transfers that are not electronic funds transfers under the EFTA. Without this amendment, neither the federal EFTA nor UCC Article 4A (as codified in the act) will apply to some aspects of remittance transfers, and the result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer.<sup>16</sup>

### **Cancellation of Mortgages**

Under current law, a lender must cancel a mortgage within 60 days after it has been paid in full.<sup>17</sup> The statute does not distinguish as to different types of mortgages, such as open-end mortgages and home equity lines of credit, and does not provide any exceptions. The Florida Statutes do not define the term, “open-end mortgages.” In the context of the financial services industry, these

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<sup>11</sup> Section 1073 of Dodd-Frank created Section 919 of the EFTA, relating to remittance transfers. Section 919 is codified at 15 U.S.C. s. 1693o-1. Dodd-Frank transferred EFTA rulemaking authority from the Board of Governors of the Federal Reserve System to the Consumer Financial Protection Bureau (CFPB). The CFPB’s remittance transfer rule became effective on October 28, 2013. The CFPB’s final remittance transfer rule was codified as new subpart B to Regulation E, 12 C.F.R. ss. 1005.30-1005.36.

<sup>12</sup> 12 CFR s. 1005.30(e).

<sup>13</sup> Uniform Law Commission, *UCC Article 4A Amendments (2012) Summary*, at [http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20\(2012\)](http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20(2012)).

<sup>14</sup> Electronic Fund Transfers (Regulation E), Final Rule and Proposed Rule, 77 FR 6211-6212 (Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

<sup>15</sup> Uniform Law Commission, *UCC Article 4A Amendments (2012): Enactment Status Map*, at [http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments \(2012\)](http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments (2012)) (last visited Jan. 7, 2016).

<sup>16</sup> Uniform Law Commission, *supra* note 13.

<sup>17</sup> Section 701.03, F.S.

products generally allow borrowers to draw cash, up to the maximum credit limit, and then as the borrower pays down the balance of the loan, the borrower can draw cash again up to the limit. A home equity line of credit is a form of revolving credit in which the home serves as collateral. In contrast, “closed-end mortgages” disburse the entire loan amount upfront to or on behalf of the borrower and do not allow future redraws of credit.<sup>18</sup>

According to the Florida Bankers Association, open-end lines of credit provide flexibility to consumers by allowing continual access to their home equity by paying the mortgage in full and then having the ability to access the equity when and if it is needed again by the consumer. Under current law, lenders must cancel “any mortgage” upon payoff and must release the lien without exception. This undermines the purpose of open-end mortgages and creates costly and burdensome work for both the consumer and the lender each time the consumer seeks new access to credit secured by the home.<sup>19</sup> Surrounding states such as Alabama, Georgia, Mississippi, and North Carolina have laws requiring that open-end mortgages and similar lines of credit be cancelled only upon the borrower’s full payment and written notice to the lender requesting termination of the open-end mortgage.<sup>20</sup>

### **Consumer Finance Loans**

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensure and regulation of nondepository financial service entities and individuals. One of the regulatory programs, administered by OFR, is the Florida Consumer Finance Act (act),<sup>21</sup> which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets forth maximum interest rates for a consumer finance loan, which is a loan of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.<sup>22</sup>

The act provides the grounds for denial of a license or other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S., provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender.

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<sup>18</sup> Consumer Financial Protection Bureau, *Ask CFPB: What is a second mortgage loan or “junior-lien”?* Available at <http://www.consumerfinance.gov/askcfpb/105/what-is-a-second-mortgage-loan-or-junior-lien.html> Additionally, Regulation Z, which implements the federal Truth in Lending Act, defines “open-end credit” as “consumer credit extended by a credit under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. 12 C.F.R. s. 226.2(20).

<sup>19</sup> E-mail from the Florida Bankers Association, SB 260, Financial Transactions (Sept. 28, 2015) (on file with Senate Committee on Banking and Insurance).

<sup>20</sup> Ala. Code 1975 s. 35-10-26; Ga. Code Ann. s. 44-14-3; Miss. Code Ann. s. 89-5-21; N.C.G.S.A. s. 45-36.9.

<sup>21</sup> Ch. 516, F.S.

<sup>22</sup> Section 516.01(2), F.S.

### **Convenience Fees on Credit Cards**

Current law generally prohibits a seller or a lessor from imposing a surcharge on credit card purchases.<sup>23</sup> Charges that are exempt from the prohibition include charges imposed pursuant to an approved state or federal tariff and convenience fees imposed by an institution of higher learning that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.<sup>24</sup>

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

#### **Remittance Transfers**

Current law is silent regarding whether the state Uniform Commercial Code: Funds Transfers law (chapter 670, F.S.) applies to a funds transfer that is a remittance transfer under the federal Electronic Funds Transfer Act. This bill adopts the federal Uniform Law Commission's 2012 amendment, which clarifies that the act applies to funds transfers that are remittance transfers as defined in the EFTA, unless the remittance transfer is an electronic funds transfer, which would be covered by EFTA. The bill provides that if there is any inconsistency between a funds transfer under the act and the EFTA, the EFTA will govern the inconsistency. This provision is consistent with language in the EFTA providing that state law is preempted only if it is inconsistent with the EFTA or Regulation E, and then only to the extent of the inconsistency.<sup>25</sup> (Section 670.108)

#### **Cancellation of Mortgages**

Current law requires a mortgage lender to cancel a mortgage within 60 days after it has been paid in full. Current law treats all types of mortgages the same for purposes of mortgage cancellation. This bill reduces the period for cancellation of a mortgage from 60 days to 45 days after full payment of the amount due under a promissory note secured by a mortgage. The bill provides an additional requirement for open-end mortgages. Mortgage cancellation on an open-end mortgage requires written notice from the borrower that he or she intends to close the mortgage. Upon receipt of the notice, the mortgagee or assignee shall cancel the mortgage within 45 days. The provisions on mortgage cancellation do not apply to an open-end mortgage existing before July 1, 2016, if the loan agreement included procedures for cancelling the mortgage. (Section 701.03, F.S.)

#### **Consumer Finance Loans**

The Florida Consumer Finance Act prohibits and imposes disciplinary action on any person who pays money or anything of value to a person for referring a loan applicant to a licensed consumer

<sup>23</sup> Section 501.0117(1), F.S.

<sup>24</sup> An independent nonprofit institution of higher learning may qualify for the Florida Resident Access Grant Program if the institution:

- Is located in and chartered by the state;
- Is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;
- Grants baccalaureate degrees; and
- Has a secular purpose (s. 1009.89(3), F.S.).

<sup>25</sup> 15 U.S.C. s. 1693q.

finance lender. This bill provides an exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower. (Section 516.07, F.S.)

#### **Convenience Fees on Credit Cards**

Current law authorizes certain private colleges to impose a convenience fee on credit card payments made to the school for tuition, fees, and other student expenses. This bill extends the authority to charge a convenience fee to private schools offering kindergarten through grade 12 education.<sup>26</sup> (Section 510.0117, F.S.)

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 bill's clarification of the coverage of ch. 670, F.S., to remittance transfers may provide greater operational efficiency for remittance transfer providers and intermediary institutions. In addition, the bill's provision to allow an open-end mortgage to remain open after a borrower pays off the amount due under a promissory note secured by a mortgage may reduce administrative costs for lenders and borrowers.

The bill's extension of authority to private kindergarten through grade 12 schools to charge convenience fees on credit card purchases would benefit the private schools. Private schools would be able to impose a convenience fee up to the amount charged by credit card companies per transaction. Parents of children enrolled at private kindergarten

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<sup>26</sup> A private school is a nonpublic school which offers kindergarten through grade 12 education. A private school may be any religious, for-profit, or nonprofit school, which is not a home education program. Section 1002.01(2), F.S.

through grade 12 schools would now have to pay convenience fees if they use a credit card to purchase tuition, fees, or other charges on student accounts.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.0117, 516.07, 670.108, and 701.03.

**IX. Additional Information:**

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

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

**CS/CS/CS/CS by Banking and Insurance on February 9, 2016:**

The bill differs from the prior version of the bill by not containing a provision that would have allowed a check casher, as an alternative to obtaining a thumbprint when cashing a payment instrument over \$1,000, to obtain two additional forms of secondary identification.. The bill also removes a scrivener's error.

**CS/CS/CS by Rules on January 27, 2016:**

The bill allows a check casher, as an alternative to obtaining a thumbprint when cashing a payment instrument over \$1,000, to obtain two additional forms of secondary identification.

**CS/CS by Judiciary on January 20, 2016:**

The bill expands the current ability of certain private schools to charge convenience fees on the use of a credit card to pay tuition, fees, or other student account charges.

**CS by Banking and Insurance on January 11, 2016:**

The CS:

- Allows a licensed consumer finance lender to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower.
- Requires a lender to cancel a mortgage within 45 days instead of 60 days if certain conditions are met.



- Provides that s. 701.03, F.S., relating to the cancellation of mortgages, does not apply to any existing or future open-end mortgage unless otherwise stated in the loan agreement.
- Clarifies that the act applies to remittance transfers made on or after July 1, 2016, the effective date of the bill.

**B. Amendments:**

None.

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

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825714

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 71 - 85.

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

And the title is amended as follows:

Delete lines 8 - 11

and insert:

make consumer finance loans; amending s. 670.108,



121654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
	.	
	.	
	.	

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

**Senate Amendment**

In title, delete lines 24 - 27  
and insert:  
the open-end mortgage; providing that a requirement  
that certain mortgages be cancelled within a specified  
timeframe does not apply to an open-ended mortgage  
existing before a certain date if the loan agreement  
contained procedures for cancelling the mortgage;  
providing applicability

By the Committees on Rules; Judiciary; and Banking and Insurance; and Senators Smith and Richter

595-02698-16

2016260c3

A bill to be entitled

An act relating to financial transactions; amending s. 501.0117, F.S.; providing that a convenience fee imposed upon a student or family paying certain fees by credit card to a private school is not considered a surcharge; amending s. 516.07, F.S.; revising the grounds for denial of an application for a license to make consumer finance loans; amending s. 560.310, F.S.; revising the documents that must be maintained or submitted by a licensee engaged in check cashing under certain circumstances; amending s. 670.108, F.S.; revising applicability; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer made under the federal act and a funds transfer made under ch. 670, F.S.; amending s. 701.03, F.S.; reducing the time limit for a mortgagee or an assignee to cancel a mortgage, except in cases where the loan is an open-end mortgage; authorizing an open-end mortgage to be canceled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-end mortgage; providing applicability; amending s. 516.07, F.S.; revising the grounds for denial of an application for a license to make consumer finance loans; providing applicability; providing an effective date.

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

Page 1 of 5

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

595-02698-16

2016260c3

Section 1. Subsection (1) of section 501.0117, Florida Statutes, is amended to read:

501.0117 Credit cards; transactions in which seller or lessor prohibited from imposing surcharge; penalty.—

(1) A seller or lessor in a sales or lease transaction may not impose a surcharge on the buyer or lessee for electing to use a credit card in lieu of payment by cash, check, or similar means, if the seller or lessor accepts payment by credit card. A surcharge is any additional amount imposed at the time of a sale or lease transaction by the seller or lessor that increases the charge to the buyer or lessee for the privilege of using a credit card to make payment. Charges imposed pursuant to approved state or federal tariffs are not considered to be a surcharge, and charges made under such tariffs are exempt from this section. A convenience fee imposed upon a student or family paying tuition, fees, or other student account charges by credit card to a William L. Boyd, IV, Florida resident access grant eligible institution, as defined in s. 1009.89, or to a private school, as defined in s. 1002.01, is not considered to be a surcharge and is exempt from this section if the amount of the convenience fee does not exceed the total cost charged by the credit card company to the institution. The term "credit card" includes those cards for which unpaid balances are payable on demand. This section does not apply to the offering of a discount for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, if the discount is offered to all prospective customers.

Section 2. Paragraph (k) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

Page 2 of 5

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

595-02698-16

2016260c3

61 516.07 Grounds for denial of license or for disciplinary  
62 action.—

63 (1) The following acts are violations of this chapter and  
64 constitute grounds for denial of an application for a license to  
65 make consumer finance loans and grounds for any of the  
66 disciplinary actions specified in subsection (2):

67 (k) Paying money or anything else of value, directly or  
68 indirectly, to any person as compensation, inducement, or reward  
69 for referring loan applicants to a licensee, if such amount is  
70 charged directly or indirectly to the borrower.

71 Section 3. Paragraph (c) of subsection (2) of section  
72 560.310, Florida Statutes, is amended to read:

73 560.310 Records of check cashers and foreign currency  
74 exchangers.—

75 (2) If the payment instrument exceeds \$1,000, the following  
76 additional information must be maintained or submitted:

77 (c) A thumbprint of the customer taken by the licensee when  
78 the payment instrument is presented for negotiation or payment  
79 or two additional forms of secondary identification, including  
80 an employee identification card, credit or bank cards, a social  
81 security card, insurance cards, an identification card issued by  
82 an educational institution, a non-U.S. Government identification  
83 card, a U.S. birth certificate, a permanent resident card, or  
84 another other form of identification as authorized by the  
85 commission.

86 Section 4. Section 670.108, Florida Statutes, is amended to  
87 read:

88 670.108 Relationship to Electronic Fund Transfer Act  
89 Exclusion of consumer transactions governed by federal law.—

595-02698-16

2016260c3

90 (1) Except as provided in subsection (2), this chapter does  
91 not apply to a funds transfer any part of which is governed by  
92 the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No.  
93 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.), as amended  
94 from time to time.

95 (2) This chapter applies to a funds transfer that is a  
96 remittance transfer as defined in the Electronic Fund Transfer  
97 Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless  
98 the remittance transfer is an electronic fund transfer as  
99 defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693a,  
100 as amended from time to time.

101 (3) If there is an inconsistency between a funds transfer  
102 under this chapter and the Electronic Fund Transfer Act, the  
103 Electronic Fund Transfer Act governs the inconsistency.

104 Section 5. Section 701.03, Florida Statutes is amended to  
105 read:

106 701.03 Cancellation.—

107 (1) Whenever the amount of money due under a promissory  
108 note secured by a ~~on any~~ mortgage is ~~shall be~~ fully paid, the  
109 mortgagee or assignee shall within ~~45~~ 60 days after satisfaction  
110 of the mortgage thereafter cancel the mortgage ~~same~~ in the  
111 manner provided by law, unless the mortgage is an open-end  
112 mortgage.

113 (2) A mortgage that is an open-end mortgage as provided in  
114 the loan agreement may be canceled upon written notice from the  
115 borrower of the intent to close the mortgage. The mortgagee or  
116 assignee shall cancel the open-end mortgage within 45 days after  
117 receiving the notice. This subsection does not apply to an open-  
118 end mortgage existing before July 1, 2016, if the loan agreement

595-02698-16

2016260c3

119 contained procedures for canceling the mortgage.

120 Section 6. This act applies to remittance transfers  
121 initiated on or after July 1, 2016.

122 Section 7. 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)

2/9/16

*Meeting Date*

SB 260

*Bill Number (if applicable)*

#825714

*Amendment Barcode (if applicable)*

Topic Waive in Support of Amendment #825714 to SB 260

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

*Street*

Tallahassee

Florida

32399

Email meredith.hinshelwood@flofr.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/9/16  
Meeting Date

SB 260  
Bill Number (if applicable)  
#825714  
Amendment Barcode (if applicable)

Topic Waive in Support of Amendment #825714 to SB 260

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

Address Florida Office of Financial Regulation  
Street  
Tallahassee Florida 32399  
City State Zip

Phone 850-410-9601

Email meredith.hinshelwood@flofr.com

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

2/9/16

Meeting Date

SB 260

Bill Number (if applicable)

#825714

Amendment Barcode (if applicable)

Topic Waive in Support of Amendment #825714 to SB 260

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

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Zip

Phone 850-410-9601

Email meredith.hinshelwood@flofr.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: [ ] Yes [ ] 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)

2-9-16  
Meeting Date

260  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name James Harold Thompson

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

Address 123 S. Calhoun St.  
Street  
Tallahassee FL 32302  
City State Zip

Phone 850-545-9556

Email JThompson@vestly.com

Speaking:  For  Against  Information

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

Representing Fla. Financial Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2.9.2016

Meeting Date

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

260

Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Kim Siomkos (see-om-kos)

Job Title VP of Gov. Affairs

Address 1001 Thomasville Rd

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Tallahassee FL 32308

City

State

Zip

Email ksiomkos@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.

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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)

2/9/16  
Meeting Date

260  
Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

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1911ahassee

FL

32303

City

State

Zip

Email alice.vickers@flacp.org

Speaking:  For  Against  Information

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

Representing FL 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)

02/09/2016

*Meeting Date*

SB 260

*Bill Number (if applicable)*Topic Relating to Financial Transactions*Amendment Barcode (if applicable)*Name Greg BlackJob Title AttorneyAddress 119 S. Monroe Street, Suite 200Phone 850-205-9000*Street*TallahasseeFL32301Email Greg.Black@MHDfirm.com*City**State**Zip*Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing The Business Law Section of The Florida BarAppearing at request of Chair:  Yes  NoLobbyist 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.)

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

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BILL: CS/SB 970

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Unclaimed Property

DATE: February 11, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 970 amends the Florida Disposition of Unclaimed Property Act (the Act). Unclaimed property consists of any funds or other property, including insurance proceeds, that remains unclaimed by the owner for a certain period of time. The Act requires holders of unclaimed property to exercise due diligence to locate owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property. The bill makes the following changes to the Act:

- Eliminates the exception that removes the fee cap and disclosure requirement applicable to claims made under a power of attorney when probate proceedings must be initiated on behalf of the claimant regarding an estate that has never been probated or if the claim is being made under the right of a person outside the United States;
- Eliminates the exception that removes the fee cap applicable to a purchase agreement for unclaimed property when probate proceedings must be initiated on behalf of the seller for an estate that has not been probated, the seller is not a natural person, or the seller is outside the United States;
- Requires purchase agreements to specify the percent of the property to be paid to the purchaser when a flat fee is paid as compensation to the buyer;
- Requires any authorization or agreement to recover or purchase unclaimed property executed between a claimant's representative and a claimant must be submitted with the claim and may not be dated before the limited power of attorney was executed;

- Requires all documentation filed with the courts to establish entitlement must be submitted to the DFS within 180 days from the date a claim form is signed by a claimant or claimant's representative;
- Repeals the prohibition against executing a power of attorney to act as a claimant's representative or a purchase agreement within 45 days after an unclaimed property account is added to the unclaimed property database;
- Adds to s. 717.139, F.S., the public policy statement from the repealed section;
- Allows for unclaimed property in a campaign account for public office to escheat to the state;
- Increases the maximum value governing documentation standards for claims related to small estates from \$5,000 to \$10,000;
- Authorizes the DFS to estimate property value if the holder fails to produce sufficient records to do so and clarifies that the estimation requirement applies without regard to whether the holder is incorporated, formed, or organized in Florida or whether the unclaimed property existed before the effective date of the bill;
- Increases the number of days allowed for a purchaser to pay a property right seller from 10 days to 30 days, requires the filing of proof of completed payment, and voids the claim, if the required proof is not filed with the DFS;
- Revises certain definitions and adds one for the term "United States"; and
- Removes the authorization for registrants to receive social security numbers.

The effective date of the bill is July 1, 2016.

## II. Present Situation:

### Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for more than 5 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.<sup>1</sup>

In 1987, Florida adopted the Uniform Unclaimed Property Act<sup>2</sup> and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").<sup>3</sup> 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 Department of Financial Services, Bureau of Unclaimed Property (DFS) 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.

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<sup>1</sup> Sections 717.104 – 717.116, F.S.

<sup>2</sup> UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, [http://www.uniformlaws.org/Act.aspx?title=Unclaimed Property Act \(1952\)\(1981\)](http://www.uniformlaws.org/Act.aspx?title=Unclaimed%20Property%20Act%20(1952)(1981)) (last visited Feb. 5, 2016).

<sup>3</sup> Chapter 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (last visited Feb. 5, 2016).

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 5 years after the property becomes payable or distributable, unless otherwise provided in the Act.<sup>4</sup> Holders of unclaimed property (which typically include banks and insurance companies) of \$50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days prior to filing a report with the DFS.<sup>5</sup> If the owners cannot be located, 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.<sup>6</sup> 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 of apparent owners.<sup>7</sup> The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.<sup>8</sup>

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>9</sup> 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.<sup>10</sup> 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 DFS is to deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.<sup>11</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>12</sup> The DFS is allowed to retain up to \$15 million to make prompt payment on 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 to be utilized for public education.<sup>13</sup>

Claims for recovery of unclaimed property held by the DFS under the Act may be filed by or on behalf of any person with an interest in the property.<sup>14</sup> While the Act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue their claim by executing a power of attorney agreement. Or, the claimant may sell their right to the property to certain individuals that are registered with the

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<sup>4</sup> Section 717.102(1), F.S.

<sup>5</sup> Section 717.117(4), F.S.

<sup>6</sup> Section 717.117, F.S.

<sup>7</sup> For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. s. 717.117(1)(b), F.S.

<sup>8</sup> Section 717.119, F.S.

<sup>9</sup> Section 717.1201, F.S. Like many other states' unclaimed property acts, 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.

<sup>10</sup> Sections 717.117 and 717.124, F.S.

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

<sup>12</sup> Section 717.123, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 717.124, F.S.



DFS for this purpose.<sup>15</sup> In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the Act. The fee limitations are:

For representatives operating under a power of attorney:<sup>16</sup>

- 20 percent of the value of the property, not to exceed \$1,000;
- However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before or if the claimant is outside of the United States.

For purchasers obtaining rights under a purchase agreement:<sup>17</sup>

- 20 percent discount off of the value of the property, not to exceed a discount of \$1,000;
- However, the \$1,000 discount limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

The Act also prescribes the form and content of the purchase agreement that transfers the right of the claimant to another person and the document granting the power of attorney.

Since the public policy of the state is to provide the DFS with the first opportunity to locate the owner of the unclaimed property and for the owner to receive the full value of their property.<sup>18</sup> There are limitations on claiming by others through powers of attorney and purchase agreements. Powers of attorney and purchase agreements that are executed less than 45 days after the property is received by the DFS and that relate to accounts over \$250 in value are void under the Act.<sup>19</sup> The 45 day limit on such claims provides the DFS the opportunity to attempt to locate the property's owner. However, placing time and value limits on claim eligibility requires the DFS to track accounts and audit claims to identify the amount and timing of the claims. The DFS reports that this is inefficient and the public purpose can be served through other provisions of the Act. The DFS recommends repealing s. 717.1381, F.S., to eliminate administrative inefficiency.<sup>20</sup> It is notable, though, that repealing s. 717.1381, F.S., would include the repeal of

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<sup>15</sup> Only a Florida licensed attorney, certified public accountant, private investigator or an employee of a private investigator, or an employer of the private investigator if the employer holds a Class "A" license under ch. 493, F.S., may execute such purchase agreements, s. 717.1351, F.S. Additionally, the purchaser must be registered with the DFS. The DFS reports that there are currently 246 registrants under this provision. Florida Department of Financial Services, Agency Analysis of 2016 SB 970, p. 3 (Dec. 14, 2015).

<sup>16</sup> Section 717.135, F.S., requires the disclosure that the property is held by the DFS pursuant to the Act, the mailing and Internet addresses of the DFS, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and the categories of unclaimed property the claimant's representative is seeking to recover. The categories of unclaimed property are: cash accounts; stale dated checks; life insurance or annuity contract assets; utility deposits; securities or other interests in business associations; wages; accounts receivable; and contents of safe-deposit boxes.

<sup>17</sup> Section 717.1351, F.S. The content of the disclosure statement has the same elements as the disclosure described in s. 717.135, F.S., related to powers of attorney. However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

<sup>18</sup> Sections 717.118 and 717.1381, F.S.

<sup>19</sup> Section 717.1381, F.S.

<sup>20</sup> Florida Department of Financial Services, Agency Analysis of 2016 SB 970, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, Re: 45 Day issue (Jan. 27, 2016).

statements of legislative intent regarding the right of the claimant to recover their property without charge and the obligation of the DFS to make a meaningful attempt to locate the claimant.

### **Unclaimed Campaign Funds**

Section 106.141, F.S., requires candidates for public office to dispose of the funds in their campaign account within 90 days of the date that their candidacy ended.<sup>21</sup> Paragraph 106.141(4)(a), F.S., specifies a variety of options for the disposal of surplus campaign funds. With certain exceptions, they may take any combination of the following actions when disposing of the surplus:

- Return, pro rata to each contributor, the funds that have not been spent or obligated;
- Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;
- Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member; or
- Give the funds that have not been spent or obligated:
  - In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or
  - In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

If the candidate accepted contributions under the Florida Election Campaign Financing Act, the surplus funds must be returned to the General Revenue Fund, after satisfying certain monetary obligations. If the candidate takes office, they may transfer a limited amount of the funds to their office account.

Violations of the campaign finance law are subject to criminal penalties, both misdemeanors and felonies. Failure to properly dispose of surplus campaign funds is a first degree misdemeanor punishable by up to a year in jail and/or a fine of \$1,000. Candidates are prohibited from accepting campaign contributions following the end of their candidacy. They are allowed to receive and deposit refund checks to be disposed of consistent with the requirements of law, as described above. However, the law does not specify how to dispose of cash (or other property), received in forms other than a check, that would otherwise go into the campaign account but comes into the possession of the former candidate after the end of their candidacy and the disposition of the campaign account.

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

**Section 1** revises the definitions of “business association,” “domicile,” and “insurance company” to simplify their text and improve understandability. Limited liability companies are specifically included in the definition of “business association.” A definition of “United States” is created to

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<sup>21</sup> The triggers for disposition are when the candidate withdraws their candidacy, becomes an unopposed candidate, is eliminated, or is elected. s. 106.141(1), F.S.

specify the meaning of that term, which is currently used throughout the Act to determine various rights and conditions.

**Section 2** of the bill provides that if unclaimed property is owned by the campaign account of a candidate for public office, following a report of the property to the DFS, the property shall become the property of the state and the proceeds of the property shall be paid into the State School Fund.

Generally, a claim for property related to the estate of a deceased person must be accompanied by an order from a probate court. However, there are documentary exceptions for estates with an aggregate value of \$5,000 or less and no probate proceeding is pending.<sup>22</sup> **Section 3** amends s. 717.1243, F.S., to increase the maximum threshold value of this small estate provision from \$5,000 to \$10,000.

Section 717.1262, F.S., requires that a claimant whose right to property is based on a court document must file a certified copy of the relevant court document with the DFS. **Section 4** expands this requirement to include all pleadings filed with the court to establish the property right that were filed within the 180 days preceding the signing of the claim form.

The holder of unclaimed property is obligated to report the value of property to the DFS. If the holder's records are insufficient to permit preparation of the required report, the value of the property may be estimated. However, there is no authority for the DFS to estimate the value of the property when the holder fails to produce the record. **Section 5** amends s. 717.1333, F.S., to authorize the DFS to estimate the amount of unclaimed property held and due to the DFS if the holder fails to produce records following a request by the DFS.

**Section 6** amends s. 717.135, F.S., which requires a claimant's representative to either give notice to a property owner that unclaimed property is held by the DFS Bureau of Unclaimed Property or limit the fees that a claimant's representative earns under a power of attorney to recover unclaimed property to 20 percent of the unclaimed property, not to exceed \$1,000. The bill applies the requirements of the section to claims where probate proceedings must be initiated on behalf of a claimant for an estate that has never been probated. The bill also applies the requirements of the section to claims made by a person outside the United States.

Section 717.135, F.S., also requires a specific form be used to execute a limited power of attorney that discloses to the property owner the dollar value of the property and the percent of the property that is being paid to the property, and additional disclosures. The bill removes a provision in current law that allows the property locator that charges a flat fee to not include in the limited power of attorney form the percent of the property paid as compensation to the property locator.

**Sections 6 and 7** require any authorization or agreement for the recovery or purchase of property to be personally signed and dated by the claimant. The date of the authorization or agreement cannot precede the date on the grant of limited power of attorney or purchase agreement. The effect is to have a compliant power of attorney or purchase agreement be the first agreement in

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<sup>22</sup> Section 717.1243, F.S.

the case. This facilitates getting the disclosure, if one is going to be used to remove the fee cap, in front of the claimant during the first step in the claims process. It is meant to address the problem of claimants being presented and obligated to noncompliant authorizations or agreements, only to later execute a compliant agreement, which misrepresents the factual circumstances of the representation and the lawfulness of the fee to the DFS. The bill requires a copy of such authorizations or agreements to be filed with the DFS along with the other required documents. Additionally, the bill requires the DFS to deny any claim where the representative under an authorization or agreement refuses to reduce its fee to the maximum allowed by law, i.e., 20 percent of the value of the property, if the disclosure was required but not provided to the claimant timely. Taken together, the provisions of the bill creating ss. 717.135(5) and 717.1351(8), F.S., would allow the fee cap to be lifted when the specified disclosure is made at the time of the first engagement of services. Failure to do so limits fees to 20 percent of the value of the property or requires DFS denial of the claim.

**Section 7** amends s. 717.1351, F.S., which governs contracts to acquire ownership of unclaimed property from the person entitled to the unclaimed property. Current law limits the purchase price that may be offered if the purchaser does not disclose to the owner of unclaimed property that the property is being held by the Bureau of Unclaimed Property. If such notice is not provided, the purchase price may not discount the value of the unclaimed property more than 20 percent, up to a maximum discounted purchase price of \$1,000. The bill applies the requirements of the section to purchase agreements where probate proceedings must be initiated on behalf of a seller for an estate that has never been probated. The bill also applies the requirements of the section to sellers located outside the United States.

Currently, s. 717.1351, F.S., requires that purchase agreements specify the percent of the property to be paid to the purchaser on a discrete line item of the purchase agreement pursuant to the form and content requirements of the Act. However, this line may be deleted if the purchaser is paid a flat fee instead of a percentage of the recovery. The bill eliminates this exception and requires every purchase agreement to include the required text regarding the percent of the property to be paid to the purchaser and the insertion of the appropriate percentage figure, which varies depending upon the amount of the flat fee and the value of the property to be recovered.

The bill also expands the time period a purchaser of unclaimed property has to remit the purchase price to the seller from 10 to 30 days after the execution of the purchase contract. The bill expands the requirement that the purchaser file with the DFS proof that the seller received the purchase price to include all forms of payment, rather than just payment by check. The bill also provides that if proof of payment is not provided, the claim is void.

**Section 8** repeals s. 717.1381, F.S. This eliminates the 45 day waiting period for claims over \$250 in value that are handled by a representative or purchaser. The DFS reports that they will be able to maintain a waiting period using their authority under s. 717.117(3), F.S., and that their administrative efficiency will be improved by not having to audit claim filings for the timing of agreements and value of the claim for compliance with the repealed limitation.<sup>23</sup>

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<sup>23</sup> Florida Department of Financial Services, Agency Analysis of 2016 SB 970, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, Re: 45 Day issue (Jan. 27, 2016).

**Section 9** retains the portion of legislative intent in s. 717.1381, F.S., regarding the right of the claimant to recover their property without charge by moving it to s. 717.139, F.S. However, it does not preserve the legislative intent statement regarding the obligation of the DFS to make a meaningful attempt to locate the claimant.

Individuals who register with the DFS as a potential purchaser under the Act are permitted to receive the social security numbers of apparent property owners of property reported to the DFS. This is in addition to other information related to the unclaimed property. **Section 10** deletes the authorization for registrants to receive social security numbers.

**Section 11** provides an effective date of 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 bill allows for small estates up to \$10,000 to file an affidavit with the department for a claim made by a beneficiary.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 717.101, 717.1243, 717.1262, 717.1333, 717.135, 717.1351, 717.139 and 717.1400.

This bill creates section 717.1235 of the Florida Statutes.

This bill repeals section 717.1381 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 February 9, 2016:**

- Removes the section of the bill relating to “surplus trustees”;
- Requires each court pleading filed within 180 days prior to a claim for unclaimed property to be filed with the Department of Financial Services;
- Requires all authorizations or agreements for representation regarding a claim for unclaimed property to meet specified requirements regarding accurate and personal completion by the claimant and allows for a claim to be denied if such agreements exceed the fee cap;
- Increases the maximum number of days for a claimant to be paid following a purchase agreement from 10 days to 30 days from the date of execution and voids the claim if proof of payment is not filed with the DFS;
- Restores a statement of legislative intent found in s.717.1381, F.S.
- Removes the section of the bill that expressed intent to apply a portion of the bill retroactively;
- Removes the section of the bill that deleted the \$1,000 fee cap on agreements to recover or purchase unclaimed property that do not provide specified disclosures; and
- Removes the section of the bill requiring a registration fee for claimant representatives.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/09/2016	.	
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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. Subsections (4), (8), and (13) of section  
717.101, Florida Statutes, are amended, present subsection (24)  
of that section is renumbered as subsection (25), and a new  
subsection (24) is added to that section, to read:

717.101 Definitions.—As used in this chapter, unless the  
context otherwise requires:



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11 (4) "Business association" means any corporation (other  
12 than a public corporation), joint stock company, investment  
13 company, business trust, partnership, limited liability company,  
14 or association of two or more individuals for business purposes  
15 ~~of two or more individuals, whether or not for profit or not for~~  
16 ~~profit, including a banking organization, financial~~  
17 ~~organization, insurance company, dissolved pension plan, or~~  
18 ~~utility.~~

19 (8) "Domicile" means the state of incorporation ~~for, in the~~  
20 ~~case of~~ a corporation incorporated under the laws of a state; or  
21 or for unincorporated business associations, the state where the  
22 business association is organized and the state of the principal  
23 ~~place of business, in the case of a person not incorporated~~  
24 ~~under the laws of a state.~~

25 (13) "Insurance company" means an association, a  
26 corporation, or a fraternal or mutual benefit organization,  
27 whether ~~or not~~ for profit or not for profit, which is engaged in  
28 providing insurance coverage, ~~including, by way of illustration~~  
29 ~~and not limitation, accident, burial, casualty, credit life,~~  
30 ~~contract performance, dental, fidelity, fire, health,~~  
31 ~~hospitalization, illness, life (including endowments and~~  
32 ~~annuities), malpractice, marine, mortgage, surety, and wage~~  
33 ~~protection insurance.~~

34 (24) "United States" means any state, district,  
35 commonwealth, territory, insular possession, and any other area  
36 subject to the legislative authority of the United States of  
37 America.

38 Section 2. Section 717.1235, Florida Statutes, is created  
39 to read:





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40           717.1235 Dormant campaign accounts; report of unclaimed  
41 property.—Unclaimed funds reported in the name of a campaign for  
42 public office which is required to dispose of surplus funds in  
43 its campaign account pursuant to s. 106.141 must be deposited  
44 with the Chief Financial Officer to the credit of the State  
45 School Trust Fund.

46           Section 3. Subsection (4) of section 717.1243, Florida  
47 Statutes, is amended to read:

48           717.1243 Small estate accounts.—

49           (4) This section only applies if all of the unclaimed  
50 property held by the department on behalf of the owner has an  
51 aggregate value of \$10,000 ~~\$5,000~~ or less and no probate  
52 proceeding is pending.

53           Section 4. Section 717.1262, Florida Statutes, is amended  
54 to read:

55           717.1262 Court documents.—Any person who claims entitlement  
56 to unclaimed property by reason of a court document shall file a  
57 certified copy of the court document with the department. The  
58 person shall also file with the department certified copies of  
59 all pleadings to obtain a court document establishing  
60 entitlement which were filed with the court within 180 days  
61 before the date the claim form was signed by the claimant or  
62 claimant's representative.

63           Section 5. Subsection (2) of section 717.1333, Florida  
64 Statutes, is amended to read:

65           717.1333 Evidence; estimations; audit reports, examiner's  
66 worksheets, investigative reports, other related documents.—

67           (2) If the records of the holder which ~~that~~ are available  
68 for the periods subject to this chapter are insufficient to



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69 permit the preparation of a report of the unclaimed property due  
70 and owing by a holder, or if the holder fails to provide records  
71 after being requested to do so, the amount due to the department  
72 may be reasonably estimated.

73 Section 6. Subsection (2) and paragraph (g) of subsection  
74 (4) of section 717.135, Florida Statutes, are amended, present  
75 subsections (5) and (6) of that section are renumbered as  
76 subsections (6) and (7), respectively, and a new subsection (5)  
77 is added to that section, to read:

78 717.135 Power of attorney to recover reported property in  
79 the custody of the department.—

80 (2) A power of attorney described in subsection (1) must:

81 (a) Limit the fees and costs for services to 20 percent per  
82 unclaimed property account held by the department. Fees and  
83 costs for cash accounts shall be based on the value of the  
84 property at the time the power of attorney is signed by the  
85 claimant. Fees and costs for accounts containing securities or  
86 other intangible ownership interests, which securities or  
87 interests are not converted to cash, shall be based on the  
88 purchase price of the security as quoted on a national exchange  
89 or other market on which the property is regularly traded at the  
90 time the securities or other ownership interest is remitted to  
91 the claimant or the claimant's representative. Fees and costs  
92 for tangible property or safe-deposit box accounts shall be  
93 based on the value of the tangible property or contents of the  
94 safe-deposit box at the time the ownership interest is  
95 transferred or remitted to the claimant. ~~Total fees and costs on~~  
96 ~~any single account owned by a natural person residing in this~~  
97 ~~country must not exceed \$1,000; or~~



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98 (b) Fully disclose that the property is held by the Bureau  
99 of Unclaimed Property of the Department of Financial Services  
100 pursuant to this chapter, the mailing address of the bureau, the  
101 Internet address of the bureau, the person or name of the entity  
102 that held the property prior to the property becoming unclaimed,  
103 the date of the holder's last contact with the owner, if known,  
104 and the approximate value of the property, and identify which of  
105 the following categories of unclaimed property the claimant's  
106 representative is seeking to recover, as reported by the holder:

- 107 1. Cash accounts.
- 108 2. Stale dated checks.
- 109 3. Life insurance or annuity contract assets.
- 110 4. Utility deposits.
- 111 5. Securities or other interests in business associations.
- 112 6. Wages.
- 113 7. Accounts receivable.
- 114 8. Contents of safe-deposit boxes.

115  
116 ~~This subsection shall not apply if probate proceedings must be~~  
117 ~~initiated on behalf of the claimant for an estate that has never~~  
118 ~~been probated or if the unclaimed property is being claimed by a~~  
119 ~~person outside of the United States.~~

120 (4)

121 (g) This section does not prohibit the:

122 1. Use of bolding, italics, print of different colors, and  
123 text borders as a means of highlighting or stressing certain  
124 selected items within the text.

125 2. Placement of the name, address, and telephone number of  
126 the representative's firm or company in the top margin above the



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127 words "POWER OF ATTORNEY." No additional writing of any kind may  
128 be placed in the top margin including, but not limited to,  
129 logos, license numbers, Internet addresses, or slogans.

130 3. Placement of the word "pending" prior to the words "NET  
131 AMOUNT TO BE PAID TO CLAIMANT," if it is not yet possible to  
132 determine the percentage interest of an heir or legatee prior to  
133 a determination on the issue by the probate court.

134 4. Deletion of the words "Number of Shares of Stock (If  
135 Applicable)" if the agreement does not relate to the recovery of  
136 securities.

137 ~~5. Deletion of the words "Percent to Be Paid as  
138 Compensation to Claimant's Representative" if the power of  
139 attorney provides for a flat fee to be paid as compensation to  
140 the claimant's representative.~~

141 (5) Any other authorization or agreement to recover  
142 unclaimed property which is executed by or between a claimant's  
143 representative and claimant must be signed and personally dated  
144 by the claimant. The date affixed to the authorization or  
145 agreement by the claimant may not be earlier than the date  
146 personally affixed by the claimant to the original limited power  
147 of attorney under this section. A copy of the authorization or  
148 agreement must be filed with the original claim submitted to the  
149 department, along with the statutorily compliant original power  
150 of attorney under this section.

151 Section 7. Subsection (4), paragraph (d) of subsection (7),  
152 and subsection (8) of section 717.1351, Florida Statutes, are  
153 amended to read:

154 717.1351 Acquisition of unclaimed property.-

155 (4) Any contract to acquire ownership of or entitlement to



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156 unclaimed property from the person or persons entitled to the  
157 unclaimed property must provide for the purchase price to be  
158 remitted to the seller or sellers within 30 ~~40~~ days after the  
159 execution of the contract by the seller or sellers. The contract  
160 must specify the unclaimed property account number, the name of  
161 the holder who reported the property to the department, the  
162 category of unclaimed property, the value of the unclaimed  
163 property account, and the number of shares of stock, if  
164 applicable. Proof that the seller received ~~of payment by check~~  
165 must be filed with the department with the claim. If proof of  
166 payment is not provided, the claim is void.

167 (7) This section does not prohibit the:

168 ~~(d) Deletion of the words "Percent of Property to be Paid~~  
169 ~~to Buyer," if the purchase agreement provides for a flat fee to~~  
170 ~~be paid as compensation to the buyer.~~

171 (8) (a) Any other authorization or agreement to purchase  
172 unclaimed property which is executed by or between a registrant  
173 and seller must be signed and personally dated by the seller.  
174 The date affixed to the authorization or agreement by the seller  
175 may not be earlier than the date personally affixed by the  
176 seller to the original purchase agreement under this section. A  
177 copy of the authorization or agreement must be filed with the  
178 original claim submitted to the department, along with the  
179 statutorily compliant original purchase agreement under this  
180 section.

181 (b) If the registrant's fee on a document referred to in  
182 this subsection reduces the amount a seller will receive as a  
183 purchase price by more than 20 percent on any given claim, the  
184 department shall deny the claim pursuant to s. 717.124(1)(d).



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185        (c) This section does not supersede the licensing  
186 requirements of chapter 493.

187        Section 8. Section 717.1381, Florida Statutes, is repealed.

188        Section 9. Section 717.139, Florida Statutes, is amended to  
189 read:

190        717.139 Uniformity of application and construction.—  
191 Protecting the interests of owners of unclaimed property is  
192 declared to be the public policy of this state. It is in the  
193 best interests of the owners of unclaimed property that they  
194 have the opportunity to receive the full amount of the unclaimed  
195 property returned to them without deduction of any fees. This  
196 chapter shall be applied and construed as to effectuate its  
197 general purpose of protecting the interest of missing owners of  
198 property, while providing that the benefit of all unclaimed and  
199 abandoned property shall go to all the people of the state, and  
200 to make uniform the law with respect to the subject of this  
201 chapter among states enacting it.

202        Section 10. Subsections (1), (2), and (3) of section  
203 717.1400, Florida Statutes, are amended to read:

204        717.1400 Registration.—

205        (1) In order to file claims as a claimant's representative,  
206 acquire ownership of or entitlement to unclaimed property,  
207 receive a distribution of fees and costs from the department,  
208 and obtain unclaimed property dollar amounts and, numbers of  
209 reported shares of stock, ~~and social security numbers~~ held by  
210 the department, a private investigator holding a Class "C"  
211 individual license under chapter 493 must register with the  
212 department on such form as the department shall prescribe by  
213 rule, and must be verified by the applicant. To register with



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214 the department, a private investigator must provide:

215 (a) A legible copy of the applicant's Class "A" business  
216 license under chapter 493 or that of the applicant's firm or  
217 employer which holds a Class "A" business license under chapter  
218 493.

219 (b) A legible copy of the applicant's Class "C" individual  
220 license issued under chapter 493.

221 (c) The business address and telephone number of the  
222 applicant's private investigative firm or employer.

223 (d) The names of agents or employees, if any, who are  
224 designated to act on behalf of the private investigator,  
225 together with a legible copy of their photo identification  
226 issued by an agency of the United States, or a state, or a  
227 political subdivision thereof.

228 (e) Sufficient information to enable the department to  
229 disburse funds by electronic funds transfer.

230 (f) The tax identification number of the private  
231 investigator's firm or employer which holds a Class "A" business  
232 license under chapter 493.

233 (2) In order to file claims as a claimant's representative,  
234 acquire ownership of or entitlement to unclaimed property,  
235 receive a distribution of fees and costs from the department,  
236 and obtain unclaimed property dollar amounts and, numbers of  
237 reported shares of stock, ~~and social security numbers~~ held by  
238 the department, a Florida-certified public accountant must  
239 register with the department on such form as the department  
240 shall prescribe by rule, and must be verified by the applicant.  
241 To register with the department a Florida-certified public  
242 accountant must provide:



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- 243 (a) The applicant's Florida Board of Accountancy number.
- 244 (b) A legible copy of the applicant's current driver  
245 license showing the full name and current address of such  
246 person. If a current driver license is not available, another  
247 form of identification showing the full name and current address  
248 of such person or persons shall be filed with the department.
- 249 (c) The business address and telephone number of the  
250 applicant's public accounting firm or employer.
- 251 (d) The names of agents or employees, if any, who are  
252 designated to act on behalf of the Florida-certified public  
253 accountant, together with a legible copy of their photo  
254 identification issued by an agency of the United States, or a  
255 state, or a political subdivision thereof.
- 256 (e) Sufficient information to enable the department to  
257 disburse funds by electronic funds transfer.
- 258 (f) The tax identification number of the accountant's  
259 public accounting firm employer.
- 260 (3) In order to file claims as a claimant's representative,  
261 acquire ownership of or entitlement to unclaimed property,  
262 receive a distribution of fees and costs from the department,  
263 and obtain unclaimed property dollar amounts and, numbers of  
264 reported shares of stock, ~~and social security numbers~~ held by  
265 the department, an attorney licensed to practice in this state  
266 must register with the department on such form as the department  
267 shall prescribe by rule, and must be verified by the applicant.  
268 To register with the department, such attorney must provide:
- 269 (a) The applicant's Florida Bar number.
- 270 (b) A legible copy of the applicant's current driver  
271 license showing the full name and current address of such





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272 person. If a current driver license is not available, another  
273 form of identification showing the full name and current address  
274 of such person or persons shall be filed with the department.

275 (c) The business address and telephone number of the  
276 applicant's firm or employer.

277 (d) The names of agents or employees, if any, who are  
278 designated to act on behalf of the attorney, together with a  
279 legible copy of their photo identification issued by an agency  
280 of the United States, or a state, or a political subdivision  
281 thereof.

282 (e) Sufficient information to enable the department to  
283 disburse funds by electronic funds transfer.

284 (f) The tax identification number of the attorney's firm or  
285 employer.

286 Section 11. This act shall take effect July 1, 2016.

287  
288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause  
291 and insert:

292 A bill to be entitled  
293 An act relating to unclaimed property; amending s.  
294 717.101, F.S.; revising and providing definitions;  
295 creating s. 717.1235, F.S.; requiring unclaimed funds  
296 reported in the name of specified campaigns for public  
297 office to be deposited with the Chief Financial  
298 Officer to the credit of the State School Trust Fund;  
299 amending s. 717.1243, F.S.; revising the aggregate  
300 value that constitutes a small estate account;



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301 amending s. 717.1262, F.S.; requiring certain persons  
302 claiming entitlement to unclaimed property to file  
303 certified copies of specified pleadings with the  
304 Department of Financial Services; amending s.  
305 717.1333, F.S.; revising requirements for the  
306 estimation of certain amounts due to the department;  
307 amending s. 717.135, F.S.; removing a cap on fees and  
308 costs for services on specified unclaimed property  
309 accounts; revising applicability; deleting a provision  
310 that allows specified wording on a certain power of  
311 attorney; providing requirements for a certain  
312 authorization or agreement to recover unclaimed  
313 property; amending s. 717.1351, F.S.; revising  
314 requirements and conditions for contracts to acquire  
315 ownership of or entitlement to property; deleting a  
316 provision that allows specified wording on a purchase  
317 agreement; providing requirements for a certain  
318 authorization or agreement to purchase unclaimed  
319 property; requiring the department to deny a claim  
320 under certain circumstances; repealing s. 717.1381,  
321 F.S., relating to void unclaimed property powers of  
322 attorney and purchase agreements; amending s. 717.139,  
323 F.S.; providing legislative intent; amending s.  
324 717.1400, F.S.; removing authorization for certain  
325 private investigators, public accountants, and  
326 attorneys to obtain social security numbers; providing  
327 an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

1           **Senate Substitute for Amendment (260196) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Subsections (4), (8), and (13) of section  
7 717.101, Florida Statutes, are amended, present subsection (24)  
8 of that section is renumbered as subsection (25), and a new  
9 subsection (24) is added to that section, to read:

10           717.101 Definitions.—As used in this chapter, unless the



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11 context otherwise requires:

12 (4) "Business association" means any corporation (other  
13 than a public corporation), joint stock company, investment  
14 company, business trust, partnership, limited liability company,  
15 or association of two or more individuals for business purposes  
16 ~~of two or more individuals, whether or not for profit or not for~~  
17 ~~profit, including a banking organization, financial~~  
18 ~~organization, insurance company, dissolved pension plan, or~~  
19 ~~utility.~~

20 (8) "Domicile" means the state of incorporation ~~for, in the~~  
21 ~~case of~~ a corporation incorporated under the laws of a state; ~~or~~  
22 or for unincorporated business associations, the state where the  
23 business association is organized ~~and the state of the principal~~  
24 ~~place of business, in the case of a person not incorporated~~  
25 ~~under the laws of a state.~~

26 (13) "Insurance company" means an association, a  
27 corporation, or a fraternal or mutual benefit organization,  
28 whether ~~or not~~ for profit or not for profit, which is engaged in  
29 providing insurance coverage, ~~including, by way of illustration~~  
30 ~~and not limitation, accident, burial, casualty, credit life,~~  
31 ~~contract performance, dental, fidelity, fire, health,~~  
32 ~~hospitalization, illness, life (including endowments and~~  
33 ~~annuities), malpractice, marine, mortgage, surety, and wage~~  
34 ~~protection insurance.~~

35 (24) "United States" means any state, district,  
36 commonwealth, territory, insular possession, and any other area  
37 subject to the legislative authority of the United States of  
38 America.

39 Section 2. Section 717.1235, Florida Statutes, is created



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40 to read:

41 717.1235 Dormant campaign accounts; report of unclaimed  
42 property.—Unclaimed funds reported in the name of a campaign for  
43 public office which is required to dispose of surplus funds in  
44 its campaign account pursuant to s. 106.141 must be deposited  
45 with the Chief Financial Officer to the credit of the State  
46 School Trust Fund.

47 Section 3. Subsection (4) of section 717.1243, Florida  
48 Statutes, is amended to read:

49 717.1243 Small estate accounts.—

50 (4) This section only applies if all of the unclaimed  
51 property held by the department on behalf of the owner has an  
52 aggregate value of \$10,000 ~~\$5,000~~ or less and no probate  
53 proceeding is pending.

54 Section 4. Section 717.1262, Florida Statutes, is amended  
55 to read:

56 717.1262 Court documents.—Any person who claims entitlement  
57 to unclaimed property by reason of a court document shall file a  
58 certified copy of the court document with the department. The  
59 person shall also file with the department certified copies of  
60 all pleadings to obtain a court document establishing  
61 entitlement which were filed with the court within 180 days  
62 before the date the claim form was signed by the claimant or  
63 claimant's representative.

64 Section 5. Subsection (2) of section 717.1333, Florida  
65 Statutes, is amended to read:

66 717.1333 Evidence; estimations; audit reports, examiner's  
67 worksheets, investigative reports, other related documents.—

68 (2) If the records of the holder which ~~that~~ are available



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69 for the periods subject to this chapter are insufficient to  
70 permit the preparation of a report of the unclaimed property due  
71 and owing by a holder, or if the holder fails to provide records  
72 after being requested to do so, the amount due to the department  
73 may be reasonably estimated.

74 Section 6. Subsection (2) and paragraph (g) of subsection  
75 (4) of section 717.135, Florida Statutes, are amended, present  
76 subsections (5) and (6) of that section are renumbered as  
77 subsections (6) and (7), respectively, and a new subsection (5)  
78 is added to that section, to read:

79 717.135 Power of attorney to recover reported property in  
80 the custody of the department.—

81 (2) A power of attorney described in subsection (1) must:

82 (a) Limit the fees and costs for services to 20 percent per  
83 unclaimed property account held by the department. Fees and  
84 costs for cash accounts shall be based on the value of the  
85 property at the time the power of attorney is signed by the  
86 claimant. Fees and costs for accounts containing securities or  
87 other intangible ownership interests, which securities or  
88 interests are not converted to cash, shall be based on the  
89 purchase price of the security as quoted on a national exchange  
90 or other market on which the property is regularly traded at the  
91 time the securities or other ownership interest is remitted to  
92 the claimant or the claimant's representative. Fees and costs  
93 for tangible property or safe-deposit box accounts shall be  
94 based on the value of the tangible property or contents of the  
95 safe-deposit box at the time the ownership interest is  
96 transferred or remitted to the claimant. Total fees and costs on  
97 any single account owned by a natural person residing in this



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98 country must not exceed \$1,000; or

99 (b) Fully disclose that the property is held by the Bureau  
100 of Unclaimed Property of the Department of Financial Services  
101 pursuant to this chapter, the mailing address of the bureau, the  
102 Internet address of the bureau, the person or name of the entity  
103 that held the property prior to the property becoming unclaimed,  
104 the date of the holder's last contact with the owner, if known,  
105 and the approximate value of the property, and identify which of  
106 the following categories of unclaimed property the claimant's  
107 representative is seeking to recover, as reported by the holder:

- 108 1. Cash accounts.
- 109 2. Stale dated checks.
- 110 3. Life insurance or annuity contract assets.
- 111 4. Utility deposits.
- 112 5. Securities or other interests in business associations.
- 113 6. Wages.
- 114 7. Accounts receivable.
- 115 8. Contents of safe-deposit boxes.

116  
117 ~~This subsection shall not apply if probate proceedings must be~~  
118 ~~initiated on behalf of the claimant for an estate that has never~~  
119 ~~been probated or if the unclaimed property is being claimed by a~~  
120 ~~person outside of the United States.~~

121 (4)

122 (g) This section does not prohibit the:

- 123 1. Use of bolding, italics, print of different colors, and  
124 text borders as a means of highlighting or stressing certain  
125 selected items within the text.
- 126 2. Placement of the name, address, and telephone number of



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127 the representative's firm or company in the top margin above the  
128 words "POWER OF ATTORNEY." No additional writing of any kind may  
129 be placed in the top margin including, but not limited to,  
130 logos, license numbers, Internet addresses, or slogans.

131 3. Placement of the word "pending" prior to the words "NET  
132 AMOUNT TO BE PAID TO CLAIMANT," if it is not yet possible to  
133 determine the percentage interest of an heir or legatee prior to  
134 a determination on the issue by the probate court.

135 4. Deletion of the words "Number of Shares of Stock (If  
136 Applicable)" if the agreement does not relate to the recovery of  
137 securities.

138 ~~5. Deletion of the words "Percent to Be Paid as  
139 Compensation to Claimant's Representative" if the power of  
140 attorney provides for a flat fee to be paid as compensation to  
141 the claimant's representative.~~

142 (5) (a) Any other authorization or agreement to recover  
143 unclaimed property which is executed by or between a claimant's  
144 representative and claimant must be signed and personally dated  
145 by the claimant. The date affixed to the authorization or  
146 agreement by the claimant may not be earlier than the date  
147 personally affixed by the claimant to the original limited power  
148 of attorney under this section. A copy of the authorization or  
149 agreement must be filed with the original claim submitted to the  
150 department, along with the statutorily compliant original power  
151 of attorney under this section.

152 (b) If the claimant's representative's fee for a document  
153 described in this subsection exceeds 20 percent on any given  
154 claim, s. 717.124(1) (d) applies.

155 Section 7. Subsections (2) and (4), paragraph (d) of





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156 subsection (7), and subsection (8) of section 717.1351, Florida  
157 Statutes, are amended to read:

158 717.1351 Acquisition of unclaimed property.—

159 (2) All contracts to acquire ownership of or entitlement to  
160 unclaimed property from the person or persons entitled to the  
161 unclaimed property must be in 10-point type or greater and must:

162 (a) Have a purchase price that discounts the value of the  
163 unclaimed property at the time the agreement is executed by the  
164 seller at no greater than 20 percent per account held by the  
165 department. An unclaimed property account must not be discounted  
166 in excess of \$1,000. ~~However, the \$1,000 discount limitation~~  
167 ~~does not apply if probate proceedings must be initiated on~~  
168 ~~behalf of the seller for an estate that has never been probated~~  
169 ~~or if the seller of the unclaimed property is not a natural~~  
170 ~~person or is a person outside the United States; or~~

171 (b) Fully disclose that the property is held by the Bureau  
172 of Unclaimed Property of the Department of Financial Services  
173 pursuant to this chapter, the mailing address of the bureau, the  
174 Internet address of the bureau, the person or name of the entity  
175 that held the property prior to the property becoming unclaimed,  
176 the date of the holder's last contact with the owner, if known,  
177 and the approximate value of the property, and identify which of  
178 the following categories of unclaimed property the buyer is  
179 seeking to purchase as reported by the holder:

- 180 1. Cash accounts.
- 181 2. Stale dated checks.
- 182 3. Life insurance or annuity contract assets.
- 183 4. Utility deposits.
- 184 5. Securities or other interests in business associations.



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- 185 6. Wages.
- 186 7. Accounts receivable.
- 187 8. Contents of safe-deposit boxes.

188  
189 The purchase agreement described in this paragraph must state in  
190 12-point type or greater in the order indicated with the blank  
191 spaces accurately completed:

192  
193 FULL DISCLOSURE STATEMENT

194  
195 The property is currently held by the State of Florida  
196 Department of Financial Services, Bureau of Unclaimed  
197 Property, pursuant to chapter 717, Florida Statutes.  
198 The mailing address of the Bureau of Unclaimed  
199 Property is ..... The Internet address of the  
200 Bureau of Unclaimed Property is .....

201  
202 The property was remitted by: .....

203  
204 Date of last contact: .....

205  
206 Property category: .....

207  
208 Immediately above the signature line for the seller, the  
209 purchase agreement described in this paragraph must state in 12-  
210 point type or greater:

211  
212 Seller agrees, by signing below, that the FULL  
213 DISCLOSURE STATEMENT has been read and fully



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214 understood.

215

216 (4) Any contract to acquire ownership of or entitlement to  
217 unclaimed property from the person or persons entitled to the  
218 unclaimed property must provide for the purchase price to be  
219 remitted to the seller or sellers within 30 ~~40~~ days after the  
220 execution of the contract by the seller or sellers. The contract  
221 must specify the unclaimed property account number, the name of  
222 the holder who reported the property to the department, the  
223 category of unclaimed property, the value of the unclaimed  
224 property account, and the number of shares of stock, if  
225 applicable. Proof that the seller received ~~of payment by check~~  
226 must be filed with the department with the claim. If proof of  
227 payment is not provided, the claim is void.

228 (7) This section does not prohibit the:

229 ~~(d) Deletion of the words "Percent of Property to be Paid~~  
230 ~~to Buyer," if the purchase agreement provides for a flat fee to~~  
231 ~~be paid as compensation to the buyer.~~

232 (8) (a) Any other authorization or agreement to purchase  
233 unclaimed property which is executed by or between a registrant  
234 and seller must be signed and personally dated by the seller.  
235 The date affixed to the authorization or agreement by the seller  
236 may not be earlier than the date personally affixed by the  
237 seller to the original purchase agreement under this section. A  
238 copy of the authorization or agreement must be filed with the  
239 original claim submitted to the department, along with the  
240 statutorily compliant original purchase agreement under this  
241 section.

242 (b) If the claimant's representative's purchase price paid



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243 to the seller on a document referred to in this subsection  
244 reduces the purchase price by more than 20 percent on any given  
245 claim, s. 717.124(1)(d) applies.

246 (c) This section does not supersede the licensing  
247 requirements of chapter 493.

248 Section 8. Section 717.1381, Florida Statutes, is repealed.

249 Section 9. Section 717.139, Florida Statutes, is amended to  
250 read:

251 717.139 Uniformity of application and construction.—  
252 Protecting the interests of owners of unclaimed property is  
253 declared to be the public policy of this state. It is in the  
254 best interests of the owners of unclaimed property that they  
255 have the opportunity to receive the full amount of the unclaimed  
256 property returned to them without deduction of any fees. This  
257 chapter shall be applied and construed as to effectuate its  
258 general purpose of protecting the interest of missing owners of  
259 property, while providing that the benefit of all unclaimed and  
260 abandoned property shall go to all the people of the state, and  
261 to make uniform the law with respect to the subject of this  
262 chapter among states enacting it.

263 Section 10. Subsections (1), (2), and (3) of section  
264 717.1400, Florida Statutes, are amended to read:

265 717.1400 Registration.—

266 (1) In order to file claims as a claimant's representative,  
267 acquire ownership of or entitlement to unclaimed property,  
268 receive a distribution of fees and costs from the department,  
269 and obtain unclaimed property dollar amounts and~~7~~ numbers of  
270 reported shares of stock, ~~and social security numbers~~ held by  
271 the department, a private investigator holding a Class "C"



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272 individual license under chapter 493 must register with the  
273 department on such form as the department shall prescribe by  
274 rule, and must be verified by the applicant. To register with  
275 the department, a private investigator must provide:

276 (a) A legible copy of the applicant's Class "A" business  
277 license under chapter 493 or that of the applicant's firm or  
278 employer which holds a Class "A" business license under chapter  
279 493.

280 (b) A legible copy of the applicant's Class "C" individual  
281 license issued under chapter 493.

282 (c) The business address and telephone number of the  
283 applicant's private investigative firm or employer.

284 (d) The names of agents or employees, if any, who are  
285 designated to act on behalf of the private investigator,  
286 together with a legible copy of their photo identification  
287 issued by an agency of the United States, or a state, or a  
288 political subdivision thereof.

289 (e) Sufficient information to enable the department to  
290 disburse funds by electronic funds transfer.

291 (f) The tax identification number of the private  
292 investigator's firm or employer which holds a Class "A" business  
293 license under chapter 493.

294 (2) In order to file claims as a claimant's representative,  
295 acquire ownership of or entitlement to unclaimed property,  
296 receive a distribution of fees and costs from the department,  
297 and obtain unclaimed property dollar amounts and, numbers of  
298 reported shares of stock, ~~and social security numbers~~ held by  
299 the department, a Florida-certified public accountant must  
300 register with the department on such form as the department



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301 shall prescribe by rule, and must be verified by the applicant.  
302 To register with the department a Florida-certified public  
303 accountant must provide:

304 (a) The applicant's Florida Board of Accountancy number.

305 (b) A legible copy of the applicant's current driver  
306 license showing the full name and current address of such  
307 person. If a current driver license is not available, another  
308 form of identification showing the full name and current address  
309 of such person or persons shall be filed with the department.

310 (c) The business address and telephone number of the  
311 applicant's public accounting firm or employer.

312 (d) The names of agents or employees, if any, who are  
313 designated to act on behalf of the Florida-certified public  
314 accountant, together with a legible copy of their photo  
315 identification issued by an agency of the United States, or a  
316 state, or a political subdivision thereof.

317 (e) Sufficient information to enable the department to  
318 disburse funds by electronic funds transfer.

319 (f) The tax identification number of the accountant's  
320 public accounting firm employer.

321 (3) In order to file claims as a claimant's representative,  
322 acquire ownership of or entitlement to unclaimed property,  
323 receive a distribution of fees and costs from the department,  
324 and obtain unclaimed property dollar amounts and, numbers of  
325 reported shares of stock, ~~and social security numbers~~ held by  
326 the department, an attorney licensed to practice in this state  
327 must register with the department on such form as the department  
328 shall prescribe by rule, and must be verified by the applicant.  
329 To register with the department, such attorney must provide:



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- 330 (a) The applicant's Florida Bar number.
- 331 (b) A legible copy of the applicant's current driver  
332 license showing the full name and current address of such  
333 person. If a current driver license is not available, another  
334 form of identification showing the full name and current address  
335 of such person or persons shall be filed with the department.
- 336 (c) The business address and telephone number of the  
337 applicant's firm or employer.
- 338 (d) The names of agents or employees, if any, who are  
339 designated to act on behalf of the attorney, together with a  
340 legible copy of their photo identification issued by an agency  
341 of the United States, or a state, or a political subdivision  
342 thereof.
- 343 (e) Sufficient information to enable the department to  
344 disburse funds by electronic funds transfer.
- 345 (f) The tax identification number of the attorney's firm or  
346 employer.

347 Section 11. This act shall take effect July 1, 2016.

348  
349 ===== T I T L E A M E N D M E N T =====

350 And the title is amended as follows:

351 Delete everything before the enacting clause  
352 and insert:

353 A bill to be entitled  
354 An act relating to unclaimed property; amending s.  
355 717.101, F.S.; revising and providing definitions;  
356 creating s. 717.1235, F.S.; requiring unclaimed funds  
357 reported in the name of specified campaigns for public  
358 office to be deposited with the Chief Financial



359 Officer to the credit of the State School Trust Fund;  
360 amending s. 717.1243, F.S.; revising the aggregate  
361 value that constitutes a small estate account;  
362 amending s. 717.1262, F.S.; requiring certain persons  
363 claiming entitlement to unclaimed property to file  
364 certified copies of specified pleadings with the  
365 Department of Financial Services; amending s.  
366 717.1333, F.S.; revising requirements for the  
367 estimation of certain amounts due to the department;  
368 amending s. 717.135, F.S.; revising applicability;  
369 deleting a provision that allows specified wording on  
370 a certain power of attorney; providing requirements  
371 for a certain authorization or agreement to recover  
372 unclaimed property; requiring the department to deny a  
373 claim under certain circumstances; amending s.  
374 717.1351, F.S.; revising requirements and conditions  
375 for contracts to acquire ownership of or entitlement  
376 to property; deleting a provision that allows  
377 specified wording on a purchase agreement; providing  
378 requirements for a certain authorization or agreement  
379 to purchase unclaimed property; requiring the  
380 department to deny a claim under certain  
381 circumstances; repealing s. 717.1381, F.S., relating  
382 to void unclaimed property powers of attorney and  
383 purchase agreements; amending s. 717.139, F.S.;  
384 providing legislative intent; amending s. 717.1400,  
385 F.S.; removing authorization for certain private  
386 investigators, public accountants, and attorneys to  
387 obtain social security numbers; providing an effective





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388

date.

By Senator Richter

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1 A bill to be entitled  
 2 An act relating to unclaimed property; amending s.  
 3 45.034, F.S.; revising qualifications for a surplus  
 4 trustee; amending s. 717.101, F.S.; revising and  
 5 providing definitions; creating s. 717.1235, F.S.;  
 6 providing that certain unclaimed property shall  
 7 escheat to the state for certain purposes; amending s.  
 8 717.1243, F.S.; revising the aggregate value that  
 9 constitutes a small estate account; amending s.  
 10 717.1333, F.S.; revising requirements for the  
 11 estimation of certain amounts due; amending s.  
 12 717.135, F.S.; revising requirements for a power of  
 13 attorney used in the recovery of unclaimed property;  
 14 eliminating a maximum fee provision for such recovery;  
 15 revising applicability; amending s. 717.1351, F.S.;  
 16 revising requirements for contracts to acquire  
 17 ownership of or entitlement to property; deleting a  
 18 provision that allows certain wording on a purchase  
 19 agreement; repealing s. 717.1381, F.S., relating to  
 20 void unclaimed property powers of attorney and  
 21 purchase agreements; amending s. 717.1400, F.S.;  
 22 removing authority of certain private investigators to  
 23 obtain social security numbers; revising registration  
 24 requirements; providing retroactive applicability;  
 25 providing an effective date.

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

28  
 29 Section 1. Subsection (8) is added to section 45.034,

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30 Florida Statutes, to read:

31 45.034 Qualifications and appointment of a surplus trustee  
 32 in foreclosure actions.—

33 (8) (a) A surplus trustee must not be an owner, shareholder,  
 34 officer, member, employee, or participant in more than one  
 35 surplus trustee company or corporation.

36 (b) Upon a finding by the Department of Financial Services  
 37 that a surplus trustee has violated this subsection, the surplus  
 38 trustee's certification shall be suspended for 1 year.

39 Section 2. Subsection (24) of section 717.101, Florida  
 40 Statutes, is renumbered as subsection (25), a new subsection  
 41 (24) is added to that section, and subsections (4), (8), and  
 42 (13) of that section are amended, to read:

43 717.101 Definitions.—As used in this chapter, unless the  
 44 context otherwise requires:

45 (4) "Business association" means any corporation (other  
 46 than a public corporation), joint stock company, investment  
 47 company, business trust, partnership, limited liability company,  
 48 or association of two or more individuals for business purposes  
 49 ~~of two or more individuals, whether or not for profit or not for~~  
 50 ~~profit, including a banking organization, financial~~  
 51 ~~organization, insurance company, dissolved pension plan, or~~  
 52 ~~utility.~~

53 (8) "Domicile" means the state of incorporation ~~for, in the~~  
 54 ~~case of~~ a corporation incorporated under the laws of a state,  
 55 ~~and or~~ the state where ~~of~~ the principal place of business is  
 56 located for unincorporated business associations, ~~in the case of~~  
 57 ~~a person not incorporated under the laws of a state.~~

58 (13) "Insurance company" means an association, corporation,

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59 or fraternal or mutual benefit organization, whether ~~or not~~ for  
60 profit or not for profit, which is engaged in providing  
61 insurance coverage, ~~including, by way of illustration and not~~  
62 ~~limitation, accident, burial, casualty, credit life, contract~~  
63 ~~performance, dental, fidelity, fire, health, hospitalization,~~  
64 ~~illness, life (including endowments and annuities), malpractice,~~  
65 ~~marine, mortgage, surety, and wage protection insurance.~~

66 (24) "United States" means any state, district,  
67 commonwealth, territory, insular possession, and any other area  
68 subject to the legislative authority of the United States of  
69 America.

70 Section 3. Section 717.1235, Florida Statutes, is created  
71 to read:

72 717.1235 Candidate for public office; escheatment of  
73 unclaimed property.—If the apparent owner of unclaimed property  
74 is the campaign account of a candidate for public office, the  
75 property, after being reported to the department, shall escheat  
76 to the state. The proceeds from disposition of the property  
77 shall be paid into the State School Fund.

78 Section 4. Subsection (4) of section 717.1243, Florida  
79 Statutes, is amended to read:

80 717.1243 Small estate accounts.—

81 (4) This section only applies if all of the unclaimed  
82 property held by the department on behalf of the owner has an  
83 aggregate value of \$10,000 ~~\$5,000~~ or less and no probate  
84 proceeding is pending.

85 Section 5. Subsection (2) of section 717.1333, Florida  
86 Statutes, is amended to read:

87 717.1333 Evidence; estimations; audit reports, examiner's

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88 worksheets, investigative reports, other related documents.—

89 (2) If the records of the holder that are available for the  
90 periods subject to this chapter are insufficient to permit the  
91 preparation of a report of the unclaimed property due and owing  
92 by a holder, or if the holder fails to provide records after  
93 being requested to do so, the amount due to the department may  
94 be reasonably estimated, regardless of whether the holder is  
95 incorporated, formed, or organized in this state.

96 Section 6. Subsection (2) of section 717.135, Florida  
97 Statutes, is amended to read:

98 717.135 Power of attorney to recover reported property in  
99 the custody of the department.—

100 (2) A power of attorney described in subsection (1) must:

101 (a) Limit the fees and costs for services to 20 percent per  
102 unclaimed property account held by the department. Fees and  
103 costs for cash accounts shall be based on the value of the  
104 property at the time the power of attorney is signed by the  
105 claimant. Fees and costs for accounts containing securities or  
106 other intangible ownership interests, which securities or  
107 interests are not converted to cash, shall be based on the  
108 purchase price of the security as quoted on a national exchange  
109 or other market on which the property is regularly traded at the  
110 time the securities or other ownership interest is remitted to  
111 the claimant or the claimant's representative. Fees and costs  
112 for tangible property or safe-deposit box accounts shall be  
113 based on the value of the tangible property or contents of the  
114 safe-deposit box at the time the ownership interest is  
115 transferred or remitted to the claimant. ~~Total fees and costs on~~  
116 ~~any single account owned by a natural person residing in this~~

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117 ~~country must not exceed \$1,000; or~~

118 (b) Fully disclose that the property is held by the Bureau  
119 of Unclaimed Property of the Department of Financial Services  
120 pursuant to this chapter, the mailing address of the bureau, the  
121 Internet address of the bureau, the person or name of the entity  
122 that held the property prior to the property becoming unclaimed,  
123 the date of the holder's last contact with the owner, if known,  
124 and the approximate value of the property, and identify which of  
125 the following categories of unclaimed property the claimant's  
126 representative is seeking to recover, as reported by the holder:

- 127 1. Cash accounts.
- 128 2. Stale dated checks.
- 129 3. Life insurance or annuity contract assets.
- 130 4. Utility deposits.
- 131 5. Securities or other interests in business associations.
- 132 6. Wages.
- 133 7. Accounts receivable.
- 134 8. Contents of safe-deposit boxes.

135  
136 ~~This subsection shall not apply if probate proceedings must be~~  
137 ~~initiated on behalf of the claimant for an estate that has never~~  
138 ~~been probated or if the unclaimed property is being claimed by a~~  
139 ~~person outside of the United States.~~

140 Section 7. Paragraph (a) of subsection (2) and paragraph  
141 (d) of subsection (7) of section 717.1351, Florida Statutes, are  
142 amended to read:

143 717.1351 Acquisition of unclaimed property.-

144 (2) All contracts to acquire ownership of or entitlement to  
145 unclaimed property from the person or persons entitled to the

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146 unclaimed property must be in 10-point type or greater and must:

147 (a) Have a purchase price that discounts the value of the  
148 unclaimed property at the time the agreement is executed by the  
149 seller at no greater than 20 percent per account held by the  
150 department. ~~An unclaimed property account must not be discounted~~  
151 ~~in excess of \$1,000. However, the \$1,000 discount limitation~~  
152 ~~does not apply if probate proceedings must be initiated on~~  
153 ~~behalf of the seller for an estate that has never been probated~~  
154 ~~or if the seller of the unclaimed property is not a natural~~  
155 ~~person or is a person outside the United States; or~~

156 (7) This section does not prohibit the:

157 ~~(d) Deletion of the words "Percent of Property to be Paid~~  
158 ~~to Buyer," if the purchase agreement provides for a flat fee to~~  
159 ~~be paid as compensation to the buyer.~~

160 Section 8. Section 717.1381, Florida Statutes, is repealed.

161 Section 9. Section 717.1400, Florida Statutes, is amended  
162 to read:

163 717.1400 Registration.-

164 (1) In order to file claims as a claimant's representative,  
165 acquire ownership of or entitlement to unclaimed property,  
166 receive a distribution of fees and costs from the department,  
167 and obtain unclaimed property dollar amounts and, numbers of  
168 reported shares of stock, ~~and social security numbers~~ held by  
169 the department, a private investigator holding a Class "C"  
170 individual license under chapter 493 must register with the  
171 department on such form as the department prescribes ~~shall~~  
172 ~~prescribe~~ by rule, and must be verified by the applicant. To  
173 register with the department, a private investigator must  
174 provide:

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- 175 (a) A legible copy of the applicant's Class "A" business  
 176 license under chapter 493 or that of the applicant's firm or  
 177 employer which holds a Class "A" business license under chapter  
 178 493.
- 179 (b) A legible copy of the applicant's Class "C" individual  
 180 license issued under chapter 493.
- 181 (c) The business address and telephone number of the  
 182 applicant's private investigative firm or employer.
- 183 (d) The names of agents or employees, if any, who are  
 184 designated to act on behalf of the private investigator,  
 185 together with a legible copy of their photo identification  
 186 issued by an agency of the United States, or a state, or a  
 187 political subdivision thereof.
- 188 (e) Sufficient information to enable the department to  
 189 disburse funds by electronic funds transfer.
- 190 (f) The tax identification number of the private  
 191 investigator's firm or employer which holds a Class "A" business  
 192 license under chapter 493.
- 193 (2) In order to file claims as a claimant's representative,  
 194 acquire ownership of or entitlement to unclaimed property,  
 195 receive a distribution of fees and costs from the department,  
 196 and obtain unclaimed property dollar amounts and, numbers of  
 197 reported shares of stock, ~~and social security numbers~~ held by  
 198 the department, a Florida-certified public accountant must  
 199 register with the department on such form as the department  
 200 prescribes shall prescribe by rule, and must be verified by the  
 201 applicant. To register with the department, a Florida-certified  
 202 public accountant must provide:
- 203 (a) The applicant's Florida Board of Accountancy number.

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- 204 (b) A legible copy of the applicant's current driver  
 205 license showing the full name and current address of such  
 206 person. If a current driver license is not available, another  
 207 form of identification showing the full name and current address  
 208 of such person or persons shall be filed with the department.
- 209 (c) The business address and telephone number of the  
 210 applicant's public accounting firm or employer.
- 211 (d) The names of agents or employees, if any, who are  
 212 designated to act on behalf of the Florida-certified public  
 213 accountant, together with a legible copy of their photo  
 214 identification issued by an agency of the United States, or a  
 215 state, or a political subdivision thereof.
- 216 (e) Sufficient information to enable the department to  
 217 disburse funds by electronic funds transfer.
- 218 (f) The tax identification number of the accountant's  
 219 public accounting firm employer.
- 220 (3) In order to file claims as a claimant's representative,  
 221 acquire ownership of or entitlement to unclaimed property,  
 222 receive a distribution of fees and costs from the department,  
 223 and obtain unclaimed property dollar amounts and, numbers of  
 224 reported shares of stock, ~~and social security numbers~~ held by  
 225 the department, an attorney licensed to practice in this state  
 226 must register with the department on such form as the department  
 227 prescribes shall prescribe by rule, and must be verified by the  
 228 applicant. To register with the department, such attorney must  
 229 provide:
- 230 (a) The applicant's Florida Bar number.
- 231 (b) A legible copy of the applicant's current driver  
 232 license showing the full name and current address of such

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233 person. If a current driver license is not available, another  
 234 form of identification showing the full name and current address  
 235 of such person or persons shall be filed with the department.

236 (c) The business address and telephone number of the  
 237 applicant's firm or employer.

238 (d) The names of agents or employees, if any, who are  
 239 designated to act on behalf of the attorney, together with a  
 240 legible copy of their photo identification issued by an agency  
 241 of the United States, or a state, or a political subdivision  
 242 thereof.

243 (e) Sufficient information to enable the department to  
 244 disburse funds by electronic funds transfer.

245 (f) The tax identification number of the attorney's firm or  
 246 employer.

247 (4) Information and documents already on file with the  
 248 department before ~~prior to~~ the effective date of this provision  
 249 need not be resubmitted in order to complete the registration.

250 (5) If a material change in the status of a registration  
 251 occurs, a registrant must, within 30 days, provide the  
 252 department with the updated documentation and information in  
 253 writing. Material changes include, but are not limited to: a  
 254 designated agent or employee ceasing to act on behalf of the  
 255 designating person, a surrender, suspension, or revocation of a  
 256 license, or a license renewal.

257 (a) If a designated agent or employee ceases to act on  
 258 behalf of the person who has designated the agent or employee to  
 259 act on such person's behalf, the designating person must, within  
 260 30 days, inform the Bureau of Unclaimed Property in writing of  
 261 the termination of agency or employment.

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262 (b) If a registrant surrenders the registrant's license or  
 263 the license is suspended or revoked, the registrant must, within  
 264 30 days, inform the bureau in writing of the surrender,  
 265 suspension, or revocation.

266 (c) If a private investigator's Class "C" individual  
 267 license under chapter 493 or a private investigator's employer's  
 268 Class "A" business license under chapter 493 is renewed, the  
 269 private investigator must provide a copy of the renewed license  
 270 to the department within 30 days after the receipt of the  
 271 renewed license by the private investigator or the private  
 272 investigator's employer.

273 (6) A registrant's firm or employer may not have a name  
 274 that might lead another person to conclude that the registrant's  
 275 firm or employer is affiliated or associated with the United  
 276 States, or an agency thereof, or a state or an agency or  
 277 political subdivision of a state. The department shall deny an  
 278 application for registration or revoke a registration if the  
 279 applicant's or registrant's firm or employer has a name that  
 280 might lead another person to conclude that the firm or employer  
 281 is affiliated or associated with the United States, or an agency  
 282 thereof, or a state or an agency or political subdivision of a  
 283 state. Names that might lead another person to conclude that the  
 284 firm or employer is affiliated or associated with the United  
 285 States, or an agency thereof, or a state or an agency or  
 286 political subdivision of a state, include, but are not limited  
 287 to, the words United States, Florida, state, bureau, division,  
 288 department, or government.

289 (7) A registrant must submit a \$500 application fee with  
 290 his or her application for registration and submit a \$250

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291 renewal fee on or before July 1 of each year thereafter. A  
292 registrant who fails to pay the renewal fee shall lose  
293 privileges afforded by this section until his or her fees are  
294 paid. A registrant who fails to renew his or her registration by  
295 December 31 must reapply for registration.

296 (8)(7) The licensing and other requirements of this section  
297 must be maintained as a condition of registration with the  
298 department.

299 Section 10. The amendments made by this act to s. 717.1333,  
300 Florida Statutes, are remedial in nature and apply retroactively  
301 to unclaimed property existing before July 1, 2016.

302 Section 11. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda 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 #970**, relating to Unclaimed Property, 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

APPEARANCE RECORD

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

2/9/2016

Meeting Date

SB 970

Bill Number (if applicable)

Topic SB 970/Unclaimed Property

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monroe St

Phone 8504132863

Street

Tallahassee

FL

32303

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Department of Financial Services

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**  
**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 1104

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 10, 2016

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

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

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1104 changes the procedures for service of process on a financial institution. Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. This bill allows a financial institution to designate a place or registered agent located in Florida with the Department of State as its sole location or agent for service of process. The place or agent must be open or the agent must be available to receive service of process between 9 a.m. and 5 p.m. on business days.

If a financial institution has no registered agent or service cannot be made at the designated central location, the bill provides that service may be made to an officer or director of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida.

The bill provides that any service required or authorized to be made by the Office of Financial Regulation (OFR) may be made to any officer, director, or business agent of the financial institution at its principal place of business or any other branch, office, or place of business.

The effective date is January 1, 2017.

## II. Present Situation:

The U.S. dual banking system allows financial institutions to become chartered (organized) under either federal or state law. National banks are chartered under federal law. State-chartered banks are chartered under the laws of the state in which the bank is headquartered. Credit unions may also be either state or federally chartered.

In Florida, the OFR, which is administratively housed within the Department of Financial Services, is responsible for the regulation of financial institutions chartered and organized under Florida law and in accordance with the Florida Financial Institutions Codes for safety and soundness.<sup>1</sup> The OFR does not regulate national banks or banks that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida. State service of process laws apply to national banks and are not preempted by federal law.

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 655.0201, F.S., governs the manner in which service of process, notice, or demand may be made on financial institutions that transact business in Florida, whether state or nationally chartered. It provides that process may be served in accordance with chs. 48 (service of process), 49 (constructive service of process), 605 (limited liability companies), or part I of ch. 607 (corporations), F.S. Section 48.081, F.S., sets forth the order of priority of persons within a private corporation, domestic or foreign, who may be properly served:

- President or vice president, or other head of the corporation,
- Cashier, treasurer, secretary, or general manager,
- Any director,
- Any officer or business agent residing in the state.

Every Florida corporation and every foreign corporation qualified to do business in this state must designate a registered agent and registered office which must be kept open and available for receiving process during certain hours and days, in accordance with pt. 1, ch. 607, F.S.<sup>2</sup> The Financial Institutions Codes require Florida-chartered banks to be formed as a Florida corporation or as a limited liability company (LLC) in certain circumstances.<sup>3</sup> Accordingly, s. 655.0201(1), F.S., also allows service of process to be made on financial institutions pursuant to ch. 605, F.S. (Florida Revised Limited Liability Company Act), or part I of ch. 607, F.S. (Florida Business Corporation Act). The LLC Act generally provides that process may be served on the entity's registered agent.<sup>4</sup>

Subsection 655.0201(2), F.S., allows, but does not require, a financial institution to designate a registered agent for service of process. If the financial institution does not have a registered agent, or the registered agent cannot be served with reasonable diligence, subsection

---

<sup>1</sup> See s. 20.121(3)(a)2, F.S. The Financial Institutions Codes are chapters 655, 657, 658, 660, 662, 663, 665, and 667, F.S.

<sup>2</sup> See s. 48.091, F.S.

<sup>3</sup> See s. 658.16, F.S.

<sup>4</sup> See ss. 605.0113 and 605.0117, F.S.

655.0201(2), F.S., authorizes service on any executive officer<sup>5</sup> of the financial institution at its principal place of business in Florida.

If neither of the previously described alternatives is viable, the default alternative is to serve any officer,<sup>6</sup> director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in this state.<sup>7</sup>

Finally, the statute provides that this section does not prescribe the only means of serving notice or demand on a financial institution.

A recent example of improper service of process on a financial institution in Florida is illustrated in the *Bank of America, N.A. v. Bornstein*<sup>8</sup> decision from the Fourth District Court of Appeal. The plaintiff served a writ of garnishment on Bank of America through a bank teller at a West Palm Beach branch office, without showing that service was first attempted on the statutorily prescribed superior classes of persons who could have been served. Bank of America moved to quash service under the service of process statutes in the Codes and under ch. 48, F.S., asserting that the bank teller was not authorized to accept service on behalf of the bank. The appellate court concurred with the bank, finding service was improper.

### III. Effect of Proposed Changes:

This bill allows a financial institution to designate a place or registered agent within Florida as its central location for service of process with the Department of State. The place or agent must be open or available to receive service on regular business days from at least 9 a.m. to 5 p.m. The agent or location is the sole location for service of process including service for garnishment actions, levy, injunctions, lawsuits, and the attachment of safety deposit boxes.

If the financial institution has no registered agent or service cannot be made at the location, service may be made to any officer or director of the financial institution at its principal place of business or at any other branch, office, or place of business in Florida.

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<sup>5</sup> Section 655.005(1)(g), F.S., defines “executive officer” as “an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a financial institution. The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers, whether or not the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.”

<sup>6</sup> Section 655.005(1)(r), F.S., defines “officer” as “an individual elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of chair of the board of directors, vice chair of the board of directors, chair of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary of a trust company, or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.”

<sup>7</sup> See s. 655.0201(3), F.S.

<sup>8</sup> 39 So.3d 500 (Fla. 4<sup>th</sup> DCA 2010).

The bill allows service made by the OFR to be made to any officer, director, or business agent at its principal place of business or any other branch, office, or place of business in Florida. OFR can also continue to serve via certified mail pursuant to s. 655.031, F.S.

This bill takes effect 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:

The fiscal impact on the private sector is not known.

C. Government Sector Impact:

The bill allows a financial institution to designate a registered agent or place for service of process with the Department of State. Current law allows a financial institution to designate a registered agent. The impact of registering a location with the Department is not known.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 48.092 of the Florida Statutes.

This bill substantially amends section 655.0201 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 February 9, 2016:**

The CS removes provisions from the bill requiring the Department of Financial Services to create a website to list the locations for service of process on financial institutions and adds provisions allowing a financial institution to designate a registered agent or location for service and providing hours when the agent must be available or the location must be open to accept service. Instead, the bill allows financial institutions to designate with the Department of State a place or registered agent that is the sole location or agent for service of process.

- B. **Amendments:**

None.



801266

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 48.092, Florida Statutes, is created to  
read:

48.092 Service on financial institutions.—Service on  
financial institutions must be made in accordance with s.  
655.0201.

Section 2. Section 655.0201, Florida Statutes, is amended



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11 to read:

12 655.0201 Service of process, notice, levy, or demand on  
13 financial institutions.-

14 (1) Notwithstanding any other Florida law, this section  
15 establishes the proper location for service of process upon a  
16 financial institution for all types of service of process to be  
17 made on a financial institution ~~Process against any financial~~  
18 ~~institution authorized by federal or state law to transact~~  
19 ~~business in this state may be served in accordance with chapter~~  
20 ~~48, chapter 49, chapter 605, or part I of chapter 607, as~~  
21 ~~appropriate.~~

22 (2) A ~~Any~~ financial institution authorized by federal or  
23 state law to transact business in this state may designate with  
24 the Department of State a place or registered agent located  
25 within the state as the financial institution's sole location or  
26 agent for service of process, notice, levy, or demand. Any such  
27 place or registered agent so designated must be open and  
28 available for service of process during regular business hours  
29 on regular business days, which, at a minimum, is any time  
30 between the hours of 9 a.m. and 5 p.m. local time, on Mondays  
31 through Fridays, excluding federal and Florida holidays. After a  
32 financial institution designates a place or registered agent  
33 within this state, such place or registered agent is the sole  
34 location for service of process, including service for actions  
35 related to garnishment, levy, injunctions, lawsuits, and the  
36 attachment of safety deposit boxes, in accordance with chapters  
37 60, 76, and 77, and the Florida Rules of Civil Procedure  
38 ~~required or permitted by law to be served on the financial~~  
39 ~~institution. If the financial institution has no registered~~





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40 ~~agent, or its registered agent cannot with reasonable diligence~~  
41 ~~be served, service may be made to any executive officer of the~~  
42 ~~financial institution at its principal place of business in this~~  
43 ~~state.~~

44 (3) (a) If a financial institution has no registered agent  
45 or service cannot be made in accordance with subsection (2),  
46 service may be made to any officer or director of the financial  
47 institution at its principal place of business or at any other  
48 branch, office, or place of business in the state.

49 (b) Notwithstanding subsection (2), any service required or  
50 authorized to be made by the Office of Financial Regulation  
51 under the financial institutions codes may be made to any  
52 officer, director, or business agent of the financial  
53 institution at its principal place of business or any other  
54 branch, office, or place of business in the state as set forth  
55 in s. 655.031(2) If service cannot be made in accordance with  
56 subsection (2), service may be made to any officer, director, or  
57 business agent of the financial institution at its principal  
58 place of business or at any other branch, office, or place of  
59 business in the state.

60 ~~(4) This section does not prescribe the only means, or~~  
61 ~~necessarily the required means, of serving notice or demand on a~~  
62 ~~financial institution.~~

63 Section 3. This act shall take effect January 1, 2017.

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

65 And the title is amended as follows:

66 Delete everything before the enacting clause  
67 and insert:  
68



801266

69                                   A bill to be entitled  
70           An act relating to service of process on financial  
71           institutions; creating s. 48.092, F.S.; requiring  
72           service on financial institutions to be made in  
73           accordance with s. 655.0201, F.S.; amending s.  
74           655.0201, F.S.; revising applicability of provisions  
75           of law governing service of process on financial  
76           institutions; authorizing certain financial  
77           institutions to designate with the Department of State  
78           a place or registered agent within the state as the  
79           sole location or agent for service of process, notice,  
80           levy, or demand; providing that service of process,  
81           notice, levy, or demand may be made at specified time  
82           periods; providing exceptions if the financial  
83           institution has no registered agent, service cannot be  
84           made at the sole location, or for service made by the  
85           Office of Financial Regulation; providing an effective  
86           date.

By Senator Flores

37-00619B-16

20161104\_\_

A bill to be entitled

An act relating to service of process on financial institutions; amending s. 655.005, F.S.; defining the term "department"; amending s. 655.0201, F.S.; revising provisions for service of process made on a financial institution; authorizing a financial institution to designate a central location within the state which is the sole location where service of process on the financial institution and its branches may be made within the state; specifying a notice to be filed with the Department of Financial Services if a financial institution elects to designate such a central location; specifying types of service of process to be made at the central location; requiring the department to publish a list of central locations on its website and update the list in a specified manner; revising the individuals who may receive service of process if a central location is not designated; deleting a provision authorizing other means of service or demand; amending ss. 322.143 and 655.968, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present paragraphs (g) through (q) of subsection (1) of section 655.005, Florida Statutes, are redesignated as paragraphs (i) through (s), respectively, present paragraphs (r) through (y) of that subsection are redesignated as paragraphs (u) through (bb), respectively, present paragraphs (z) and (aa) of that subsection are redesignated as paragraphs (t) and (g), respectively, and a new paragraph (h) is added to that

Page 1 of 4

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

37-00619B-16

20161104\_\_

subsection, to read:

655.005 Definitions.—

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

(h) "Department" means the Department of Financial Services.

Section 2. Section 655.0201, Florida Statutes, is amended to read:

655.0201 Service of process, notice, or demand on financial institutions.—

(1) A financial institution authorized by federal or state law to transact business in this state may designate a place or registered agent within the state as its central location for service of process. After a financial institution has designated a place or registered agent, such place or registered agent is the sole location for service of process on the financial institution and all of its branches within the state ~~Process against any financial institution authorized by federal or state law to transact business in this state may be served in accordance with chapter 48, chapter 49, chapter 605, or part I of chapter 607, as appropriate.~~

(2) (a) To establish a central location for service of process, a financial institution must file a notice with the department designating its central location. The filing must contain the central location's:

1. Addressee name.

2. Physical address.

3. Telephone number.

4. Business hours during which service of process will be

Page 2 of 4

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

37-00619B-16

20161104\_\_

62 accepted.

63 (b) The central location is the proper venue for service of  
 64 process for all types of service of process made on a financial  
 65 institution, including service for actions related to  
 66 garnishment, levy, injunctions, lawsuits, and the attachment of  
 67 safety deposit boxes, in accordance with chapters 60, 76, and 77  
 68 and the Florida Rules of Civil Procedure.

69 (c) The department shall publish a list of all central  
 70 locations on its website. The department must update the list to  
 71 reflect revocations or modifications made by a financial  
 72 institution within 15 business days after receipt of such  
 73 revocation or modification. The department's website must  
 74 specify the date this list was last updated Any financial  
 75 institution authorized by federal or state law to transact  
 76 business in this state may designate a registered agent as the  
 77 financial institution's agent for service of process, notice, or  
 78 demand required or permitted by law to be served on the  
 79 financial institution. If the financial institution has no  
 80 registered agent, or its registered agent cannot with reasonable  
 81 diligence be served, service may be made to any executive  
 82 officer of the financial institution at its principal place of  
 83 business in this state.

84 (3) If service cannot be made in accordance with subsection  
 85 (1) (2), service may be made to an any officer, director, or  
 86 business agent of the financial institution at its principal  
 87 place of business or at any other branch, office, or place of  
 88 business in the state.

89 ~~(4) This section does not prescribe the only means, or~~  
 90 ~~necessarily the required means, of serving notice or demand on a~~

Page 3 of 4

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

37-00619B-16

20161104\_\_

91 ~~financial institution.~~

92 Section 3. Subsection (9) of section 322.143, Florida  
 93 Statutes, is amended to read:

94 322.143 Use of a driver license or identification card.—

95 (9) This section does not apply to a financial institution  
 96 as defined in s. 655.005(1) ~~s. 655.005(1)(i)~~.

97 Section 4. Paragraph (b) of subsection (1) of section  
 98 655.968, Florida Statutes, is amended to read:

99 655.968 Financial institutions; transactions relating to  
 100 Iran or terrorism.—

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

102 (b) "Financial institution" has the same meaning as defined  
 103 in s. 655.005(1) ~~s. 655.005(1)(i)~~.

104 Section 5. This act shall take effect July 1, 2016.

Page 4 of 4

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

# APPEARANCE RECORD

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

2/9/16

*Meeting Date*

SB 1104

*Bill Number (if applicable)*

#801266

*Amendment Barcode (if applicable)*

Topic Waive in Support of Amendment #801266 to SB 1104

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

Address Florida Office of Financial Regulation

*Street*

Phone 850-410-9601

Tallahassee

Florida

32399

Email meredith.hinshelwood@flofr.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2-9-16

Meeting Date

1104

Bill Number (if applicable)

001266

Amendment Barcode (if applicable)

Topic Service of Process on Financial Institutions

Name G. C. MURRAY, JR.

Job Title Deputy General Counsel

Address 218 S Monroe St.

Street

Phone 850 241 1053

TLH

City

FL

State

32301

Zip

Email gemurray@floridajustice  
association.org

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.

S-001 (10/14/14)

# APPEARANCE RECORD

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

2-9-16

Meeting Date

SB 1104

Bill Number (if applicable)

Topic Service of Process

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Director of Governmental Affairs

Address 3692 Coolidge ct.

Phone 850-558-1050

TLH FL 32311

City

State

Zip

Email jennifer.martin@lscu.coop

Speaking:  For  Against  Information

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

Representing Florida Credit Union Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# APPEARANCE RECORD

20 9. 2016

Meeting Date

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

1104

Bill Number (if applicable)

Topic Service of Process

Amendment Barcode (if applicable)

Name Kim Siomkos (see-om-kos)

Job Title VP of Gov. Affairs

Address 1001 Thomasville Rd

Phone SG1-317-4704

Street

Tallahassee

FL

State

32308

Zip

Email ksiomkos@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.**



# APPEARANCE RECORD

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

2/9/16

Meeting Date

SB 1104

Bill Number (if applicable)

#801266

Amendment Barcode (if applicable)

Topic Waive in Support of Amendment #801266 to SB 1104

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

Street

Tallahassee

Florida

32399

Email meredith.hinshelwood@flofr.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# APPEARANCE RECORD

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

2/9/16

*Meeting Date*

SB 1104

*Bill Number (if applicable)*

#801266

*Amendment Barcode (if applicable)*

Topic Waive in Support of Amendment #801266 to SB 1104

Name Meredith Hinshelwood

Job Title Deputy Director of Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

*Street*

Tallahassee

Florida

32399

Email meredith.hinshelwood@flofr.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

---

BILL: CS/SB 1274

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Sinkhole Insurance

DATE: February 11, 2016

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1274 creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss” which is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole coverage would also be subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., with the following exceptions:

- Available only for personal lines residential insurance;
- Coverage may be limited to repairs to stabilize the building and repair the foundation;
- Deductibles may be in an amount agreed to by the insured and insurer;
- Policy limits may be in an amount agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property;
- Requires a signed notice by an applicant that they have read and understand the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.;
- Allows insurers to establish limited sinkhole policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR);
- Until October 1, 2019, insurers may file rates for limited sinkhole coverage that are not subject to the filing and review requirements of s. 627.062(2)(a) and (f), F.S.;
- Until July 1, 2020, surplus lines agents may export coverage to eligible surplus lines insurers without obtaining three declinations from admitted insurers;

- Prohibits a limited sinkhole coverage post loss assignment of benefit except to a subsequent purchaser of the property who acquires insurable interest following a loss.

The bill establishes surplus requirements of \$7.5 million for new and existing insurers that solely transact limited sinkhole coverage. Insurers providing limited sinkhole coverage must notify the OIR at least 30 days prior to offering the coverage in the state. Such insurers must file a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

The bill is effective July 1, 2016.

## II. Present Situation:

### Insurance for Sinkholes and Catastrophic Ground Cover Collapse

A sinkhole is defined in Florida law as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.<sup>1</sup> Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. This type of subsidence formation may be aggravated and accelerated by urbanization and suburbanization, by water usage and changes in weather patterns.

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.<sup>2</sup> In 2007, Florida law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.<sup>3</sup> Catastrophic ground cover collapse is more severe than sinkhole loss. Catastrophic ground cover collapse means geological activity that results in all the following:

1. The abrupt collapse of the ground cover;
2. A depression in the ground cover clearly visible to the naked eye;
3. Structural damage to the covered building, including the foundation; and
4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.<sup>4</sup>

Insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.<sup>5</sup> Such coverage is subject to the insurer's approved underwriting and insurability guidelines. At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building. However, by law, Citizens Property Insurance Corporation (Citizens)<sup>6</sup> sinkhole loss coverage does not cover sinkhole losses to

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<sup>1</sup> Section 627.706(2)(b), F.S.

<sup>2</sup> Ch. 1981-280, Laws of Fla.

<sup>3</sup> Section 30, Ch. 2007-1, Laws of Fla.

<sup>4</sup> Section 627.706(2)(a), F.S.

<sup>5</sup> Section 627.706, F.S.

<sup>6</sup> Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

appurtenant structures, driveways, sidewalks, decks, or patios. Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

For sinkhole loss coverage in residential property insurance, current law allows insurers to include a deductible that applies only to sinkhole loss in the following amounts: 1 percent, 2 percent, 5 percent, or 10 percent of policy dwelling limits. The insurer has the option to choose which sinkhole loss deductible is offered to policyholders and currently, most insurers, including Citizens, offer policyholders only a 10 percent sinkhole loss deductible.

Substantial changes to Florida's sinkhole law occurred in 2005, 2006, and 2011.<sup>7</sup> In 2011, the Legislature reviewed the sinkhole law and enacted comprehensive reforms addressing all areas of the law. Data collected by the Office of Insurance Regulation (OIR) in 2010, before the reforms were enacted, showed a significant increase in the number and cost of sinkhole claims from 2006 to 2010.<sup>8</sup> These increases impacted the financial stability of property insurers in Florida, including Citizens, and were used by insurers to justify property insurance rate increases.

### **2011 Sinkhole Insurance Reforms**

The sinkhole reforms enacted in 2011 were in response to the increasing number and cost of sinkhole claims. The goal of the reforms was to keep sinkhole loss insurance available to homeowners while providing more certainty in sinkhole claims for homeowners and insurers in terms of coverage, costs, repairs, and exposure. The bill enacted numerous revisions and clarifications to ss. 627.706-627.7074, F.S., governing sinkhole and catastrophic ground cover collapse insurance.

#### ***Definition of Sinkhole Loss***

The legislative reforms revised the definition of "sinkhole loss," primarily by creating a statutory definition of "structural damage." A sinkhole loss is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. The 2011 legislative reforms created a detailed definition of "structural damage" for purposes of determining whether a sinkhole loss has occurred. The definition specifies five distinct types of damage that constitute structural damage. Each type of damage is tied to standards contained in the Florida Building Code or used in the construction industry. Accordingly, in order for the policyholder to obtain policy benefits for sinkhole loss, the insured structure must sustain structural damage as defined by the bill that is caused by sinkhole activity.

#### ***Investigation and Payment of Sinkhole Claims***

The 2011 legislative sinkhole reforms substantially revised the statutory process for investigating and paying sinkhole claims in s. 627.707, F.S. The process requires the insurer to determine whether the building has incurred structural damage that has been caused by sinkhole activity.<sup>9</sup>

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<sup>7</sup> chs. 2005-111, 2006-12, and 2011-39, Laws of Fla.

<sup>8</sup> *Report on Review of the 2010 Sinkhole Data Call by the Office of Insurance Regulation*, Nov. 8, 2010, [http://www.flor.com/siteDocuments/Sinkholes/2010\\_Sinkhole\\_Data\\_Call\\_Report.pdf](http://www.flor.com/siteDocuments/Sinkholes/2010_Sinkhole_Data_Call_Report.pdf) (last visited Feb. 5, 2016).

<sup>9</sup> Section 627.707(1), F.S.

Coverage for sinkhole loss is not available if structural damage is not present or sinkhole activity is not the cause of structural damage. This process is as follows:

- Initial Inspection and Structural Damage Determination – Upon receipt of a claim for sinkhole loss, the insurer must inspect the policyholder’s premises to determine if there has been structural damage which may be the result of sinkhole activity.<sup>10</sup> This inspection will often require the insurer to retain a professional engineer to evaluate whether the insured building has incurred structural damage as defined by statute.
- Sinkhole Testing – The insurer is required to engage a professional engineer or professional geologist to conduct sinkhole testing pursuant to s. 627.7072, F.S., if the insurer confirms that structural damage exists and is either unable to identify a valid cause of the structural damage or discovers that the structural damage is consistent with sinkhole loss.<sup>11</sup> If coverage is excluded under the policy even if sinkhole loss is confirmed, then the insurer is not required to conduct sinkhole testing.<sup>12</sup>
- Notice to the Policyholder – The insurer must provide written notice to the policyholder detailing what the insurer has determined to be the cause of damage (if the determination has been made) and a statement of the circumstances under which the insurer must conduct sinkhole testing.<sup>13</sup> The policyholder must also be notified of his or her right to demand sinkhole testing and the circumstances under which the policyholder may incur costs associated with testing.<sup>14</sup>
- Authorization to Deny Sinkhole Claim – An insurer may deny a claim upon a determination that there is no sinkhole loss.<sup>15</sup>
- Policyholder Demand for Sinkhole Testing – The policyholder may demand sinkhole testing in writing within 60 days after receiving a claim denial if the insurer denied the claim without performing sinkhole testing and coverage would be available<sup>16</sup> if a sinkhole loss is confirmed.<sup>17</sup> However, a policyholder requesting such testing must pay the insurer 50 percent of the sinkhole testing costs up to \$2,500.<sup>18</sup> If the requested testing confirms a sinkhole loss the insurer must reimburse the testing costs to the policyholder.<sup>19</sup>
- Payment of Sinkhole Claims – If a sinkhole loss is verified, the insurer must pay to stabilize the land and building and repair the foundation in accordance with the recommendation of the professional engineer retained by the insurer.<sup>20</sup> Payment for other repairs to the structure and contents are governed by the insurance policy. The insurer may limit payment to the actual cash value of the sinkhole loss not including below-ground repair techniques until the policyholder enters into a contract for the performance of building stabilization repairs.<sup>21</sup> The contract for below-ground repairs must be made in accordance with the recommendations set

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<sup>10</sup> See *id.*

<sup>11</sup> Section 627.707(2), F.S.

<sup>12</sup> See *id.*

<sup>13</sup> Section 627.707(3), F.S.

<sup>14</sup> See *id.*

<sup>15</sup> Section 627.707(4)(a), F.S.

<sup>16</sup> The claim denial was not issued due to policy conditions or exclusions of coverage and instead was based the failure of the loss to meet the definition of sinkhole loss.

<sup>17</sup> Section 627.707(4)(b), F.S.

<sup>18</sup> Section 627.707(4)(b)2., F.S.

<sup>19</sup> Section 627.707(4)(b)3., F.S.

<sup>20</sup> Section 627.707(5), F.S.

<sup>21</sup> Section 627.707(5)(a), F.S.

forth in the insurer's sinkhole report issued pursuant to s. 627.7073, F.S.,<sup>22</sup> and entered into within 90 days after the policyholder receives notice that the insurer has confirmed coverage for sinkhole loss.<sup>23</sup> The time period is tolled if either party invokes neutral evaluation. If repairs cannot be completed within policy limits, the insurer may either pay to complete the recommended repairs or tender policy limits without a reduction for repair expenses already incurred.<sup>24</sup>

### ***Other Revisions***

The 2011 bill authorized insurers to restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building as defined in the insurance policy. The bill also allows an insurer to require a property inspection prior to issuing sinkhole loss coverage. The bill clarified that additional living expense coverage is only available pursuant to a sinkhole loss if there is structural damage to the covered building.

### ***Results of 2011 Sinkhole Insurance Reforms***

The first complete year the reforms were in effect was 2012.<sup>25</sup> No data has been collected on an industry-wide basis on the number of claims, claim severity, or claim costs since the reforms were enacted, so their impact on sinkhole claims and costs on an industry-wide basis is unknown. However, Citizens performed a sinkhole study in 2012 to compute the impact of the 2011 reforms on their policies.<sup>26</sup> This study looked at actual sinkhole claim files from Citizens and readjusted the losses and expenses associated with the claims as if the 2011 reforms had been in effect. The actuarial analysis which accompanied the study projected the 2011 reforms would reduce Citizens' expected incurred sinkhole losses for 2013 by almost 55 percent. In Citizens' rate filing for 2014,<sup>27</sup> their actuary projected Citizens' sinkhole losses would decrease by over 52 percent relative to what they would have been without the 2011 reforms. The actuary further noted, however, that even with the projected reduction in sinkhole losses, Citizens still has a significant rate deficiency in the sinkhole area. In fact, in 2012, Citizens earned almost \$57 million in sinkhole premium but paid almost \$227 million in sinkhole losses and expenses.

According to data accompanying Citizens 2016 rate filing,<sup>28</sup> in 2014, new sinkhole claim volume was down 68 percent from 2013. This continued a trend of annual reductions in the number of sinkhole claims filed with the corporation. In 2011, over 4,500 sinkhole claims were reported to Citizens. In 2012, that number decreased to approximately 3,100 claims and in 2013 the total

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<sup>22</sup> Section 627.707(5), F.S.

<sup>23</sup> Section 627.707(5)(b), F.S.

<sup>24</sup> Section 627.707(5), F.S.

<sup>25</sup> The reforms were effective on May 17, 2011, when the bill (CS/CS/CS/SB 408) was signed by the Governor.

<sup>26</sup> *Citizens Property Insurance Corporation Senate Bill 408 Sinkhole Analysis*, prepared by Insurance Services Office, dated Jul. 19, 2012, and presented at Citizens' Board of Governors Meeting on Jul. 27, 2012, [https://www.citizensfla.com/documents/20702/643634/07AH\\_Citizens\\_SB408\\_Sinkhole\\_Analysis.pdf/a26f62af-b142-4b5c-aed2-35821603c1a0](https://www.citizensfla.com/documents/20702/643634/07AH_Citizens_SB408_Sinkhole_Analysis.pdf/a26f62af-b142-4b5c-aed2-35821603c1a0) (last visited Feb. 9, 2016).

<sup>27</sup> Citizens Property Insurance Company, *2014 Rate Kit*, pg. 4, <https://www.citizensfla.com/documents/20702/124817/2014+Rate+Kit.pdf/7564c271-8e83-427d-8cb4-ca41b67a2e57> (last visited Feb. 9, 2016).

<sup>28</sup> Citizens Property Insurance Company, *2016 Rate Kit*, pg. 10, <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 9, 2016).

claims received was approximately 1,200.<sup>29</sup> Total incurred losses and allocated loss adjustment expenses have dropped substantially from approximately \$537 million in 2011 to approximately \$83 million in 2014.<sup>30</sup>

### **Standards for Sinkhole Testing and Sinkhole Reports**

Section 627.7072, F.S., requires sinkhole testing to be performed by a professional engineer and a professional geologist. The tests performed must be sufficient for the professional geologist and professional engineer to determine the presence of a sinkhole loss or other cause of damage. The tests must also enable the professional engineer to make recommendations regarding necessary building stabilization and foundation repair.

Upon the completion of sinkhole testing, the professional engineer or professional geologist must issue a report and certification to the insurer and the policyholder pursuant to the requirements of s. 627.7073, F.S. The report must detail the testing performed, whether structural damage is present, whether sinkhole activity is the cause of the damage, and any recommendations for stabilizing the land and building and making foundation repairs. The findings and recommendations of the insurer's professional engineer are presumed to be correct. If an insurer pays a claim for sinkhole loss, the insurer must file a copy of the report and certification and other required documentation with the county clerk of court. Once building stabilization or foundation repairs are complete for a verified sinkhole loss, the engineer responsible for monitoring repairs must issue a report to the policyholder detailing the repairs performed and certify that the repairs were performed properly. The report must also be filed with the county clerk of court.

### **Neutral Evaluation**

Neutral evaluation is an alternative procedure in s. 627.7074, F.S., for the resolution of disputed sinkhole insurance claims for which a sinkhole testing report<sup>31</sup> has been issued. The neutral evaluator must have sufficient professional training and credentials to render opinions as to causation, and if applicable, the recommended method of repair and the estimated cost of such repairs.<sup>32</sup> Neutral evaluation is nonbinding, but the insurer and policyholder must participate if either party requests it.<sup>33</sup> At a minimum, neutral evaluation must determine the cause of the loss, all methods of stabilization and repair both above and below ground, the costs for stabilization

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<sup>29</sup> Citizens Property Insurance Company, *Citizens Property Insurance Corporation Actuarial & Underwriting Committee Recommended Rate Filing Executive Summary*, Jun. 23, 2015, at pg. 5, [https://www.citizensfla.com/documents/20702/27059/02\\_2016\\_Annual\\_Recommended\\_Rate\\_Filing\\_Exec\\_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0](https://www.citizensfla.com/documents/20702/27059/02_2016_Annual_Recommended_Rate_Filing_Exec_Summary.pdf/57019cdf-e272-4307-b78e-620883395be0) (last visited Feb. 9, 2016).

<sup>30</sup> Citizens Property Insurance Corporation, *2016 Rate Hearing*, pg. 19, <https://www.citizensfla.com/documents/20702/30286/2016+Rate+Hearing+Kit/479c1ab7-f120-47ca-a158-6f908ff36d1a> (last visited Feb. 9, 2016).

<sup>31</sup> Section 627.7073, F.S., contains the statutory standards for a sinkhole report. A sinkhole report must be based on tests performed by a professional engineer and professional geologist that, as required by s. 627.7072, F.S., are sufficient to determine the presence or absence of sinkhole loss and allow the professional engineer to make recommendations regarding necessary building stabilization and foundation repair. The sinkhole report must contain the opinion of the professional engineer or professional geologist as to whether a sinkhole loss is present, and if so, the recommendation of the professional engineer of methods for stabilizing the land and repairing the foundation.

<sup>32</sup> See s. 627.7074(1)(a), F.S., and s. 627.7074(11), F.S.

<sup>33</sup> Section 627.7074(4), F.S.



and all repairs, and the information necessary to issue a report of the neutral evaluator's findings and recommendations.<sup>34</sup>

Neutral evaluation is an informal process in which formal rules of evidence and procedure need not be observed.<sup>35</sup> The insurer or the policyholder request neutral evaluation by sending written notice to the Department of Financial Services (DFS).<sup>36</sup> The DFS then provides a list of certified neutral evaluators to the parties who have 14 days to select a neutral evaluator.<sup>37</sup> If the parties cannot agree to a neutral evaluator, the department makes the selection. Once a neutral evaluator is selected, within 14 days he or she must notify the policyholder and the insurer of the date, time, and place of the neutral evaluation conference.<sup>38</sup>

Once a neutral evaluator has been selected by the parties or appointed by the DFS, the insurer submits the sinkhole testing report to the neutral evaluator and the policyholder submits all reports initiated by the policyholder or an agent of the policyholder that either confirm sinkhole loss or dispute the results of another report.<sup>39</sup> The neutral evaluator must be allowed reasonable access to the interior and exterior of the insured structures to be evaluated.<sup>40</sup> At the conclusion of neutral evaluation, the neutral evaluator must prepare a report describing all matters that are the subject of neutral evaluation, including whether a sinkhole loss has occurred, and, if so, the estimated costs of stabilizing the land and any covered building and other appropriate repairs.<sup>41</sup> The recommendation of the neutral evaluator and his or her testimony must be admitted in any litigation relating to the insurance claim.<sup>42</sup> If the insurer timely complies with the recommendation of the neutral evaluator, the insurer is not liable for extra-contractual damages related to issues determined under neutral evaluation.<sup>43</sup>

### **Surplus Requirements**

To transact insurance in Florida, insurers must apply for a certificate of authority and meet certain surplus requirements. For a new domestic insurer that transacts residential property insurance and is:

- Not a wholly owned subsidiary of an insurer domiciled in any other state, the surplus requirement is at least \$15 million.
- A wholly owned subsidiary of an insurer domiciled in any other state, the requirement is at least \$50 million.

Under current law, the surplus requirements for existing insurers are different than the requirements for new insurers. For property and casualty insurers, the requirement is \$4 million, except for property and casualty insurers authorized to underwrite any line of residential property insurance. For residential property insurers not holding a certificate of authority before July 1,

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<sup>34</sup> Section 627.7074(2), F.S.

<sup>35</sup> Section 627.7074(5), F.S.

<sup>36</sup> Section 627.7074(4), F.S.

<sup>37</sup> Section 627.7074(7), F.S.

<sup>38</sup> See *id.*

<sup>39</sup> See section 627.7074(2) and (5), F.S.

<sup>40</sup> Section 627.7074(5), F.S.

<sup>41</sup> Section 627.7074(12), F.S.

<sup>42</sup> Section 627.7074(13), F.S.

<sup>43</sup> Section 627.7074(15), F.S.

2011, the requirement is \$15 million. For residential property insurers holding a certificate of authority before July 1, 2011, and until June 30, 2016, \$5 million; on or after July 1, 2016, and until June 30, 2021, \$10 million; on or after July 1, 2021, \$15 million.

### **Rate Filings for Property, Casualty, and Surety Insurance**

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the “Rating Law,” and apply to property, casualty, and surety insurance. The law states that the rates for all classes to which part I applies “shall not be excessive, inadequate, or unfairly discriminatory.”<sup>44</sup> The Office of Insurance Regulation (OIR) has the responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

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

The OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, if applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

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<sup>44</sup> Section 627.062(1), F.S.

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

#### **Creation of Limited Sinkhole Coverage Insurance and Application of Current Law to Coverage [s. 627.7151(1) and (2), F.S.]**

The bill creates s. 627.7151, F.S., which allows insurers to offer a new type of sinkhole insurance coverage. Limited sinkhole coverage would, as under current law, only provide coverage for “sinkhole loss” which is defined in statute as structural damage to the covered building, including the foundation, caused by sinkhole activity. Limited sinkhole insurance is authorized only for personal lines residential insurance, not commercial lines residential insurance (such as condominium association and homeowners association coverages) or commercial lines insurance. Insurers may exclude from limited sinkhole coverage insurance coverage for contents and additional living expenses. The section created by the bill does not apply to excess coverage for sinkhole loss. Limited sinkhole coverage is subject to the statutory requirements for sinkhole insurance in ss. 627.706-627.7074, F.S., except as otherwise provided in the bill.

#### **Scope of Benefits Provided [s. 627.7151(3)(a), F.S.]**

Coverage may be limited to repairs to stabilize the building and repair the foundation in accordance with the recommendations of the professional engineer retained pursuant to s. 627.707(2), F.S. Currently, s. 627.707(5), F.S., directs insurers to pay for building stabilization and foundation repair but also requires that the insurer, “shall pay for other repairs to the structure and contents in accordance with the terms of the policy.” The bill specified that limited sinkhole coverage insurance may be issued that does not provide coverage for “other repairs to the structure and contents.”

The bill retains the current requirement that if the insurer’s professional engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer’s professional engineer or tender the policy limits to the policyholder. The bill does not retain a provision in s. 627.707(5)(c), F.S., which applies when below-ground sinkhole remediation repairs begin and the engineer selected by the insurer determines that repairs cannot be completed within policy limits. In that situation, the statute requires the insurer to complete the repairs regardless of the policy limit or tender the full policy limit without a reduction for repairs already performed.

#### **Deductibles and Policy Limits [s. 627.7151(3)(b) and (c), F.S.]**

Currently, sinkhole deductibles may only be 1 percent, 2 percent, 5, percent, or 10 percent of the dwelling policy limits. Limited sinkhole insurance may contain those deductibles and alternatively may have a deductible in any amount agreed to by the insured and insurer.

The policy limit may be in any amount agreed to by the insured and insurer, so long as the limit is no less than \$50,000 unless that amount exceeds full replacement costs of the property.

#### **Required Notice to Policyholders [s. 627.7151(4), F.S.]**

The insurance agent must obtain from an applicant for limited sinkhole insurance a signed acknowledgment that contains the following statement in at least 12-point bold, uppercase type:

“BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT APPLY TO MY POLICY.” The signed acknowledgment must also include notices to the policyholder if the policy limit is less than replacement cost or contains a deductible greater than 10 percent. The notice for a policy limit less than replacement cost is: “THIS POLICY LIMITS SINKHOLE COVERAGE TO LESS THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY AT RISK.” The notice for a deductible greater than 10 percent is: “THIS POLICY EXCEEDS THE DEDUCTIBLE AMOUNT PERMITTED FOR OTHER AUTHORIZED SINKHOLE LOSS INSURANCE POLICIES WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.”

### **Exemption from Form and Rate Approval [s. 627.7151(5) and (6)]**

The bill allows insurers to establish limited sinkhole coverage policy forms not subject to filing with and approval by the Office of Insurance Regulation (OIR).

The bill allows insurers to develop rates for the new version of sinkhole insurance created by the bill under the full rate review process provided for in s. 627.062, F.S. Alternatively, the bill allows the use of rates developed by an alternative option if the rate filing is submitted to the OIR before October 1, 2019. Under the alternative option created by the bill, a rate filing for the sinkhole coverage created by the bill is exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S. Instead, the insurer makes an informational filing. In the informational filing, the insurer must notify the OIR of any change to its sinkhole insurance rates, including the average statewide percentage change in rates, no later than 30 days after the effective date of the change in rates. Insurers that utilize this option must maintain actual data regarding its sinkhole insurance rates for 2 years after the effective date of those rates.

Regardless of the rate filing method used, a rate still cannot be excessive, inadequate, or unfairly discriminatory. The insurer writing the sinkhole insurance is responsible for ensuring the rate charged meets this requirement. The bill allows the OIR to examine an insurer’s documentation supporting a rate to verify the rate meets the requirement with the insurer paying for the examination. During an examination, the OIR uses the rate factors and standards in current law that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the sinkhole insurance rate charged is excessive, inadequate, or unfairly discriminatory. Additionally, the insurer must notify the OIR within 30 days of a rate change for sinkhole insurance that was originally set by this method. Setting sinkhole rates using this method is similar to what is allowed in current law for rates for flood insurance and certain types of commercial lines risks under s. 627.062(3)(d), F.S.

### **Surplus Lines [s. 627.7151(7), F.S.]**

Currently, no insurance coverage is eligible for export to a surplus lines insurer unless it meets certain conditions. One condition is that an agent has sought coverage from and received three documented rejections from authorized insurers currently writing the same type of coverage. Until July 1, 2020, the bill allows this new sinkhole coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for

insurance from Florida licensed sinkhole insurers. This provision tracks the same language in place for flood insurance regarding surplus lines insurers. However, the other requirements governing the exporting of coverage to the surplus lines continue to apply.

**Regulatory Requirements [s. 627.7151(8), F.S.]**

Insurers providing sinkhole coverage must notify the OIR at least 30 days before writing sinkhole insurance in this state. They also must file a plan of operation and financial projections or revisions to such plan, as applicable, with the OIR.

**Assignment of Post-Loss Benefits [s. 627.7151(9), F.S.]**

The bill prohibits a policyholder of a limited sinkhole coverage insurance policy to assign a post-loss claim except to a subsequent purchaser of the property who acquires an insurable interest following a loss.

**Surplus Requirements for Insurers Transacting Only Limited Sinkhole Coverage Insurance [s. 624.407, F.S., and s. 624.408, F.S.]**

The bill reduces the surplus as to policyholder requirements for new and existing insurers that only transact limited sinkhole insurance for personal lines residential property pursuant to s. 627.7151, F.S., to \$7.5 million.

**Effective Date**

The 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 economic impact on the private sector is unknown. The limited sinkhole insurance created by the bill may be more readily available in sinkhole-prone areas of the state such as Hillsborough, Pinellas, Pasco, and Hernando counties. If insurers offering this new sinkhole insurance raise deductibles and initiate limits on coverage (sub-limits), policyholders may have lower premiums. However, if a policyholder experienced a sinkhole, the out-of-pocket costs to the policyholder may be higher than if the policyholder has currently existing sinkhole insurance. For policyholders who currently lack sinkhole insurance, the coverage provided by limited sinkhole insurance would reduce out-of-pocket expenses.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407 and 624.408.

This bill creates section 627.7151 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 February 9, 2016:**

- Limited sinkhole coverage is not required to insure the contents of personal property or additional living expenses.
- Removes the requirement that contents of personal property be adjusted at replacement cost and not actual cash value.
- Allows for limited sinkhole coverage to repair and stabilize the building and foundation in accordance with the recommendations of a professional engineer. If repairs cannot be completed within policy limits, the insurer must pay to complete the repairs or tender the policy limits to the policyholder.
- Allows a deductible in an amount agreed to by the insured and insurer.

- Allows policy limits agreed to by the insured and insurer, provided policy limits below \$50,000 are not allowed unless that amount exceeds full replacement costs of the property.
- Requires a signed notice by an applicant that they have read and understand the coverages of limited sinkhole coverage, including when insuring for less than replacement cost or agreeing to a deductible greater than allowed in s. 627.706(1)(b), F.S.
- Allows limited sinkhole insurers to establish their own forms without needing approval by the Office of Insurance Regulation (OIR).
- Removes the prohibition that Citizens must stop writing sinkhole coverage after July 1, 2018.
- Removes the requirement that the Florida Commission on Hurricane Loss Projection Methodology approve sinkhole models.
- Removes an erroneous statement that the Florida Hurricane Catastrophe Fund cannot cover sinkhole loss.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/09/2016	.	
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The Committee on Banking and Insurance (Margolis) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required; new insurers.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of





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11 authority in this state shall possess surplus as to  
12 policyholders at least the greater of:

13 (a) For a property and casualty insurer, \$5 million, or  
14 \$2.5 million for any other insurer;

15 (b) For life insurers, 4 percent of the insurer's total  
16 liabilities;

17 (c) For life and health insurers, 4 percent of the  
18 insurer's total liabilities, plus 6 percent of the insurer's  
19 liabilities relative to health insurance;

20 (d) For all insurers other than life insurers and life and  
21 health insurers, 10 percent of the insurer's total liabilities;

22 ~~or~~

23 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
24 domestic insurer that transacts residential property insurance  
25 and is:

26 1. Not a wholly owned subsidiary of an insurer domiciled in  
27 any other state, \$15 million.

28 2. A wholly owned subsidiary of an insurer domiciled in any  
29 other state, \$50 million; or

30 (f) Notwithstanding paragraphs (a), (d), and (e), for a  
31 domestic insurer that only transacts limited sinkhole coverage  
32 insurance for personal lines residential property pursuant to s.  
33 627.7151, \$7.5 million.

34 Section 2. Paragraph (h) is added to subsection (1) of  
35 section 624.408, Florida Statutes, to read:

36 624.408 Surplus required; current insurers.—

37 (1) To maintain a certificate of authority to transact any  
38 one kind or combinations of kinds of insurance, as defined in  
39 part V of this chapter, an insurer in this state must at all



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40 times maintain surplus as to policyholders at least the greater  
41 of:

42 (h) Notwithstanding paragraphs (e), (f), and (g), for a  
43 domestic insurer that only transacts limited sinkhole coverage  
44 insurance for personal lines residential property pursuant to s.  
45 627.7151, \$7.5 million.

46  
47 The office may reduce the surplus requirement in paragraphs (f)  
48 and (g) if the insurer is not writing new business, has premiums  
49 in force of less than \$1 million per year in residential  
50 property insurance, or is a mutual insurance company.

51 Section 3. Section 627.7151, Florida Statutes, is created  
52 to read:

53 627.7151 Limited sinkhole coverage insurance.-

54 (1) An authorized insurer may issue, but is not required to  
55 make available, a limited sinkhole coverage insurance policy  
56 providing personal lines residential coverage, subject to  
57 underwriting, for the peril of sinkhole loss on any structure or  
58 the contents of personal property contained therein, subject to  
59 this section and ss. 627.706-627.7074. This section does not  
60 apply to commercial lines residential or commercial lines  
61 nonresidential coverage for the peril of sinkhole loss. This  
62 section also does not apply to coverage for the peril of  
63 sinkhole loss that is excess coverage over any other insurance  
64 covering the peril of sinkhole loss.

65 (2) Limited sinkhole coverage insurance must cover only  
66 losses from the peril of sinkhole loss, as defined in s.  
67 627.706(2)(j); however, such coverage shall not be required to  
68 provide for contents and additional living expenses.



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69       (3) Limited sinkhole coverage insurance may:  
70       (a) Notwithstanding s. 627.707(5), limit coverage to  
71 repairs to stabilize the building and repair the foundation in  
72 accordance with the recommendations of the professional engineer  
73 retained pursuant to s. 627.707(2). However, if the insurer's  
74 professional engineer determines that the repair cannot be  
75 completed within policy limits, the insurer must pay to complete  
76 the repairs recommended by the insurer's professional engineer  
77 or tender the policy limits to the policyholder.  
78       (b) In addition to the deductibles authorized under s.  
79 627.706(1)(b), offer deductibles agreed to by the insured and  
80 insurer.  
81       (c) Offer policy limits agreed to by the insured and  
82 insurer, provided policy limits below \$50,000 are not allowed  
83 unless that amount exceeds full replacement costs of the  
84 property.  
85       (4) Before issuing a limited sinkhole coverage insurance  
86 policy under this section, the insurance agent must obtain from  
87 an applicant an acknowledgement signed by the applicant that  
88 includes the following statement in at least 12-point bold,  
89 uppercase type: "BY ACCEPTING THIS LIMITED SINKHOLE COVERAGE  
90 INSURANCE POLICY I HAVE READ AND UNDERSTAND THE LIMITATIONS THAT  
91 MAY APPLY TO MY POLICY." The signed acknowledgment must also  
92 include, in at least 12-point bold, uppercase type, for a  
93 policy:  
94       (a) That limits limited sinkhole coverage to an amount less  
95 than the full replacement cost of the property, the following  
96 statement: "THIS POLICY LIMITS SINKHOLE COVERAGE TO LESS THAN  
97 THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT



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98 IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN  
99 THIS PROPERTY AT RISK."

100 (b) That provides for a deductible which exceeds the  
101 deductibles authorized under s. 627.706(1)(b), the following  
102 statement: "THIS POLICY EXCEEDS THE DEDUCTIBLE AMOUNT PERMITTED  
103 FOR OTHER AUTHORIZED SINKHOLE LOSS INSURANCE POLICIES WHICH MAY  
104 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."

105 (5) An insurer may establish and use limited sinkhole  
106 coverage forms. Limited sinkhole coverage forms are not subject  
107 to filing and approval pursuant to s. 627.410.

108 (6)(a) An insurer may establish and use limited sinkhole  
109 coverage rates in accordance with the rate standards provided in  
110 s. 627.062.

111 (b) For limited sinkhole coverage rates filed with the  
112 office before October 1, 2019, the insurer may also establish  
113 and use such rates in accordance with the rates, rating  
114 schedules, or rating manuals filed by the insurer with the  
115 office which allow the insurer a reasonable rate of return on  
116 limited sinkhole coverage written in this state. Limited  
117 sinkhole coverage rates established pursuant to this paragraph  
118 are not subject to s. 627.062(2)(a) or (f). An insurer shall  
119 notify the office of any change to such rates within 30 days  
120 after the effective date of the change. The notice must include  
121 the name of the insurer and the average statewide percentage  
122 change in rates. Actuarial data with regard to such rates for  
123 limited sinkhole coverage must be maintained by the insurer for  
124 2 years after the effective date of such rate change and is  
125 subject to examination by the office. The office may require the  
126 insurer to incur the costs associated with an examination. Upon



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127 examination, the office, in accordance with generally accepted  
128 and reasonable actuarial techniques, shall consider the rate  
129 factors in s. 627.062(2)(b) and (d), and the standards in s.  
130 627.062(2)(e), to determine whether the rate is excessive,  
131 inadequate, or unfairly discriminatory.

132 (7) A surplus lines agent may export limited sinkhole  
133 coverage insurance to an eligible surplus lines insurer without  
134 satisfying the conditions set forth in s. 626.916(1). This  
135 subsection expires July 1, 2020.

136 (8) In addition to any other applicable requirements, an  
137 insurer providing limited sinkhole coverage in this state must:

138 (a) Notify the office at least 30 days before writing  
139 limited sinkhole coverage insurance in this state.

140 (b) File a plan of operation and financial projections or  
141 revisions to such plan, as applicable, with the office.

142 (9) A policyholder of a limited sinkhole coverage insurance  
143 policy authorized by this section who incurs a covered loss may  
144 not assign a post-loss claim except to a subsequent purchaser of  
145 the property who acquires insurable interest following a loss.

146 Section 4. This act shall take effect July 1, 2016.

147  
148 ===== T I T L E A M E N D M E N T =====

149 And the title is amended as follows:

150 Delete everything before the enacting clause  
151 and insert:

152 A bill to be entitled  
153 An act relating to limited sinkhole coverage  
154 insurance; amending s. 624.407, F.S.; specifying the  
155 amount of surplus funds required for domestic insurers



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156 applying for a certificate of authority to provide  
157 limited sinkhole coverage insurance; amending s.  
158 624.408, F.S.; specifying the minimum surplus that  
159 must be maintained by insurers that provide limited  
160 sinkhole coverage insurance; creating s. 627.7151,  
161 F.S.; authorizing certain insurers to offer limited  
162 sinkhole coverage insurance in this state; providing  
163 applicability; providing a limitation of coverage;  
164 authorizing a specified limitation of coverage subject  
165 to a certain condition; authorizing certain policy  
166 terms; requiring an insurance agent to obtain a  
167 specified signed acknowledgement from an applicant  
168 before issuing a policy; authorizing insurer forms and  
169 exempting forms from approval; authorizing an insurer  
170 to establish and use rates in accordance with  
171 specified rate standards; requiring an insurer to  
172 provide a specified notice of changes to rates within  
173 a specified time frame to the Office of Insurance  
174 Regulation; requiring an insurer to maintain certain  
175 actuarial data for a specified time frame; authorizing  
176 the office to require an insurer to incur the costs  
177 associated with examining such data; providing factors  
178 for the office in determining whether a rate is  
179 excessive, inadequate, or unfairly discriminatory;  
180 authorizing a surplus lines agent to export a contract  
181 or endorsement for sinkhole coverage to a surplus  
182 lines insurer without meeting certain requirements;  
183 requiring the insurer to notify the office before  
184 writing sinkhole insurance and to file a plan of



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185 operation with the office; prohibiting assignments of  
186 post-loss claims; providing an exception; providing an  
187 effective date.

By Senator Latvala

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A bill to be entitled

1 An act relating to sinkhole insurance; amending s.  
 2 624.407, F.S.; specifying an initial minimum surplus  
 3 requirement for certain new sinkhole insurers;  
 4 amending s. 624.408, F.S.; specifying a minimum  
 5 surplus requirement for certain current sinkhole  
 6 insurers; amending s. 627.062, F.S.; adding projected  
 7 sinkhole losses to a list of factors that must be  
 8 considered by the Office of Insurance Regulation in  
 9 reviewing certain rate filings; amending s. 627.0628,  
 10 F.S.; requiring the Florida Commission on Hurricane  
 11 Loss Projection Methodology to adopt certain standards  
 12 and guidelines relating to personal lines residential  
 13 sinkhole loss by a specified date; creating s.  
 14 627.7151, F.S.; authorizing certain insurers to offer  
 15 sinkhole insurance in this state; providing  
 16 applicability; providing coverage requirements and  
 17 limitations; requiring a notice of coverage or policy  
 18 limitations on the policy declarations page or face  
 19 page; authorizing certain rate standards for sinkhole  
 20 coverage rates to be established and used by insurers;  
 21 requiring an insurer to provide the office with a  
 22 specified notice of changes to certain sinkhole  
 23 coverage rates; requiring an insurer to maintain  
 24 certain actuarial data for a certain time; authorizing  
 25 the office to examine such data to determine if the  
 26 rate is excessive, inadequate, or unfairly  
 27 discriminatory; authorizing the office to require an  
 28 insurer to incur costs associated with such  
 29 examination; authorizing a surplus lines agent to  
 30 export sinkhole insurance to an eligible surplus lines  
 31 insurer without meeting a certain requirement;  
 32

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33 providing for expiration; requiring an insurer to  
 34 notify the office within a specified time before  
 35 writing sinkhole insurance and to file with the office  
 36 a plan of operation and financial projections;  
 37 prohibiting Citizens Property Insurance Corporation  
 38 from issuing or renewing certain sinkhole insurance  
 39 after a certain date; requiring the corporation to  
 40 provide coverage for catastrophic ground cover  
 41 collapse; prohibiting the Florida Hurricane  
 42 Catastrophe Fund from reimbursing certain losses  
 43 caused by sinkhole; providing for construction;  
 44 providing an effective date.  
 45

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

46  
 47  
 48 Section 1. Subsection (1) of section 624.407, Florida  
 49 Statutes, is amended to read:

50 624.407 Surplus required; new insurers.-

51 (1) To receive authority to transact any one kind or  
 52 combinations of kinds of insurance, as defined in part V of this  
 53 chapter, an insurer applying for its original certificate of  
 54 authority in this state shall possess surplus as to  
 55 policyholders at least the greater of:

56 (a) For a property and casualty insurer, \$5 million, or  
 57 \$2.5 million for any other insurer\_+

58 (b) For life insurers, 4 percent of the insurer's total  
 59 liabilities\_+

60 (c) For life and health insurers, 4 percent of the  
 61 insurer's total liabilities, plus 6 percent of the insurer's

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62 liabilities relative to health insurance.~~7~~

63 (d) For all insurers other than life insurers and life and  
64 health insurers, 10 percent of the insurer's total liabilities.~~7~~

65 ~~ex~~

66 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
67 domestic insurer that transacts residential property insurance  
68 and is:

69 1. Not a wholly owned subsidiary of an insurer domiciled in  
70 any other state, \$15 million.

71 2. A wholly owned subsidiary of an insurer domiciled in any  
72 other state, \$50 million.

73 (f) Notwithstanding paragraphs (a), (d), and (e), for a  
74 domestic insurer that solely transacts personal residential  
75 property insurance for the peril of sinkhole in accordance with  
76 s. 627.7151, \$2.5 million.

77 Section 2. Paragraph (h) is added to subsection (1) of  
78 section 624.408, Florida Statutes, to read:

79 624.408 Surplus required; current insurers.—

80 (1) To maintain a certificate of authority to transact any  
81 one kind or combinations of kinds of insurance, as defined in  
82 part V of this chapter, an insurer in this state must at all  
83 times maintain surplus as to policyholders at least the greater  
84 of:

85 (h) Notwithstanding paragraphs (e), (f), and (g), for a  
86 domestic residential property insurer that solely transacts  
87 residential property insurance for the peril of sinkhole in  
88 accordance with s. 627.7151, \$1.5 million.

89  
90 The office may reduce the surplus requirement in paragraphs (f)

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91 and (g) if the insurer is not writing new business, has premiums  
92 in force of less than \$1 million per year in residential  
93 property insurance, or is a mutual insurance company.

94 Section 3. Paragraph (b) of subsection (2) of section  
95 627.062, Florida Statutes, is amended to read:

96 627.062 Rate standards.—

97 (2) As to all such classes of insurance:

98 (b) Upon receiving a rate filing, the office shall review  
99 the filing to determine if a rate is excessive, inadequate, or  
100 unfairly discriminatory. In making that determination, the  
101 office shall, in accordance with generally accepted and  
102 reasonable actuarial techniques, consider the following factors:

103 1. Past and prospective loss experience within and without  
104 this state.

105 2. Past and prospective expenses.

106 3. The degree of competition among insurers for the risk  
107 insured.

108 4. Investment income reasonably expected by the insurer,  
109 consistent with the insurer's investment practices, from  
110 investable premiums anticipated in the filing, plus any other  
111 expected income from currently invested assets representing the  
112 amount expected on unearned premium reserves and loss reserves.  
113 The commission may adopt rules using reasonable techniques of  
114 actuarial science and economics to specify the manner in which  
115 insurers calculate investment income attributable to classes of  
116 insurance written in this state and the manner in which  
117 investment income is used to calculate insurance rates. Such  
118 manner must contemplate allowances for an underwriting profit  
119 factor and full consideration of investment income that produces

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120 a reasonable rate of return; however, investment income from  
 121 invested surplus may not be considered.

122 5. The reasonableness of the judgment reflected in the  
 123 filing.

124 6. Dividends, savings, or unabsorbed premium deposits  
 125 allowed or returned to policyholders, members, or subscribers in  
 126 this state.

127 7. The adequacy of loss reserves.

128 8. The cost of reinsurance. The office may not disapprove a  
 129 rate as excessive solely due to the insurer having obtained  
 130 catastrophic reinsurance to cover the insurer's estimated 250-  
 131 year probable maximum loss or any lower level of loss.

132 9. Trend factors, including trends in actual losses per  
 133 insured unit for the insurer making the filing.

134 10. Conflagration and catastrophe hazards, if applicable.

135 11. Projected hurricane losses, if applicable, which must  
 136 be estimated using a model or method found to be acceptable or  
 137 reliable by the Florida Commission on Hurricane Loss Projection  
 138 Methodology, and as further provided in s. 627.0628.

139 12. Projected flood and sinkhole losses for personal  
 140 residential property insurance, if applicable, which may be  
 141 estimated using a model or method, or a straight average of  
 142 model results or output ranges, independently found to be  
 143 acceptable or reliable by the Florida Commission on Hurricane  
 144 Loss Projection Methodology and as further provided in s.  
 145 627.0628.

146 13. A reasonable margin for underwriting profit and  
 147 contingencies.

148 14. The cost of medical services, if applicable.

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149 15. Other relevant factors that affect the frequency or  
 150 severity of claims or expenses.

151

152 The provisions of this subsection do not apply to workers'  
 153 compensation, employer's liability insurance, and motor vehicle  
 154 insurance.

155 Section 4. Paragraphs (a), (d), and (e) of subsection (3)  
 156 of section 627.0628, Florida Statutes, are amended to read:

157 627.0628 Florida Commission on Hurricane Loss Projection  
 158 Methodology; public records exemption; public meetings  
 159 exemption.-

160 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.-

161 (a) The commission shall consider any actuarial methods,  
 162 principles, standards, models, or output ranges that have the  
 163 potential for improving the accuracy of or reliability of the  
 164 hurricane loss projections used in residential property  
 165 insurance rate filings and flood and sinkhole loss projections  
 166 used in rate filings for personal lines residential flood and  
 167 sinkhole insurance coverage. The commission shall, from time to  
 168 time, adopt findings as to the accuracy or reliability of  
 169 particular methods, principles, standards, models, or output  
 170 ranges.

171 (d) With respect to a rate filing under s. 627.062, an  
 172 insurer shall employ and may not modify or adjust actuarial  
 173 methods, principles, standards, models, or output ranges found  
 174 by the commission to be accurate or reliable in determining  
 175 hurricane loss factors and probable maximum loss levels for use  
 176 in a rate filing under s. 627.062. An insurer may employ a model  
 177 in a rate filing until 120 days after the expiration of the

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178 commission's acceptance of that model and may not modify or  
 179 adjust models found by the commission to be accurate or reliable  
 180 in determining probable maximum loss levels. This paragraph does  
 181 not prohibit an insurer from using a straight average of model  
 182 results or output ranges for the purposes of a rate filing for  
 183 personal lines residential flood or sinkhole insurance coverage  
 184 under s. 627.062.

185 (e)1. The commission shall adopt actuarial methods,  
 186 principles, standards, models, or output ranges for personal  
 187 lines residential flood loss no later than July 1, 2017.

188 2. The commission shall adopt actuarial methods,  
 189 principles, standards, models, or output ranges for personal  
 190 lines residential sinkhole loss no later than July 1, 2018.

191 Section 5. Section 627.7151, Florida Statutes, is created  
 192 to read:

193 627.7151 Sinkhole insurance.-

194 (1) An authorized insurer may issue an insurance policy  
 195 providing personal lines residential property coverage for the  
 196 peril of sinkhole on any residential structure or the contents  
 197 of personal property contained in such residential structure  
 198 subject to this section and s. 627.706. This section does not  
 199 apply to commercial lines residential or commercial lines  
 200 nonresidential coverage for the peril of sinkhole. This section  
 201 also does not apply to coverage for the peril of sinkhole which  
 202 is excess coverage over any other insurance covering the peril  
 203 of sinkhole.

204 (2) Sinkhole insurance must cover only sinkhole loss as  
 205 defined in s. 627.706(2).

206 (3) Sinkhole insurance must:

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207 (a) Include coverage for additional living expenses.

208 (b) Provide that any loss under personal property or  
 209 contents coverage which is repaired or replaced be adjusted only  
 210 on the basis of replacement costs up to the policy limits.

211 (4) Any limitations on sinkhole coverage or policy limits  
 212 pursuant to this section, including, but not limited to,  
 213 deductibles, must be prominently noted on the policy  
 214 declarations page or face page.

215 (5) (a) An insurer may establish and use sinkhole coverage  
 216 rates in accordance with the rate standards provided in s.  
 217 627.062.

218 (b) For sinkhole coverage rates filed with the office  
 219 before October 1, 2019, the insurer may also establish and use  
 220 such rates in accordance with the rates, rating schedules, or  
 221 rating manuals filed by the insurer with the office which allow  
 222 the insurer a reasonable rate of return on sinkhole coverage  
 223 written in this state.

224 1. An insurer shall notify the office of any change to  
 225 sinkhole coverage rates within 30 days after the effective date  
 226 of the change. The notice must include the name of the insurer  
 227 and the average statewide percentage change in rates.

228 2. An insurer shall maintain for 2 years after the  
 229 effective date of a rate change the actuarial data with respect  
 230 to such rates for sinkhole coverage.

231 3. The office may examine such actuarial data and require  
 232 the insurer to incur the costs associated with an examination.  
 233 Upon examination, the office, in accordance with generally  
 234 accepted and reasonable actuarial techniques, shall consider the  
 235 rate factors in s. 627.062(2) (b), (c), and (d), and the

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236 standards in s. 627.062(2)(e), to determine if the rate is  
237 excessive, inadequate, or unfairly discriminatory.

238 4. Sinkhole coverage rates established pursuant to this  
239 paragraph are not subject to s. 627.062(2)(a) and (f).

240 (6) A surplus lines agent may export sinkhole insurance to  
241 an eligible surplus lines insurer without making a diligent  
242 effort to seek such coverage from three or more authorized  
243 insurers in accordance with s. 626.916(1)(a). This subsection  
244 expires July 1, 2020.

245 (7) In addition to any other applicable requirement, an  
246 insurer providing sinkhole coverage in this state must notify  
247 the office at least 30 days before writing sinkhole insurance in  
248 this state and file with the office a plan of operation and  
249 financial projections or revisions to such plan, as applicable.

250 (8) Citizens Property Insurance Corporation may not issue  
251 or renew personal lines residential property insurance for the  
252 peril of sinkhole after July 1, 2018. The corporation shall  
253 provide coverage for catastrophic ground cover collapse as  
254 defined in s. 627.706(2)(a).

255 (9) The Florida Hurricane Catastrophe Fund may not provide  
256 reimbursement for personal residential property losses  
257 proximately caused by the peril of sinkhole, including losses  
258 that occur during a covered event as defined in s.  
259 215.555(2)(b).

260 (10) With respect to the regulation of sinkhole coverage  
261 written in this state by authorized insurers, this section  
262 supersedes any other provision in the Florida Insurance Code,  
263 except s. 627.706, in the event of a conflict.

264 Section 6. 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)

2/9/16

Meeting Date

1274

Bill Number (if applicable)

Topic Sinkhole Insurance

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

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

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

February 5, 2016

The Honorable Lizbeth Benacquisto, Chair  
Committee on Banking and Insurance  
320 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair:

I respectfully ask to be excused from the Banking and Insurance Committee meeting scheduled for Tuesday February 9th, 2016.

Thank you for your consideration.

Sincerely,

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

Garrett S. Richter

cc: James Knudson, Staff Director  
Sheri Green, Administrative Assistant

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore