

Tab 1 **CS/SB 336** by **RI, Richter**; (Similar to CS/CS/H 0079) Property Insurance Appraisers and Property Insurance Appraisal Umpires

644752	A	S	RCS	BI, Richter	Delete L.377 - 381:	02/16 04:03 PM
602768	A	S	L RCS	BI, Negron	Delete L.901 - 909:	02/16 04:03 PM
672348	A	S	L RCS	BI, Negron	Delete L.371:	02/16 04:03 PM
699790	A	S	L WD	BI, Smith	btw L.1077 - 1078:	02/16 04:03 PM

Tab 2 **SB 1248** by **Diaz de la Portilla**; (Similar to H 0177) Prohibited Insurance Practices

161206	A	S	L WD	BI, Margolis	Delete L.56 - 70:	02/16 06:42 PM
311958	A	S	L RCS	BI, Margolis	Delete L.25 - 70:	02/16 06:42 PM

Tab 3 **CS/SB 1442** by **HP, Garcia**; (Similar to CS/CS/H 0221) Out-of-network Health Insurance Coverage

966946	A	S	WD	BI, Negron	Delete L.78 - 191:	02/16 04:04 PM
418472	D	S	L RCS	BI, Detert	Delete everything after	02/16 04:04 PM
561776	AA	S	WD	BI, Negron	btw L.104 - 105:	02/16 04:04 PM

Tab 4 **SB 1696** by **Flores**; (Similar to CS/H 1425) Consumer Finance Loans

704486	D	S		BI, Richter	Delete everything after	02/15 01:34 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 16, 2016

TIME: 1:30—3:30 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 336 Regulated Industries / Richter (Similar CS/CS/H 79)	Property Insurance Appraisers and Property Insurance Appraisal Umpires; Exempting certificates issued to property insurance appraisal umpires from the requirement to bear a seal of the Department of Financial Services; requiring umpires to be licensed and appointed; providing limitations on fees charged by a public adjuster during an appraisal; creating the "Property Insurance Appraisal Umpire Law", etc. RI 02/02/2016 Not Considered RI 02/09/2016 Fav/CS BI 02/16/2016 Fav/CS AP	Fav/CS Yeas 10 Nays 0
2	SB 1248 Diaz de la Portilla (Similar H 177, Compare CS/H 671)	Prohibited Insurance Practices; Providing responsibilities and prohibiting activities of licensed contractors and subcontractors under certain conditions; prohibiting certain persons and entities from giving a referral fee, commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement, in connection with certain repair, mitigation, or restoration services; providing duties of the Department of Financial Services, etc. BI 02/16/2016 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
3	CS/SB 1442 Health Policy / Garcia (Similar CS/CS/H 221, Compare CS/H 1175, S 1496)	Out-of-network Health Insurance Coverage; Requiring hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with certain provisions as a condition of licensure; adding a ground for discipline of referring health care providers by the Department of Health; requiring an insurer that issues a policy including coverage for the services of a preferred provider to post certain information about participating providers on its website, etc. HP 02/01/2016 Fav/CS BI 02/16/2016 Fav/CS AP	Fav/CS Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 16, 2016, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1696 Flores (Similar CS/H 1425, Linked S 1628)	Consumer Finance Loans; Establishing the Increased Access to Responsible Small Dollar Loans Pilot Program; providing general requirements for a program loan; requiring a program licensee to offer certain credit education to a borrower; requiring a program licensee and a referral partner to enter into a written referral partner agreement, etc. BI 02/16/2016 Temporarily Postponed AGG AP	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 336

INTRODUCER: Banking and Insurance Committee; Regulated Industries Committee; and Senator Richter

SUBJECT: Property Insurance Appraisers and Property Insurance Appraisal Umpires

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Caldwell</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 336 provides for the licensing and regulation of property insurance appraisers and umpires by the Department of Financial Services (department). Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss. Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute. Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

The bill establishes a licensing program for “property insurance appraisal umpires” within the department. The bill incorporates the program into part I of ch. 626, F.S., which sets forth the procedural provisions applicable to all insurance licensing programs administered by the department. Licensure is required only for appraisals involving residential claims. The bill creates definitions; qualifications and requirements for licensure, including prerequisite education, fees, and background screening; continuing education; grounds for the refusal, suspension, or revocation of a license; and a code of conduct that includes restrictions on the amount that may be charged. Florida-licensed engineers, contractors, architects, attorneys, and adjusters who meet specified experience requirements are eligible for licensure. Retired judges are not required to obtain licensure under the bill.

In addition, the bill allows only licensed adjusters or attorneys to practice as an appraiser in insurance claims related to residential property. Fees charged by public adjusters who serve as appraisers are capped at current statutory limits for adjusters, and contracts for appraisal services must contain specified notice regarding the right to negotiate fees. Appraisers for insurers are not similarly regulated.

The bill appropriates \$24,000 in recurring funds from the Insurance Regulatory Trust Fund to the DFS and appropriates \$73,107 in recurring funds and \$39,230 in nonrecurring funds from the Administrative Trust Fund to the DFS. The bill also authorizes one full-time equivalent position with associated salary rate of \$47,291 to implement provisions of the bill.

The bill provides an effective date of October 1, 2016.

II. Present Situation:

Florida Insurance Code

“Florida Insurance Code” (code) consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

Section 624.11(1), F.S., prohibits a person from transacting insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, without complying with the applicable provisions of the code. Section 624.04, F.S., defines the term “person,” as used in the code, to include:

an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, service representative, adjuster, and every legal entity.

The Department of Financial Services (department) and the Office of Insurance Regulation of the Financial Services Commission are charged with enforcing the code.¹

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.² The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured’s coverage, determining current replacement costs, and conferring with the insurer’s representatives to adjust the claim. Public adjusters are licensed by the department and must meet specified age, residency, examination, and surety bond requirements.³ The conduct of a public adjuster is governed by statute and by rule.⁴ A company

¹ Section 626.307, F.S.

² Section 626.854(1), F.S.

³ Section 626.865, F.S.

⁴ See generally, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795, and 626.8796, F.S., and Rule 69B-220, F.A.C.

employee adjuster (known as a “company adjuster”) performs the same services as a public adjuster except he or she is employed by the insurer.⁵

Property Insurance Appraisers and Umpires

Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.⁶ Such provisions typically provide that each party select a property insurance appraiser (appraiser). The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the property insurance appraisal umpire (appraisal umpire) resolves the dispute.⁷ Current law does not limit or restrict who may act as an appraiser or appraisal umpire or provide for the regulation of appraisers or appraisal umpires.

Section 627.70151, F.S., provides conflict of interest standards for appraisal umpires. It provides that insurers and policyholder may challenge an appraisal umpire’s impartiality and disqualify the proposed umpire only if:

- (1) A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- (2) The umpire has previously represented a party in a professional capacity in the same claim or matter involving the same property;
- (3) The umpire has represented another person in a professional capacity on the same or a substantially related matter that includes the claim, the same property or an adjacent property, and the other person’s interests are materially adverse to the interests of a party; or
- (4) The umpire has worked as an employer or employee of a party within the preceding 5 years.

The Sunrise Act

Florida does not license or regulate appraisal umpires or appraisers.

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

⁵ Section 626.856, F.S.

⁶ See Fla. Jur. Insurance s. 3292.

⁷ *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

The response submitted by the proponents of the bill, the Insurance Appraisers and Umpires Association (IAUA),⁸ states that the unregulated profession poses a substantial harm to the public health, safety, or welfare.⁹ In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and

⁸ More information about the Insurance Appraisers and Umpires Association is available at: <http://www.iaua.us/about-iaua.aspx> (last visited March 13, 2015).

⁹ Rep. Frank Artiles, *Sunrise Questionnaire for New Regulation Re: HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers*, pg. 1 (March 6, 2015) (On file with the Senate Committee on Banking and Insurance).

thus they fail to repair the interior making the damages worse and affecting the value of the home.

III. Effect of Proposed Changes:

The bill provides for the regulation of appraisal umpires and appraisers.

Chapter 624, F.S. - Appraisal Umpires

The bill amends s. 624.04, F.S., to include appraisal umpires within the definition of the term “person.” In effect, this provision requires appraisal umpires to comply with the provisions of the code.

The bill amends the following provisions in ch. 624, F.S., to include appraisal umpires:

- Section 624.303(2), F.S., to exempt certificates issued to umpires from the requirement to bear the seal of the department;
- Section 624.311(4), F.S., to provide a schedule for destruction of appraisal umpire licensing files and records; and
- Section 624.317, F.S., to authorize the department to investigate umpires for violations of the insurance code.

The bill amends s. 624.501, F.S., to authorize the following licensing fees for appraisal umpires, which are currently applicable to agent, adjusters, and other insurance representatives:

- A reasonable fee fixed by the department for preparing a list of appraisal umpires; and
- A \$20 fee for the late filing of an appointment renewal.

The bill requires a \$60 fee for each appointment and biennial renewal, and an unspecified fee to cover the actual cost of a credit report when such report must be secured by the department.

The bill also amends s. 624.523, F.S., to require the deposit of fees into the Insurance Regulatory Trust Fund.

Chapter 626, F.S. - Appraisers and Appraisal Umpires

The bill creates s. 626.112(6), F.S., to require that a person may not act, represent, or hold themselves out to be an appraisal umpire unless the person holds a current effective license and appointment as an appraisal umpire. Retired appellate, circuit, or county judges who are members in good standing with the Florida Bar are not required to obtain the license created by the bill.

The bill creates s. 626.112(7), F.S., to require that a person may not act, represent, or hold themselves out to be an appraiser who is eligible to represent an insured on a personal residential or commercial residential property insurance claim unless he or she holds a currently effective license as an adjuster or is exempt from license under s. 626.860, F.S.¹⁰ This provision does not

¹⁰ Section 626.860, F.S., permits licensed attorneys to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance.

prohibit persons who are not licensed as an adjuster to act as an appraiser for insurance claims related to non-residential property.

The bill creates s. 626.112(8), F.S., to prohibit the following three classes of persons from acting or serving as an appraiser or appraisal umpire:

- Persons disqualified under s. 626.207, F.S.;¹¹
- Persons who have been convicted of a felony or a crime punishable by imprisonment of 1 year or more; and
- Persons who have been dishonorably discharged from the Armed Forces of the United States.

The bill defines “convicted” as a “finding of guilt or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.”

The bill amends the following provisions in ch. 626, F.S., to include the regulation of appraisal umpires:

- Section 626.015(16), F.S., to provide that the terms “property insurance appraisal umpire” and “umpire” have the same meaning as the term “property insurance appraisal umpire” as defined in s. 626.9964, F.S.;
- Section 626.016, F.S., to expand the scope of the Chief Financial Officer’s powers and duties and the department’s enforcement jurisdiction to include appraisal umpires;
- Section 626.022, F.S., to include appraisal umpire licensing in the scope of part I of ch.626, F.S., relating to licensing procedures and general requirements for insurance representatives;
- Section 626.171, F.S., to require applicants for licensure as an umpire to submit fingerprints;
- Section 626.207, F.S., to exclude appraisal umpire applicants from the application of s. 112.011, F.S., relating to disqualification from license or public employment;
- Section 626.2815, F.S., to include appraisal umpires in the continuing education requirement for adjusters;¹²
- Section s. 626.451, F.S., to include appraisal umpires in the procedures for appointment;
- Section 626.461, F.S., to include appraisal umpires in the procedure for the renewal, continuation, or termination of an appointment;
- Section 626.521, F.S., to authorize the department to obtain a credit and character report for appraisal umpire applicants;
- Section 626.541, F.S., to include appraisal umpires in procedure for doing business as a firm or corporate name;
- Section 626.601, F.S., to authorize the department to investigate improper conduct of any licensed umpire;
- Section 626.611, F.S., to require the department to refuse, suspend, or revoke an appraisal umpire’s license or appointment for the same grounds as current law provides for agents, title agencies, adjusters, customer representatives, service representatives, or managing general agents;

¹¹ Section 626.207, F.S., prohibits persons who have engaged in specified felonies or misdemeanors related to the financial services business from engaging in financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation.

¹² However, s. 626.9965(2)(e), F.S., exempts retired county, circuit, or appellate judges from the continuing education requirement in s. 626.2815, F.S.

- Section 626.621, F.S., to grant the department the discretion to refuse, suspend, or revoke an umpire's license or appointment for the same grounds as current law provides for agents, title agencies, adjusters, customer representatives, service representatives, or managing general agents;
- Section 626.641(4), F.S., to prohibit an appraisal umpire from owning, controlling, or being employed by other licensees during the period that the appraisal umpire's license is suspended or revoked;
- Sections 626.7845(2), 626.8305, 626.8411, and 626.9957, F.S., to conform cross-references.
- Section 626.8443(4), F.S., to prohibit a title insurance agent or agency from owning, controlling, or being employed by an appraisal umpire or during the period the agent's license or appointment is suspended or revoked;
- Section 626.854(11)(d), F.S., to cap fees for appraisal or combined appraisal and adjusting services as provided in s. 626.854(11)(b), F.S., which caps fees for public adjuster services; and
- Section 626.8791, F.S., to provide a conspicuous notice in contracts for appraisal services that states that there is not legal requirement that the appraiser must charge a client a set fee or percentage on money recovered in a case, and that the client has the right to bargain the rate or percentage in the contract.

Property Insurance Appraisal Umpire Licensing Program

The bill creates part XIV of ch. 626, F.S., consisting of ss. 626.9961 through 626.9968, F.S., to provide for the regulation of appraisal umpires.

Section 626.9961, F.S., provides that part XIV of ch. 626, may be referred to as the "Property Insurance Appraisal Umpire Law."

Section 626.9962, F.S., provides a statement of legislative intent that the regulation of appraisal umpires is intended to protect public safety and welfare and to avoid economic injury to the residents of this state.

Section 626.9963, F.S., provides that part XIV of ch. 626, F.S., supplements part I of ch. 626, F.S., the "Licensing Procedures Law."

Definitions

Section 626.9964, F.S., defines the terms "appraisal," "competent," "department," "property insurance appraisal umpire," "umpire," "property insurance appraiser," and "appraiser."

The bill defines the terms "property insurance appraisal umpire" or "umpire" to mean:

A person selected by the appraisers representing the insurer and the insured, or, if the appraisers cannot agree, by the court, who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal;

Appraisal Umpire Qualifications

Section 626.9965, F.S., provides the license qualifications for an appraisal umpire.

To be licensed as an appraisal umpire a person must be at least one of the following:

- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor pursuant to part I of ch. 489, F.S.;
- An architect licensed to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A Florida-licensed attorney; or
- A property and casualty adjuster licensed under part VI of ch. 626, F.S., who has been licensed for at least 5 years as an adjuster before he or she may be licensed as an appraisal umpire.

In addition to meeting the license requirements, an individual must:

- Be a natural person who is at least 18 years of age;
- Be a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services;
- Be of good moral character;
- Be trustworthy and competent;
- Pay the applicable fees; and
- Satisfactorily complete the education courses approved by the department that consist of at least 19 hours of insurance claims estimating and at least 5 hours of insurance law, ethics, disciplinary trends, and case studies.

Section 626.9965(2)(e), F.S., also exempts retired county, circuit, or appellate judges from the continuing education requirement in s. 626.2815, F.S., and the education requirement in this subsection.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

Grounds for Discretionary Refusal, Suspension, or Revocation of a License

The bill creates s. 626.9966, F.S., to provide discretionary grounds for the denial of an application, the suspension or revocation of a license, and to refuse to renew or continue a license, including:

- Violating a duty imposed by law or by the terms of the umpire agreement;
- Having a registration, license, or certification to practice or conduct any regulated profession, business, or vocation revoked, suspended, encumbered or denied;
- Making or filing a report or record, written or oral, which the umpire knows to be false;
- Agreeing to serve as an umpire if service is contingent upon the umpire reporting a predetermined amount, analysis, or opinion; and
- Violation of any ethical standard for umpires.

Ethical Standards for Appraisal Umpires

The bill creates s. 626.9967, F.S., to provide the following ethical standards for appraisal umpires. An appraisal umpire must:

- Charge a fee on an hourly basis and only bill for the actual time spent on or allocated for the appraisal;
- Not charge a fee based on a percentage value of the claim;
- Not charge a fee contingent on a specified outcome;
- Not charge a fee of more than \$500 if the amount reported by either appraiser does not exceed \$500;
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading advertising or marketing practices;
- Not accept an appraisal unless the umpire can serve competently, promptly commence the appraisal, and devote the time and attention to its completion;
- Conduct the appraisal in a manner that advances the fair and efficient resolution of the issues;
- Deliberate and decide all issues within the scope of the appraisal, but may not render a decision on any other issues;
- Not delegate his or her duties to any other person;
- Disclose an expert's fees before retaining the expert;
- Not engage in any business, provide any service, or perform any act that would compromise his or her integrity or impartiality;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the service is beyond the person's skill or experience;
- Not give or accept any gift, favor, loan, or other item of value in excess of \$25 to any individual who participates in the appraisal process except for the reasonable fee; and
- Not engage in ex parte communications.

The bill provides that an appraiser may assign the duty of paying the umpire's fee to, and the umpire is entitled to receive payment directly from, the insurer and the insured only if the insurer and the insured acknowledge and accept that duty and agree in writing to be responsible for payment.

Conflicts of Interest

Section 626.9968, F.S., provides standards for conflicts of interest for appraisal umpires that are identical to the standards provided in current law in s. 627.70151, F.S. However, the bill also permits the insurer or the policyholder to challenge the impartiality of an appraisal umpire and disqualify his or her appointment if the appraisal umpire has violated one of the disciplinary grounds in s. 626.9966, F.S.

The bill repeals s. 627.70151, F.S.

Appropriation

For the 2016-2017 fiscal year, the bill appropriates \$24,000 in recurring funds from the Insurance Regulatory Trust Fund to the department, and appropriates \$73,107 in recurring funds

and \$39,230 in nonrecurring funds from the Administrative Trust Fund to the department. The bill authorizes one full-time equivalent position with the associated salary rate of \$47,291, for the purpose of implementing this act.

Effective Date

The bill provides an effective date of October 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:

The bill amends s. 624.501, F.S., to apply the fees in this section to appraisal umpires, and to require a \$60 fee for each appointment and biennial renewal. The bill also provides an unspecified fee to cover the actual cost of a credit report when such report must be secured by the department.

B. Private Sector Impact:

Applicants for an appraiser license and for an appraisal umpire license would be required to pay the application and license fees specified in the bill, including the cost of fingerprinting for a criminal history records check. According to FDLE, the cost for a state and national criminal history record check is \$38.75.¹³ Licensees would also incur costs related to compliance with the continuing education requirements.

C. Government Sector Impact:

For the 2016-2017 fiscal year, the bill appropriates \$24,000 in recurring funds from the Insurance Regulatory Trust Fund to the department, and appropriates \$73,107 in recurring funds and \$39,230 in nonrecurring funds from the Administrative Trust Fund to the department. The bill authorizes one full-time equivalent position with the associated salary rate of \$47,291, for the purpose of implementing this act.

¹³ See Criminal History Record Check Fee Schedule at: <http://www.fdle.state.fl.us/cms/Criminal-History-Records/Obtaining-Criminal-History-Information.aspx> (last visited February 8, 2016).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.04, 624.303, 624.311, 624.317, 624.501, 624.523, 626.015, 626.016, 626.022, 626.112, 626.171, 626.207, 626.2815, 626.451, 626.461, 626.521, 626.541, 626.601, 626.611, 626.621, 626.641, 626.7845, 626.8305, 626.8411, 626.8443, 626.854, 626.8791, and 626.9957.

This bill creates the following sections of the Florida Statutes: 626.9961, 626.9962, 626.9963, 626.9964, 626.9965, 626.9966, 626.9967, and 626.9968.

This bill repeals section 627.70151 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/CS by Banking and Insurance on February 16, 2016:

The committee substitute removes the term “convicted felon” and provides that no person disqualified from licensure under s. 626.207, F.S., convicted of a felony, or dishonorably discharged from the U.S. Armed Forces may serve as a property insurance appraiser or property insurance appraisal umpire. The CS/CS defines “convicted” for purposes of the bill.

The CS/CS also exempts from umpire licensure retired county, circuit, or appellate judges in good standing with the Florida Bar.

CS by Regulated Industries on February 9, 2016:

The committee substitute (CS) changes the title from and act relating to “property insurance appraisals” to an act relating to “property insurance appraisers and property insurance appraisal umpires.”

The CS amends s. 624.04, F.S., to include appraisal umpires within the definition of the term “person.” In effect, this provision requires persons to comply with the provisions of the code.

The CS amends the following provisions in ch. 624, F.S., to include appraisal umpires:

- Section 624.303(2), F.S., relating to the seal of the department;
- Section 624.311(4)(c), F.S., relating to the schedule for destruction of licensing files and records;

- Section 624.317, F.S., relating to the department's authority to investigate violations of the insurance code; and
- Sections 624.501 and 624.523, F.S., relating to fees.

The CS does not create s. 626.9963, F.S., to provide the applicable fees for appraisal umpires and to require that the fees must be deposited in the Insurance Regulatory Trust Fund. Instead the CS creates s. 626.9963, F.S., to provide that part XIV of ch. 626, F.S., is supplementary to the "Licensing Procedures Law, in part I of ch. 626, F.S.

The CS creates s. 626.112(6), F.S., to require that a person may not act, represent, or hold themselves out to be an appraisal umpire unless the person holds a current effective license and appointment as an appraisal umpire.

The CS creates s. 626.112(7), F.S., to require that a person may not act, represent or hold themselves out to be an appraiser who is eligible to represent an insured on a personal residential or commercial residential property insurance claim unless he or she holds a currently effective license as an adjuster or is exempt from license under s. 626.860, F.S. This provision does not prohibit persons who are not licensed as an adjuster to act as an appraiser for insurance claims related to non-residential property.

The CS creates s. 626.112(8), F.S., to prohibit persons convicted of a felony or disqualified under s. 626.207, F.S., from acting or serving as an appraiser or appraisal umpire.

The bill amends the following provisions in ch. 626, F.S., to include appraisal umpires:

- Section 626.115(16), F.S., relating to the definition of the terms "property insurance appraisal umpire" and "umpire;"
- Section 626.016, F.S., relating to the scope of the Chief Financial Officer's powers and duties and the department's enforcement jurisdiction;
- Section 626.022, F.S., relating to the scope of part I of chapter 626, F.S.;
- Section 626.171, F.S., relating to submission of fingerprints;
- Section 626.207, F.S., relating to the application of s. 112.011, F.S.;
- Section 626.2815, F.S., relating to the continuing education requirement;
- Section s. 626.451, F.S., relating to procedures for appointment;
- Section 626.461, F.S., relating to the procedure for the renewal, continuation, or termination of an appointment;
- Section 626.521, F.S., relating to credit and character reports;
- Section 626.541, F.S., relating to the procedure for doing business as a firm or corporate name;
- Section 626.601, F.S., relating to the department's authority to investigate improper conduct of any licensed umpire;
- Section 626.611, F.S., relating to the grounds for compulsory refusal, suspension, or revocation an appraisal umpire's license or appointment;
- Section 626.621, F.S., relating to the grounds for discretionary refusal, suspension, or revocation an appraisal umpire's license or appointment;

- Section 626.641(4), F.S., relating to prohibitions during the period that the appraisal umpire's license is suspended or revoked;
- Sections 626.7845(2), 626.8305, 626.8411, and 626.9957, F.S., to conform cross-references;
- Section 626.8443(4), F.S., relating to prohibitions during the period the agent's license or appointment is suspended or revoked;
- Section 626.854(11)(d), F.S., relating to cap fees; and
- Section 626.8791, F.S., relating to the required notice in contracts for appraisal services.

The CS does not create s. 626.9961, F.S., to create the property insurance appraisal umpire and appraiser licensing program within the department. Instead, the CS creates s. 626.9961, F.S., to provide that part XIV of ch. 626, may be referred to as the "Property Insurance Appraisal Umpire Law." The CS provides for the regulation of appraisal umpires in part XIV of ch. 626, F.S., but does not provide for the regulation of appraisers in part XIV of ch. 626, F.S.

The CS does not create s. 626.9962, F.S., to define the terms "appraisal," "competent," "department," "independent," "property insurance appraisal umpire," "umpire," "property insurance appraiser," and "appraiser." Instead, the bill creates s. 626.9962, F.S., to provide a statement of legislative intent.

The CS does not create s. 626.9963, F.S., to provide fees. Instead, the CS creates s. 626.9963, F.S., to provide that part XIV of ch. 626, F.S., supplements part I of ch. 626, F.S., the "Licensing Procedures Law."

The CS does not create s. 626.9964, F.S., to provide the application process for an appraiser or appraisal umpire license, and to provide the license qualifications for an appraiser or appraisal umpire. Instead, the CS creates s. 626.9964, F.S., to define the terms "appraisal," "competent," "department," "property insurance appraisal umpire," "umpire," "property insurance appraiser," and "appraiser." The CS does not define the term "independent." The CS defines the terms "property insurance appraisal umpire" and "umpire," to reference selection by a court.

The CS does not create s. 626.9965, F.S., to provide for licensure by endorsement for an appraiser or appraisal umpire. Instead, the CS creates s. 626.9965, F.S., to provide the qualifications for licensure as an appraisal umpire. It also provides that the continuing education must consist of at least 19 hours of insurance claims estimating and at least 5 hours of insurance law, ethics, disciplinary trends, and case studies. The CS also exempts retired county, circuit, or appellate judges from the continuing education requirement in s. 626.2815, F.S., and the education requirement in s. 626.9965(2)(e), F.S.

The CS does not create s. 626.9966, F.S., to provide for the appointment of an appraiser or umpire. Instead, the CS creates s. 626.9966, F.S., to provide grounds for the refusal, suspension, or revocation of an appraisal umpire license or appointment.

The CS does not create s. 626.9967, F.S., to provide a continuing education requirement for appraisers and appraisal umpire licensees.

The CS does not create s. 626.9968, F.S., to permit appraiser and umpire licensees to practice through a partnership, corporation, or other business entity that is registered with the department.

The CS does not create s. 626.9971, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and refusal to renew or continue a license.

The bill does not create s. 626.9972, F.S., to provide ethical standards for appraisers and appraisal umpires. Instead, the CS creates s. 626.9967, F.S., to provide ethical standards for appraisal umpires. The CS prohibits appraisal umpires from receiving or giving gifts, favors, loans, or other items of value that exceed \$25 to any individual who participates in the appraisal process, and prohibits the appraisal umpire from engaging in ex parte communications. The CS does not provide that the appraisal umpire must maintain the confidentiality of all information revealed during an appraisal except where disclosure is required by law, or require that the appraisal umpire must maintain confidentiality of records. The CS prohibits the appraisal umpire to charge more than \$500 if the amount reported by the appraiser for the insurer or insured does not exceed \$2,500. The CS requires that the appraisal umpire must disclose the expert's fees before retaining the expert. The CS does not specify the circumstances during which the appraisal umpire may engage in an ex parte communication.

The CS amends s. 626.9968, F.S., to permit the insurer or the policyholder to challenge the impartiality of an appraisal umpire and disqualify his or her appointment if the appraisal umpire has violated one of the disciplinary grounds in s. 626.9966, F.S.

The CS does not create s. 626.9973, F.S., to provide that, effective October 1, 2016, a person may not use the name or title "property insurance appraiser," "appraiser," "property insurance appraisal umpire," or "umpire" unless he or she is licensed pursuant to part XIV or ch. 626, F.S. It also does not provide that a person who violates this prohibition commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

The CS does not create s. 626.9974, F.S., to authorize the department to adopt rules.

The CS changes the appropriation for the 2016-2017 fiscal year. The CS does not appropriate \$605,874 in recurring funds and \$59,053 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Department of Financial Services for four full-time equivalent positions with associated salary rate of \$212,315 for the purpose of implementing this act. Instead, the CS appropriates specified recurring and nonrecurring funds from the Insurance Regulatory Trust Fund and the Administrative Trust Fund to the department, and authorizes one full-time equivalent position with the associated salary rate of \$47,291, for the purpose of implementing this act.

The CS provides an effective date of October 1, 2016, instead of July 1, 2016.

B. Amendments:

None.

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



644752

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 377 - 381
and insert:
from licensure under s. 626.860. Only a self-appointed insurance
adjuster may serve as an appraiser.

(8) No person who is disqualified under s. 626.207 or has
been convicted of a felony or a crime punishable by imprisonment
of 1 year or more under the law of the United States or of any
state thereof or under the law of any other country, or



644752

11 dishonorably discharged from any of the Armed Forces of the
12 United States may act or serve as a property insurance appraisal
13 umpire or a property insurance appraiser. For purposes of this
14 subsection, "convicted" means a finding of guilt or the
15 acceptance of a plea of guilty or nolo contendere, in any
16 federal or state court or a court in any other country, without
17 regard to whether a judgment of conviction has been entered by
18 the court having jurisdiction of the case.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete lines 30 - 31

23 and insert:

24 appointed insurance adjuster may serve as an
25 appraiser; prohibiting persons convicted of a felony
26 or certain



602768

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 901 - 909
and insert:

(a) Licensed as an engineer pursuant to chapter 471 or is a retired professional engineer as defined in s. 471.005.

(b) Licensed as a general contractor, a building contractor, or a residential contractor pursuant to part I of chapter 489.

(c) Licensed or registered as an architect to engage in the



602768

11 practice of architecture pursuant to part I of chapter 481.
12 (d) A member of The Florida Bar.
13 (e) Licensed as an adjuster pursuant to part VI of chapter



672348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 371
and insert:
appointment as a property insurance appraisal umpire. Retired
county, circuit, or appellate judges who are members in good
standing with The Florida Bar are not required to obtain the
license required by this subsection.

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



672348

11 And the title is amended as follows:
12 Delete line 27
13 and insert:
14 umpires to be licensed and appointed; providing that
15 certain retired judges are not required to be licensed
16 to be umpires; requiring



699790

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 1077 and 1078

insert:

Section 31. An appraisal may not be invoked by any party if the property insurance dispute involves less than \$5,000.

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

And the title is amended as follows:

Delete line 91



699790

11 and insert:

12 interest; prohibiting any party from invoking an
13 appraisal under certain circumstances; providing an
14 appropriation and authorizing

By the Committee on Regulated Industries; and Senator Richter

580-03294-16

2016336c1

1 A bill to be entitled
 2 An act relating to property insurance appraisers and
 3 property insurance appraisal umpires; amending s.
 4 624.04, F.S.; revising the definition of the term
 5 "person"; amending s. 624.303, F.S.; exempting
 6 certificates issued to property insurance appraisal
 7 umpires from the requirement to bear a seal of the
 8 Department of Financial Services; amending s. 624.311,
 9 F.S.; providing a schedule for destruction of property
 10 insurance appraisal umpire licensing files and
 11 records; amending s. 624.317, F.S.; authorizing the
 12 department to investigate property insurance appraisal
 13 umpires for violations of the insurance code; amending
 14 s. 624.501, F.S.; authorizing specified licensing fees
 15 for property insurance appraisal umpires; amending s.
 16 624.523, F.S.; requiring fees associated with property
 17 insurance appraisal umpires' appointments to be
 18 deposited into the Insurance Regulatory Trust Fund;
 19 amending s. 626.015, F.S.; providing a definition;
 20 amending s. 626.016, F.S.; revising the scope of the
 21 Chief Financial Officer's powers and duties and the
 22 department's enforcement jurisdiction to include
 23 umpires; amending s. 626.022, F.S.; including property
 24 insurance appraisal umpire licensing in the scope of
 25 part I of ch. 626, F.S., relating to licensing
 26 procedures; amending s. 626.112, F.S.; requiring
 27 umpires to be licensed and appointed; requiring
 28 licensure as an adjuster when serving as an appraiser
 29 under certain conditions; providing that only a self-
 30 appointed insurance appraiser may serve as an
 31 adjuster; prohibiting convicted felons or certain
 32 disqualified persons from engaging in certain

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

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33 activities; amending s. 626.171, F.S.; requiring
 34 applicants for licensure as an umpire to submit
 35 fingerprints to the department; amending s. 626.207,
 36 F.S.; excluding applicants for licensure as umpires
 37 from application of s. 112.011, F.S., relating to
 38 disqualification from license or public employment;
 39 amending s. 626.2815, F.S.; requiring specified
 40 continuing education for licensure as an umpire;
 41 amending s. 626.451, F.S.; providing requirements
 42 relating to the appointment of an umpire; amending s.
 43 626.461, F.S.; providing that an umpire appointment
 44 continues in effect, subject to renewal or earlier
 45 written notice of termination, until the person's
 46 license is revoked or otherwise terminated; amending
 47 s. 626.521, F.S.; authorizing the department to obtain
 48 a credit and character report for certain umpire
 49 applicants; amending s. 626.541, F.S.; requiring an
 50 umpire to provide certain information to the
 51 department when doing business under a different
 52 business name or when information in the licensure
 53 application changes; amending s. 626.601, F.S.;
 54 authorizing the department or office to investigate
 55 improper conduct of any licensed umpire; amending s.
 56 626.611, F.S.; requiring the department to refuse,
 57 suspend, or revoke an umpire's license under certain
 58 circumstances; amending s. 626.621, F.S.; authorizing
 59 the department to refuse, suspend, or revoke an
 60 umpire's license under certain circumstances; amending
 61 s. 626.641, F.S.; prohibiting an umpire from owning,

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62 controlling, or being employed by other licensees
 63 during the period the umpire's license is suspended or
 64 revoked; amending ss. 626.7845, 626.8305, and
 65 626.8411, F.S.; conforming provisions to changes made
 66 by the act; amending s. 626.8443, F.S.; prohibiting a
 67 title insurance agent from owning, controlling, or
 68 being employed by an umpire during the period the
 69 agent's license is suspended or revoked; amending s.
 70 626.854, F.S.; providing limitations on fees charged
 71 by a public adjuster during an appraisal; creating s.
 72 626.8791, F.S.; establishing required notice in a
 73 contract for appraisal services; amending s. 626.9957,
 74 F.S.; conforming a cross-reference; creating part XIV
 75 of ch. 626, F.S., relating to property insurance
 76 appraisal umpires; creating s. 626.9961, F.S.;
 77 providing a short title; creating s. 626.9962, F.S.;
 78 providing legislative purpose; creating s. 626.9963,
 79 F.S.; providing that the part supplements part I of
 80 ch. 626, F.S., the "Licensing Procedure Law"; creating
 81 s. 626.9964, F.S.; providing definitions; creating s.
 82 626.9965, F.S.; providing qualifications for license
 83 as an umpire; creating s. 626.9966, F.S.; authorizing
 84 the department to refuse, suspend, or revoke an
 85 umpire's license under certain circumstances; creating
 86 s. 626.9967, F.S.; providing ethical standards for
 87 property insurance appraisal umpires; creating s.
 88 626.9968, F.S.; providing for disqualification of an
 89 umpire under certain circumstances; repealing s.
 90 627.70151, F.S., relating to appraisal conflicts of

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91 interest; providing an appropriation and authorizing
 92 positions; providing applicability; providing an
 93 effective date.
 94

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

96
 97 Section 1. Section 624.04, Florida Statutes, is amended to
 98 read:

99 624.04 "Person" defined.—"Person" includes an individual,
 100 insurer, company, association, organization, Lloyds, society,
 101 reciprocal insurer or interinsurance exchange, partnership,
 102 syndicate, business trust, corporation, agent, general agent,
 103 broker, service representative, adjuster, property insurance
 104 appraisal umpire, and every legal entity.

105 Section 2. Subsection (2) of section 624.303, Florida
 106 Statutes, is amended to read:

107 624.303 Seal; certified copies as evidence.—
 108 (2) All certificates executed by the department or office,
 109 other than licenses of agents, property insurance appraisal
 110 umpires, ~~or~~ adjusters, or similar licenses or permits, shall
 111 bear its respective seal.

112 Section 3. Subsection (4) of section 624.311, Florida
 113 Statutes, is amended to read:

114 624.311 Records; reproductions; destruction.—

115 (4) To facilitate the efficient use of floor space and
 116 filing equipment in its offices, the department, commission, and
 117 office may each destroy the following records and documents
 118 pursuant to chapter 257:

119 (a) General closed correspondence files over 3 years old;

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120 (b) Agent, adjuster, property insurance appraisal umpire,
 121 and similar license files, including license files of the
 122 Division of State Fire Marshal, over 2 years old; except that
 123 the department or office shall preserve by reproduction or
 124 otherwise a copy of the original records upon the basis of which
 125 each such licensee qualified for her or his initial license,
 126 except a competency examination, and of any disciplinary
 127 proceeding affecting the licensee;

128 (c) All agent, adjuster, property insurance appraisal
 129 umpire, and similar license files and records, including
 130 original license qualification records and records of
 131 disciplinary proceedings 5 years after a licensee has ceased to
 132 be qualified for a license;

133 (d) Insurer certificate of authority files over 2 years
 134 old, except that the office shall preserve by reproduction or
 135 otherwise a copy of the initial certificate of authority of each
 136 insurer;

137 (e) All documents and records which have been photographed
 138 or otherwise reproduced as provided in subsection (3), if such
 139 reproductions have been filed and an audit of the department or
 140 office has been completed for the period embracing the dates of
 141 such documents and records; and

142 (f) All other records, documents, and files not expressly
 143 provided for in paragraphs (a)-(e).

144 Section 4. Section 624.317, Florida Statutes, is amended to
 145 read:

146 624.317 Investigation of agents, adjusters, property
 147 insurance appraisal umpires, administrators, service companies,
 148 and others.—If it has reason to believe that any person has

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149 violated or is violating any provision of this code, or upon the
 150 written complaint signed by any interested person indicating
 151 that any such violation may exist:

152 (1) The department shall conduct such investigation as it
 153 deems necessary of the accounts, records, documents, and
 154 transactions pertaining to or affecting the insurance affairs of
 155 any general agent, surplus lines agent, adjuster, property
 156 insurance appraisal umpire, managing general agent, insurance
 157 agent, insurance agency, customer representative, service
 158 representative, or other person subject to its jurisdiction,
 159 subject to the requirements of s. 626.601.

160 (2) The office shall conduct such investigation as it deems
 161 necessary of the accounts, records, documents, and transactions
 162 pertaining to or affecting the insurance affairs of any:

163 (a) Administrator, service company, or other person subject
 164 to its jurisdiction.

165 (b) Person having a contract or power of attorney under
 166 which she or he enjoys in fact the exclusive or dominant right
 167 to manage or control an insurer.

168 (c) Person engaged in or proposing to be engaged in the
 169 promotion or formation of:

170 1. A domestic insurer;

171 2. An insurance holding corporation; or

172 3. A corporation to finance a domestic insurer or in the
 173 production of the domestic insurer's business.

174 Section 5. Paragraph (c) of subsection (19) and subsection
 175 (28) of section 624.501, Florida Statutes, are amended, and
 176 subsection (29) is added to that section, to read:

177 624.501 Filing, license, appointment, and miscellaneous

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178 fees.-The department, commission, or office, as appropriate,
179 shall collect in advance, and persons so served shall pay to it
180 in advance, fees, licenses, and miscellaneous charges as
181 follows:

182 (19) Miscellaneous services:
183 (c) For preparing lists of agents, adjusters, property
184 insurance appraisal umpires, and other insurance
185 representatives, and for other miscellaneous services, such
186 reasonable charge as may be fixed by the office or department.

187 (28) Late filing of appointment renewals for agents,
188 adjusters, property insurance appraisal umpires, and other
189 insurance representatives, each appointment.....\$20.00

190 (29) Property insurance appraisal umpires:
191 (a) Property insurance appraisal umpire's appointment and
192 biennial renewal or continuation thereof, each appointment
193\$60.00

194 (b) Fee to cover the actual cost of a credit report when
195 the report must be secured by the department.

196 Section 6. Paragraph (e) of subsection (1) of section
197 624.523, Florida Statutes, is amended to read:

198 624.523 Insurance Regulatory Trust Fund.-
199 (1) There is created in the State Treasury a trust fund
200 designated "Insurance Regulatory Trust Fund" to which shall be
201 credited all payments received on account of the following
202 items:

203 (e) All payments received on account of items provided for
204 under respective provisions of s. 624.501, as follows:

- 205 1. Subsection (1) (certificate of authority of insurer).
- 206 2. Subsection (2) (charter documents of insurer).

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207 3. Subsection (3) (annual license tax of insurer).

208 4. Subsection (4) (annual statement of insurer).

209 5. Subsection (5) (application fee for insurance
210 representatives).

211 6. The "appointment fee" portion of any appointment
212 provided for under paragraphs (6) (a) and (b) (insurance
213 representatives, property, marine, casualty and surety
214 insurance, and agents).

215 7. Paragraph (6) (c) (nonresident agents).

216 8. Paragraph (6) (d) (service representatives).

217 9. The "appointment fee" portion of any appointment
218 provided for under paragraph (7) (a) (life insurance agents,
219 original appointment, and renewal or continuation of
220 appointment).

221 10. Paragraph (7) (b) (nonresident agent license).

222 11. The "appointment fee" portion of any appointment
223 provided for under paragraph (8) (a) (health insurance agents,
224 agent's appointment, and renewal or continuation fee).

225 12. Paragraph (8) (b) (nonresident agent appointment).

226 13. The "appointment fee" portion of any appointment
227 provided for under subsections (9) and (10) (limited licenses
228 and fraternal benefit society agents).

229 14. Subsection (11) (surplus lines agent).

230 15. Subsection (12) (adjusters' appointment).

231 16. Subsection (13) (examination fee).

232 17. Subsection (14) (temporary license and appointment as
233 agent or adjuster).

234 18. Subsection (15) (reissuance, reinstatement, etc.).

235 19. Subsection (16) (additional license continuation fees).

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236 20. Subsection (17) (filing application for permit to form
237 insurer).

238 21. Subsection (18) (license fee of rating organization).

239 22. Subsection (19) (miscellaneous services).

240 23. Subsection (20) (insurance agencies).

241 24. Subsection (29) (property insurance appraisal umpires'
242 appointment).

243 Section 7. Subsections (16) through (19) of section
244 626.015, Florida Statutes, are renumbered as subsections (17)
245 through (20), respectively, and a new subsection (16) is added
246 to that section, to read:

247 626.015 Definitions.—As used in this part:

248 (16) "Property insurance appraisal umpire" or "umpire"
249 means a property insurance appraisal umpire as defined in s.
250 626.9964.

251 Section 8. Subsection (1) of section 626.016, Florida
252 Statutes, is amended to read:

253 626.016 Powers and duties of department, commission, and
254 office.—

255 (1) The powers and duties of the Chief Financial Officer
256 and the department specified in this part apply only with
257 respect to insurance agents, insurance agencies, managing
258 general agents, ~~insurance~~ adjusters, umpires, reinsurance
259 intermediaries, viatical settlement brokers, customer
260 representatives, service representatives, and agencies.

261 Section 9. Subsection (1) of section 626.022, Florida
262 Statutes, is amended to read:

263 626.022 Scope of part.—

264 (1) This part applies as to insurance agents, service

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265 representatives, adjusters, umpires, and insurance agencies; as
266 to any and all kinds of insurance; and as to stock insurers,
267 mutual insurers, reciprocal insurers, and all other types of
268 insurers, except that:

269 (a) It does not apply as to reinsurance, except that ss.
270 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss.
271 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-
272 626.591, and ss. 626.601-626.711 shall apply as to reinsurance
273 intermediaries as defined in s. 626.7492.

274 (b) The applicability of this chapter as to fraternal
275 benefit societies shall be as provided in chapter 632.

276 (c) It does not apply to a bail bond agent, as defined in
277 s. 648.25, except as provided in chapter 648 or chapter 903.

278 (d) This part does not apply to a certified public
279 accountant licensed under chapter 473 who is acting within the
280 scope of the practice of public accounting, as defined in s.
281 473.302, provided that the activities of the certified public
282 accountant are limited to advising a client of the necessity of
283 obtaining insurance, the amount of insurance needed, or the line
284 of coverage needed, and provided that the certified public
285 accountant does not directly or indirectly receive or share in
286 any commission or referral fee.

287 Section 10. Section 626.112, Florida Statutes, is amended
288 to read:

289 626.112 License and appointment required; agents, customer
290 representatives, adjusters, umpires, insurance agencies, service
291 representatives, managing general agents.—

292 (1)(a) No person may be, act as, or advertise or hold
293 himself or herself out to be an insurance agent, insurance

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294 adjuster, or customer representative unless he or she is
 295 currently licensed by the department and appointed by an
 296 appropriate appointing entity or person.

297 (b) Except as provided in subsection (9) ~~(6)~~ or in
 298 applicable department rules, and in addition to other conduct
 299 described in this chapter with respect to particular types of
 300 agents, a license as an insurance agent, service representative,
 301 customer representative, or limited customer representative is
 302 required in order to engage in the solicitation of insurance.
 303 For purposes of this requirement, as applicable to any of the
 304 license types described in this section, the solicitation of
 305 insurance is the attempt to persuade any person to purchase an
 306 insurance product by:

307 1. Describing the benefits or terms of insurance coverage,
 308 including premiums or rates of return;

309 2. Distributing an invitation to contract to prospective
 310 purchasers;

311 3. Making general or specific recommendations as to
 312 insurance products;

313 4. Completing orders or applications for insurance
 314 products;

315 5. Comparing insurance products, advising as to insurance
 316 matters, or interpreting policies or coverages; or

317 6. Offering or attempting to negotiate on behalf of another
 318 person a viatical settlement contract as defined in s. 626.9911.

319

320 However, an employee leasing company licensed pursuant to
 321 chapter 468 which is seeking to enter into a contract with an
 322 employer that identifies products and services offered to

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323 employees may deliver proposals for the purchase of employee
 324 leasing services to prospective clients of the employee leasing
 325 company setting forth the terms and conditions of doing
 326 business; classify employees as permitted by s. 468.529; collect
 327 information from prospective clients and other sources as
 328 necessary to perform due diligence on the prospective client and
 329 to prepare a proposal for services; provide and receive
 330 enrollment forms, plans, and other documents; and discuss or
 331 explain in general terms the conditions, limitations, options,
 332 or exclusions of insurance benefit plans available to the client
 333 or employees of the employee leasing company were the client to
 334 contract with the employee leasing company. Any advertising
 335 materials or other documents describing specific insurance
 336 coverages must identify and be from a licensed insurer or its
 337 licensed agent or a licensed and appointed agent employed by the
 338 employee leasing company. The employee leasing company may not
 339 advise or inform the prospective business client or individual
 340 employees of specific coverage provisions, exclusions, or
 341 limitations of particular plans. As to clients for which the
 342 employee leasing company is providing services pursuant to s.
 343 468.525(4), the employee leasing company may engage in
 344 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
 345 subject to the restrictions specified in those sections. If a
 346 prospective client requests more specific information concerning
 347 the insurance provided by the employee leasing company, the
 348 employee leasing company must refer the prospective business
 349 client to the insurer or its licensed agent or to a licensed and
 350 appointed agent employed by the employee leasing company.

351 (2) No agent or customer representative shall solicit or

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352 otherwise transact as agent or customer representative, or
 353 represent or hold himself or herself out to be an agent or
 354 customer representative as to, any kind or kinds of insurance as
 355 to which he or she is not then licensed and appointed.

356 (3) No person shall act as an adjuster as to any class of
 357 business for which he or she is not then licensed and appointed.

358 (4) No person shall be, act as, or represent or hold
 359 himself or herself out to be a service representative unless he
 360 or she then holds a currently effective service representative
 361 license and appointment. This subsection does not apply as to
 362 similar representatives or employees of casualty insurers whose
 363 duties are restricted to health insurance.

364 (5) No person shall be, act as, or represent or hold
 365 himself or herself out to be a managing general agent unless he
 366 or she then holds a currently effective managing general agent
 367 license and appointment.

368 (6) No person shall be, act as, or represent or hold
 369 himself or herself out to be a property insurance appraisal
 370 umpire unless he or she holds a currently effective license and
 371 appointment as a property insurance appraisal umpire.

372 (7) No person shall be, act as, or represent or hold
 373 himself or herself out to be a property insurance appraiser who
 374 is eligible to represent an insured on a personal residential or
 375 commercial residential property insurance claim unless he or she
 376 holds a currently effective license as an adjuster or is exempt
 377 from licensure under s. 626.860. Only a self-appointed insurance
 378 appraiser may serve as an adjuster.

379 (8) No person who is a convicted felon or disqualified
 380 under s. 626.207 may act or serve as a property insurance

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381 appraisal umpire or property insurance appraiser.

382 ~~(9)(6)~~ An individual employed by a life or health insurer
 383 as an officer or other salaried representative may solicit and
 384 effect contracts of life insurance or annuities or of health
 385 insurance, without being licensed as an agent, when and only
 386 when he or she is accompanied by and solicits for and on the
 387 behalf of a licensed and appointed agent.

388 ~~(10)(a)(7)(a)~~ An individual, firm, partnership,
 389 corporation, association, or other entity shall not act in its
 390 own name or under a trade name, directly or indirectly, as an
 391 insurance agency unless it complies with s. 626.172 with respect
 392 to possessing an insurance agency license for each place of
 393 business at which it engages in an activity that may be
 394 performed only by a licensed insurance agent. However, an
 395 insurance agency that is owned and operated by a single licensed
 396 agent conducting business in his or her individual name and not
 397 employing or otherwise using the services of or appointing other
 398 licensees shall be exempt from the agency licensing requirements
 399 of this subsection.

400 (b) A branch place of business that is established by a
 401 licensed agency is considered a branch agency and is not
 402 required to be licensed so long as it transacts business under
 403 the same name and federal tax identification number as the
 404 licensed agency and has designated with the department a
 405 licensed agent in charge of the branch location as required by
 406 s. 626.0428 and the address and telephone number of the branch
 407 location have been submitted to the department for inclusion in
 408 the licensing record of the licensed agency within 30 days after
 409 insurance transactions begin at the branch location.

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410 (c) If an agency is required to be licensed but fails to
 411 file an application for licensure in accordance with this
 412 section, the department shall impose on the agency an
 413 administrative penalty of up to \$10,000.

414 (d) Effective October 1, 2015, the department must
 415 automatically convert the registration of an approved registered
 416 insurance agency to an insurance agency license.

417 ~~(11)(8)~~ No insurance agent, insurance agency, or other
 418 person licensed under the Insurance Code may pay any fee or
 419 other consideration to an unlicensed person other than an
 420 insurance agency for the referral of prospective purchasers to
 421 an insurance agent which is in any way dependent upon whether
 422 the referral results in the purchase of an insurance product.

423 ~~(12)(9)~~ Any person who knowingly transacts insurance or
 424 otherwise engages in insurance activities in this state without
 425 a license in violation of this section commits a felony of the
 426 third degree, punishable as provided in s. 775.082, s. 775.083,
 427 or s. 775.084.

428 Section 11. Subsections (1) and (4) of section 626.171,
 429 Florida Statutes, are amended to read:

430 626.171 Application for license as an agent, customer
 431 representative, adjuster, umpire, service representative,
 432 managing general agent, or reinsurance intermediary.-

433 (1) The department may not issue a license as agent,
 434 customer representative, adjuster, umpire, service
 435 representative, managing general agent, or reinsurance
 436 intermediary to any person except upon written application filed
 437 with the department, meeting the qualifications for the license
 438 applied for as determined by the department, and payment in

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439 advance of all applicable fees. The application must be made
 440 under the oath of the applicant and be signed by the applicant.
 441 An applicant may permit a third party to complete, submit, and
 442 sign an application on the applicant's behalf, but is
 443 responsible for ensuring that the information on the application
 444 is true and correct and is accountable for any misstatements or
 445 misrepresentations. The department shall accept the uniform
 446 application for nonresident agent licensing. The department may
 447 adopt revised versions of the uniform application by rule.

448 (4) An applicant for a license as an agent, customer
 449 representative, adjuster, umpire, service representative,
 450 managing general agent, or reinsurance intermediary must submit
 451 a set of the individual applicant's fingerprints, or, if the
 452 applicant is not an individual, a set of the fingerprints of the
 453 sole proprietor, majority owner, partners, officers, and
 454 directors, to the department and must pay the fingerprint
 455 processing fee set forth in s. 624.501. Fingerprints shall be
 456 used to investigate the applicant's qualifications pursuant to
 457 s. 626.201. The fingerprints shall be taken by a law enforcement
 458 agency, designated examination center, or other department-
 459 approved entity. The department shall require all designated
 460 examination centers to have fingerprinting equipment and to take
 461 fingerprints from any applicant or prospective applicant who
 462 pays the applicable fee. The department may not approve an
 463 application for licensure as an agent, customer service
 464 representative, adjuster, umpire, service representative,
 465 managing general agent, or reinsurance intermediary if
 466 fingerprints have not been submitted.

467 Section 12. Subsection (9) of section 626.207, Florida

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468 Statutes, is amended to read:

469 626.207 Disqualification of applicants and licensees;
470 penalties against licensees; rulemaking authority.-

471 (9) Section 112.011 does not apply to any applicants for
472 licensure under the Florida Insurance Code, including, but not
473 limited to, agents, agencies, adjusters, adjusting firms,
474 umpires, customer representatives, or managing general agents.

475 Section 13. Subsections (1) and (2) of section 626.2815,
476 Florida Statutes, are amended to read:

477 626.2815 Continuing education requirements.-

478 (1) The purpose of this section is to establish
479 requirements and standards for continuing education courses for
480 individuals licensed to solicit, sell, or adjust insurance or to
481 serve as an umpire in the state.

482 (2) Except as otherwise provided in this section, this
483 section applies to individuals licensed to transact ~~engage in~~
484 ~~the sale of~~ insurance or adjust ~~adjustment of~~ insurance claims
485 in this state for all lines of insurance for which an
486 examination is required for licensing and to individuals
487 licensed to serve as an umpire ~~each insurer, employer, or~~
488 ~~appointing entity, including, but not limited to, those created~~
489 ~~or existing pursuant to s. 627.351~~. This section does not apply
490 to an individual who holds a license for the sale of any line of
491 insurance for which an examination is not required by the laws
492 of this state or who holds a limited license as a crop or hail
493 and multiple-peril crop insurance agent. Licensees who are
494 unable to comply with the continuing education requirements due
495 to active duty in the military may submit a written request for
496 a waiver to the department.

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497 Section 14. Subsections (1), (3), (5), and (6) of section
498 626.451, Florida Statutes, are amended to read:

499 626.451 Appointment of agent or other representative.-

500 (1) Each appointing entity or person designated by the
501 department to administer the appointment process appointing an
502 agent, adjuster, umpire, service representative, customer
503 representative, or managing general agent in this state shall
504 file the appointment with the department or office and, at the
505 same time, pay the applicable appointment fee and taxes. Every
506 appointment shall be subject to the prior issuance of the
507 appropriate agent's, adjuster's, umpire's, service
508 representative's, customer representative's, or managing general
509 agent's license.

510 (3) By authorizing the effectuation of the appointment of
511 an agent, adjuster, umpire, service representative, customer
512 representative, or managing general agent the appointing entity
513 is thereby certifying to the department that it is willing to be
514 bound by the acts of the agent, adjuster, umpire, service
515 representative, customer representative, or managing general
516 agent, within the scope of the licensee's employment or
517 appointment.

518 (5) Any law enforcement agency or state attorney's office
519 that is aware that an agent, adjuster, umpire, service
520 representative, customer representative, or managing general
521 agent has pleaded guilty or nolo contendere to or has been found
522 guilty of a felony shall notify the department or office of such
523 fact.

524 (6) Upon the filing of an information or indictment against
525 an agent, adjuster, umpire, service representative, customer

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526 representative, or managing general agent, the state attorney
527 shall immediately furnish the department or office a certified
528 copy of the information or indictment.

529 Section 15. Section 626.461, Florida Statutes, is amended
530 to read:

531 626.461 Continuation of appointment of agent or other
532 representative.—Subject to renewal or continuation by the
533 appointing entity, the appointment of the agent, adjuster,
534 umpire, service representative, customer representative, or
535 managing general agent shall continue in effect until the
536 person's license is revoked or otherwise terminated, unless
537 written notice of earlier termination of the appointment is
538 filed with the department or person designated by the department
539 to administer the appointment process by either the appointing
540 entity or the appointee.

541 Section 16. Subsection (3) of section 626.521, Florida
542 Statutes, is amended to read:

543 626.521 Character, credit reports.—

544 (3) As to an applicant for an adjuster's, umpire's, or
545 reinsurance intermediary's license who is to be self-employed,
546 the department may secure, at the cost of the applicant, a full
547 detailed credit and character report made by an established and
548 reputable independent reporting service relative to the
549 applicant.

550 Section 17. Subsection (1) of section 626.541, Florida
551 Statutes, is amended to read:

552 626.541 Firm, corporate, and business names; officers;
553 associates; notice of changes.—

554 (1) Any licensed agent, ~~or~~ adjuster, or umpire doing

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555 business under a firm or corporate name or under any business
556 name other than his or her own individual name shall, within 30
557 days after initially transacting the initial transaction of
558 insurance or engaging in insurance activities under such
559 business name, file with the department, on forms adopted and
560 furnished by the department, a written statement of the firm,
561 corporate, or business name being so used, the address of any
562 office or offices or places of business making use of such name,
563 and the name and social security number of each officer and
564 director of the corporation and of each individual associated in
565 such firm or corporation as to the insurance transactions
566 thereof or in the use of such business name.

567 Section 18. Subsection (1) of section 626.601, Florida
568 Statutes, is amended to read:

569 626.601 Improper conduct; inquiry; fingerprinting.—

570 (1) The department or office may, upon its own motion or
571 upon a written complaint signed by any interested person and
572 filed with the department or office, inquire into any alleged
573 improper conduct of any licensed, approved, or certified
574 licensee, insurance agency, agent, adjuster, umpire, service
575 representative, managing general agent, customer representative,
576 title insurance agent, title insurance agency, mediator, neutral
577 evaluator, navigator, continuing education course provider,
578 instructor, school official, or monitor group under this code.
579 The department or office may thereafter initiate an
580 investigation of any such individual or entity if it has
581 reasonable cause to believe that the individual or entity has
582 violated any provision of the insurance code. During the course
583 of its investigation, the department or office shall contact the

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584 individual or entity being investigated unless it determines
 585 that contacting such individual or entity could jeopardize the
 586 successful completion of the investigation or cause injury to
 587 the public.

588 Section 19. Subsection (1) of section 626.611, Florida
 589 Statutes, is amended to read:

590 626.611 Grounds for compulsory refusal, suspension, or
 591 revocation of agent's, title agency's, adjuster's, umpire's,
 592 customer representative's, service representative's, or managing
 593 general agent's license or appointment.—

594 (1) The department shall deny an application for, suspend,
 595 revoke, or refuse to renew or continue the license or
 596 appointment of any applicant, agent, title agency, adjuster,
 597 umpire, customer representative, service representative, or
 598 managing general agent, and it shall suspend or revoke the
 599 eligibility to hold a license or appointment of any such person,
 600 if it finds that as to the applicant, licensee, or appointee any
 601 one or more of the following applicable grounds exist:

602 (a) Lack of one or more of the qualifications for the
 603 license or appointment as specified in this code.

604 (b) Material misstatement, misrepresentation, or fraud in
 605 obtaining the license or appointment or in attempting to obtain
 606 the license or appointment.

607 (c) Failure to pass to the satisfaction of the department
 608 any examination required under this code.

609 (d) If the license or appointment is willfully used, or to
 610 be used, to circumvent any of the requirements or prohibitions
 611 of this code.

612 (e) Willful misrepresentation of any insurance policy or

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613 annuity contract or willful deception with regard to any such
 614 policy or contract, done either in person or by any form of
 615 dissemination of information or advertising.

616 (f) If, as an adjuster, or agent licensed and appointed to
 617 adjust claims under this code, he or she has materially
 618 misrepresented to an insured or other interested party the terms
 619 and coverage of an insurance contract with intent and for the
 620 purpose of effecting settlement of claim for loss or damage or
 621 benefit under such contract on less favorable terms than those
 622 provided in and contemplated by the contract.

623 (g) Demonstrated lack of fitness or trustworthiness to
 624 engage in the business of insurance.

625 (h) Demonstrated lack of reasonably adequate knowledge and
 626 technical competence to engage in the transactions authorized by
 627 the license or appointment.

628 (i) Fraudulent or dishonest practices in the conduct of
 629 business under the license or appointment.

630 (j) Misappropriation, conversion, or unlawful withholding
 631 of moneys belonging to insurers or insureds or beneficiaries or
 632 to others and received in conduct of business under the license
 633 or appointment.

634 (k) Unlawfully rebating, attempting to unlawfully rebate,
 635 or unlawfully dividing or offering to divide his or her
 636 commission with another.

637 (l) Having obtained or attempted to obtain, or having used
 638 or using, a license or appointment as agent or customer
 639 representative for the purpose of soliciting or handling
 640 "controlled business" as defined in s. 626.730 with respect to
 641 general lines agents, s. 626.784 with respect to life agents,

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642 and s. 626.830 with respect to health agents.

643 (m) Willful failure to comply with, or willful violation
644 of, any proper order or rule of the department or willful
645 violation of any provision of this code.

646 (n) Having been found guilty of or having pleaded guilty or
647 nolo contendere to a felony or a crime punishable by
648 imprisonment of 1 year or more under the law of the United
649 States of America or of any state thereof or under the law of
650 any other country which involves moral turpitude, without regard
651 to whether a judgment of conviction has been entered by the
652 court having jurisdiction of such cases.

653 (o) Fraudulent or dishonest practice in submitting or
654 aiding or abetting any person in the submission of an
655 application for workers' compensation coverage under chapter 440
656 containing false or misleading information as to employee
657 payroll or classification for the purpose of avoiding or
658 reducing the amount of premium due for such coverage.

659 (p) Sale of an unregistered security that was required to
660 be registered, pursuant to chapter 517.

661 (q) In transactions related to viatical settlement
662 contracts as defined in s. 626.9911:

663 1. Commission of a fraudulent or dishonest act.

664 2. No longer meeting the requirements for initial
665 licensure.

666 3. Having received a fee, commission, or other valuable
667 consideration for his or her services with respect to viatical
668 settlements that involved unlicensed viatical settlement
669 providers or persons who offered or attempted to negotiate on
670 behalf of another person a viatical settlement contract as

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671 defined in s. 626.9911 and who were not licensed life agents.

672 4. Dealing in bad faith with viators.

673 Section 20. Section 626.621, Florida Statutes, is amended
674 to read:

675 626.621 Grounds for discretionary refusal, suspension, or
676 revocation of agent's, adjuster's, umpire's, customer
677 representative's, service representative's, or managing general
678 agent's license or appointment.—The department may, in its
679 discretion, deny an application for, suspend, revoke, or refuse
680 to renew or continue the license or appointment of any
681 applicant, agent, adjuster, umpire, customer representative,
682 service representative, or managing general agent, and it may
683 suspend or revoke the eligibility to hold a license or
684 appointment of any such person, if it finds that as to the
685 applicant, licensee, or appointee any one or more of the
686 following applicable grounds exist under circumstances for which
687 such denial, suspension, revocation, or refusal is not mandatory
688 under s. 626.611:

689 (1) Any cause for which issuance of the license or
690 appointment could have been refused had it then existed and been
691 known to the department.

692 (2) Violation of any provision of this code or of any other
693 law applicable to the business of insurance in the course of
694 dealing under the license or appointment.

695 (3) Violation of any lawful order or rule of the
696 department, commission, or office.

697 (4) Failure or refusal, upon demand, to pay over to any
698 insurer he or she represents or has represented any money coming
699 into his or her hands belonging to the insurer.

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700 (5) Violation of the provision against twisting, as defined
701 in s. 626.9541(1)(l).

702 (6) In the conduct of business under the license or
703 appointment, engaging in unfair methods of competition or in
704 unfair or deceptive acts or practices, as prohibited under part
705 IX of this chapter, or having otherwise shown himself or herself
706 to be a source of injury or loss to the public.

707 (7) Willful overinsurance of any property or health
708 insurance risk.

709 (8) Having been found guilty of or having pleaded guilty or
710 nolo contendere to a felony or a crime punishable by
711 imprisonment of 1 year or more under the law of the United
712 States of America or of any state thereof or under the law of
713 any other country, without regard to whether a judgment of
714 conviction has been entered by the court having jurisdiction of
715 such cases.

716 (9) If a life agent, violation of the code of ethics.

717 (10) Cheating on an examination required for licensure or
718 violating test center or examination procedures published
719 orally, in writing, or electronically at the test site by
720 authorized representatives of the examination program
721 administrator. Communication of test center and examination
722 procedures must be clearly established and documented.

723 (11) Failure to inform the department in writing within 30
724 days after pleading guilty or nolo contendere to, or being
725 convicted or found guilty of, any felony or a crime punishable
726 by imprisonment of 1 year or more under the law of the United
727 States or of any state thereof, or under the law of any other
728 country without regard to whether a judgment of conviction has

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729 been entered by the court having jurisdiction of the case.

730 (12) Knowingly aiding, assisting, procuring, advising, or
731 abetting any person in the violation of or to violate a
732 provision of the insurance code or any order or rule of the
733 department, commission, or office.

734 (13) Has been the subject of or has had a license, permit,
735 appointment, registration, or other authority to conduct
736 business subject to any decision, finding, injunction,
737 suspension, prohibition, revocation, denial, judgment, final
738 agency action, or administrative order by any court of competent
739 jurisdiction, administrative law proceeding, state agency,
740 federal agency, national securities, commodities, or option
741 exchange, or national securities, commodities, or option
742 association involving a violation of any federal or state
743 securities or commodities law or any rule or regulation adopted
744 thereunder, or a violation of any rule or regulation of any
745 national securities, commodities, or options exchange or
746 national securities, commodities, or options association.

747 (14) Failure to comply with any civil, criminal, or
748 administrative action taken by the child support enforcement
749 program under Title IV-D of the Social Security Act, 42 U.S.C.
750 ss. 651 et seq., to determine paternity or to establish, modify,
751 enforce, or collect support.

752 (15) Directly or indirectly accepting any compensation,
753 inducement, or reward from an inspector for the referral of the
754 owner of the inspected property to the inspector or inspection
755 company. This prohibition applies to an inspection intended for
756 submission to an insurer in order to obtain property insurance
757 coverage or establish the applicable property insurance premium.

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758 Section 21. Subsection (4) of section 626.641, Florida
 759 Statutes, is amended to read:
 760 626.641 Duration of suspension or revocation.—
 761 (4) During the period of suspension or revocation of a
 762 license or appointment, and until the license is reinstated or,
 763 if revoked, a new license issued, the former licensee or
 764 appointee may not engage in or attempt or profess to engage in
 765 any transaction or business for which a license or appointment
 766 is required under this code or directly or indirectly own,
 767 control, or be employed in any manner by an agent, agency,
 768 adjuster, ~~or~~ adjusting firm, or umpire.
 769 Section 22. Subsection (2) of section 626.7845, Florida
 770 Statutes, is amended to read:
 771 626.7845 Prohibition against unlicensed transaction of life
 772 insurance.—
 773 (2) Except as provided in s. 626.112(9) ~~626.112(6)~~, with
 774 respect to any line of authority specified in s. 626.015(10), no
 775 individual shall, unless licensed as a life agent:
 776 (a) Solicit insurance or annuities or procure applications;
 777 (b) In this state, engage or hold himself or herself out as
 778 engaging in the business of analyzing or abstracting insurance
 779 policies or of counseling or advising or giving opinions to
 780 persons relative to insurance or insurance contracts other than:
 781 1. As a consulting actuary advising an insurer; or
 782 2. As to the counseling and advising of labor unions,
 783 associations, trustees, employers, or other business entities,
 784 the subsidiaries and affiliates of each, relative to their
 785 interests and those of their members or employees under
 786 insurance benefit plans; or

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787 (c) In this state, from this state, or with a resident of
 788 this state, offer or attempt to negotiate on behalf of another
 789 person a viatical settlement contract as defined in s. 626.9911.
 790 Section 23. Section 626.8305, Florida Statutes, is amended
 791 to read:
 792 626.8305 Prohibition against the unlicensed transaction of
 793 health insurance.—Except as provided in s. 626.112(9)
 794 ~~626.112(6)~~, with respect to any line of authority specified in
 795 s. 626.015(6), no individual shall, unless licensed as a health
 796 agent:
 797 (1) Solicit insurance or procure applications; or
 798 (2) In this state, engage or hold himself or herself out as
 799 engaging in the business of analyzing or abstracting insurance
 800 policies or of counseling or advising or giving opinions to
 801 persons relative to insurance contracts other than:
 802 (a) As a consulting actuary advising insurers; or
 803 (b) As to the counseling and advising of labor unions,
 804 associations, trustees, employers, or other business entities,
 805 the subsidiaries and affiliates of each, relative to their
 806 interests and those of their members or employees under
 807 insurance benefit plans.
 808 Section 24. Paragraph (a) of subsection (2) of section
 809 626.8411, Florida Statutes, is amended to read:
 810 626.8411 Application of Florida Insurance Code provisions
 811 to title insurance agents or agencies.—
 812 (2) The following provisions of part I do not apply to
 813 title insurance agents or title insurance agencies:
 814 (a) Section 626.112(10) ~~626.112(7)~~, relating to licensing
 815 of insurance agencies.

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816 Section 25. Subsection (4) of section 626.8443, Florida
 817 Statutes, is amended to read:
 818 626.8443 Duration of suspension or revocation.—
 819 (4) During the period of suspension or after revocation of
 820 the license and appointment, the former licensee shall not
 821 engage in or attempt to profess to engage in any transaction or
 822 business for which a license or appointment is required under
 823 this code or directly or indirectly own, control, or be employed
 824 in any manner by any insurance agent or agency, ~~or~~ adjuster, ~~or~~
 825 adjusting firm, or umpire.

826 Section 26. Paragraph (d) is added to subsection (11) of
 827 section 626.854, Florida Statutes, to read:
 828 626.854 "Public adjuster" defined; prohibitions.—The
 829 Legislature finds that it is necessary for the protection of the
 830 public to regulate public insurance adjusters and to prevent the
 831 unauthorized practice of law.

832 (11)
 833 (d) If a public adjuster enters into a contract with an
 834 insured or a claimant to perform an appraisal, as defined in s.
 835 626.9964, the public adjuster may not charge, agree to, or
 836 accept from any source compensation, payment, commission, fee,
 837 or any other thing of value in excess of the limitations set
 838 forth in paragraph (b) for the appraisal services or, if also
 839 servicing as adjuster on the claim, a combination of adjuster and
 840 appraisal services.

841 Section 27. Section 626.8791, Florida Statutes, is created
 842 to read:
 843 626.8791 Contracts for appraisal services; required
 844 notice.—A contract between an adjuster and an insured or

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845 claimant to perform an appraisal must contain the following
 846 language in at least 14-point boldfaced, uppercase type: "THERE
 847 IS NO LEGAL REQUIREMENT THAT AN APPRAISER CHARGE A CLIENT A SET
 848 FEE OR A PERCENTAGE OF MONEY RECOVERED IN A CASE. YOU, THE
 849 CLIENT, HAVE THE RIGHT TO TALK WITH YOUR APPRAISER ABOUT THE
 850 PROPOSED FEE AND TO BARGAIN ABOUT THE RATE OR PERCENTAGE AS IN
 851 ANY OTHER CONTRACT. IF YOU DO NOT REACH AN AGREEMENT WITH ONE
 852 APPRAISER, YOU MAY TALK WITH OTHER APPRAISERS."

853 Section 28. Subsection (1) of section 626.9957, Florida
 854 Statutes, is amended to read:
 855 626.9957 Conduct prohibited; denial, revocation, or
 856 suspension of registration.—
 857 (1) As provided in s. 626.112, only a person licensed as an
 858 insurance agent or customer representative may engage in the
 859 solicitation of insurance. A person who engages in the
 860 solicitation of insurance as described in s. 626.112(1) without
 861 such license is subject to the penalties provided under s.
 862 626.112(12) ~~626.112(9).~~

863 Section 29. Part XIV of chapter 626, Florida Statutes,
 864 consisting of sections 626.9961 through 626.9968, is created to
 865 read:

866 PART XIV
 867 PROPERTY INSURANCE APPRAISAL UMPIRES

868 626.9961 Short title.—This part may be referred to as the
 869 "Property Insurance Appraisal Umpire Law."

870 626.9962 Legislative findings.—The Legislature finds it
 871 necessary to regulate persons that hold themselves out to the
 872 public as qualified to provide services as property insurance
 873 appraisal umpires in order to protect the public safety and

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874 welfare and to avoid economic injury to the residents of this
 875 state. This part applies only to property insurance appraisal
 876 umpires as defined in this part.
 877 626.9963 Part supplements licensing law.—This part is
 878 supplementary to part I, the “Licensing Procedures Law.”
 879 626.9964 Definitions.—As used in this part, the term:
 880 (1) “Appraisal” means, for purposes of licensure under this
 881 part only, a process of alternative dispute resolution used in a
 882 personal residential or commercial residential property
 883 insurance claim.
 884 (2) “Competent” means sufficiently qualified and capable of
 885 performing an appraisal.
 886 (3) “Department” means the Department of Financial
 887 Services.
 888 (4) “Property insurance appraisal umpire” or “umpire” means
 889 a person selected by the appraisers representing the insurer and
 890 the insured, or, if the appraisers cannot agree, by the court,
 891 who is charged with resolving issues that the appraisers are
 892 unable to agree upon during the course of an appraisal.
 893 (5) “Property insurance appraiser” or “appraiser” means the
 894 person selected by an insurer or insured to perform an
 895 appraisal.
 896 626.9965 Qualification for license as a property insurance
 897 appraisal umpire.—
 898 (1) The department shall issue a license as an umpire to a
 899 person who meets the requirements of subsection (2) and is one
 900 of the following:
 901 (a) A retired county, circuit, or appellate judge.
 902 (b) Licensed as an engineer pursuant to chapter 471 or is a

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903 retired professional engineer as defined in s. 471.005.
 904 (c) Licensed as a general contractor, building contractor,
 905 or residential contractor pursuant to part I of chapter 489.
 906 (d) Licensed or registered as an architect to engage in the
 907 practice of architecture pursuant to part I of chapter 481.
 908 (e) A member of The Florida Bar.
 909 (f) Licensed as an adjuster pursuant to part VI of chapter
 910 626, which license includes the property and casualty lines of
 911 insurance. An adjuster must have been licensed for at least 5
 912 years as an adjuster before he or she may be licensed as an
 913 umpire.
 914 (2) An applicant may be licensed to practice in this state
 915 as an umpire if the applicant:
 916 (a) Is a natural person at least 18 years of age;
 917 (b) Is a United States citizen or legal alien who possesses
 918 work authorization from the United States Bureau of Citizenship
 919 and Immigration;
 920 (c) Is of good moral character;
 921 (d) Has paid the applicable fees specified in s. 624.501;
 922 and
 923 (e) Has, before the date of the application for licensure,
 924 satisfactorily completed education courses approved by the
 925 department covering:
 926 1. At least 19 hours of insurance claims estimating; and
 927 2. At least 5 hours of insurance law, ethics for insurance
 928 professionals, disciplinary trends, and case studies.
 929
 930 A retired county, circuit, or appellate judge is exempt from the
 931 continuing education requirements in s. 626.2815 and this

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932 subsection.

933 (3) The department may not reject an application solely
 934 because the applicant is or is not a member of a given appraisal
 935 organization.

936 626.9966 Grounds for refusal, suspension, or revocation of
 937 an umpire license or appointment.—The department may deny an
 938 application for license or appointment under this part; suspend,
 939 revoke, or refuse to renew or continue a license or appointment
 940 of an umpire; or suspend or revoke eligibility for licensure or
 941 appointment as an umpire if the department finds that one or
 942 more of the following applicable grounds exist:

943 (1) Violating a duty imposed upon him or her by law or by
 944 the terms of the umpire agreement; aiding, assisting, or
 945 conspiring with any other person engaged in any such misconduct
 946 and in furtherance thereof; or forming the intent, design, or
 947 scheme to engage in such misconduct and committing an overt act
 948 in furtherance of such intent, design, or scheme. An umpire
 949 commits a violation of this part regardless of whether the
 950 victim or intended victim of the misconduct has sustained any
 951 damage or loss; the damage or loss has been settled and paid
 952 after the discovery of misconduct; or the victim or intended
 953 victim is an insurer or customer or a person in a confidential
 954 relationship with the umpire or is an identified member of the
 955 general public.

956 (2) Having a registration, license, or certification to
 957 practice or conduct any regulated profession, business, or
 958 vocation revoked, suspended, or encumbered; or having an
 959 application for such registration, licensure, or certification
 960 to practice or conduct any regulated profession, business, or

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961 vocation denied, by this or any other state, any nation, or any
 962 possession or district of the United States.

963 (3) Making or filing a report or record, written or oral,
 964 which the umpire knows to be false; willfully failing to file a
 965 report or record required by state or federal law; willfully
 966 impeding or obstructing such filing; or inducing another person
 967 to impede or obstruct such filing.

968 (4) Agreeing to serve as an umpire if service is contingent
 969 upon the umpire reporting a predetermined amount, analysis, or
 970 opinion.

971 (5) Agreeing to serve as an umpire, if the fee to be paid
 972 for his or her services is contingent upon the opinion,
 973 conclusion, or valuation he or she reaches.

974 (6) Failure of an umpire, without good cause, to
 975 communicate within 10 business days after a request for
 976 communication from an appraiser.

977 (7) Violation of any ethical standard for umpires specified
 978 in s. 626.9967.

979 626.9967 Ethical standards for property insurance appraisal
 980 umpires.—

981 (1) FEES AND EXPENSES.—

982 (a) The fees charged by an umpire must be reasonable and
 983 consistent with the nature of the case.

984 (b) In determining fees, an umpire:

985 1. Must charge on an hourly basis and may bill only for
 986 actual time spent on or allocated for the appraisal.

987 2. May not charge, agree to, or accept as compensation or
 988 reimbursement any payment, commission, or fee that is based on a
 989 percentage of the value of the claim or that is contingent upon

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990 a specified outcome.

991 3. May charge for costs actually incurred, and no other
992 costs.

993 4. May not charge more than \$500 if the amount reported by
994 the appraiser for the insurer or by the appraiser for the
995 insured does not exceed \$2,500.

996 (c) An appraiser may assign the duty of paying the umpire's
997 fee to, and the umpire is entitled to receive payment directly
998 from, the insurer and the insured only if the insurer and the
999 insured acknowledge and accept that duty and agree in writing to
1000 be responsible for payment.

1001 (2) MAINTENANCE OF RECORDS.—An umpire shall maintain
1002 records necessary to support charges for services and expenses,
1003 and, upon request, shall provide an accounting of all applicable
1004 charges to the insurer and insured. An umpire shall retain
1005 original or true copies of any contracts engaging his or her
1006 services, appraisal reports, and supporting data assembled and
1007 formulated by the umpire in preparing appraisal reports for at
1008 least 5 years. The umpire shall make the records available to
1009 the department for inspection and copying within 7 business days
1010 after a request. If an appraisal has been the subject of, or has
1011 been admitted as evidence in, a lawsuit, reports and records
1012 related to the appraisal must be retained for at least 2 years
1013 after the date that the trial ends.

1014 (3) ADVERTISING.—An umpire may not engage in marketing
1015 practices that contain false or misleading information. An
1016 umpire shall ensure that any advertisement of his or her
1017 qualifications, services to be rendered, or the appraisal
1018 process are accurate and honest. An umpire may not make claims

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1019 of achieving specific outcomes or promises implying favoritism
1020 for the purpose of obtaining business.

1021 (4) INTEGRITY AND IMPARTIALITY.—

1022 (a)1. An umpire may not accept an appraisal unless he or
1023 she can serve competently, promptly commence the appraisal and,
1024 thereafter, devote the time and attention to its completion in
1025 the manner expected by all persons involved in the appraisal.

1026 2. An umpire shall conduct the appraisal process in a
1027 manner that advances the fair and efficient resolution of issues
1028 that arise.

1029 3. An umpire shall deliberate and decide all issues within
1030 the scope of the appraisal, but may not render a decision on any
1031 other issues. An umpire shall decide all matters justly,
1032 exercising independent judgment. An umpire may not delegate his
1033 or her duties to any other person. An umpire who considers the
1034 opinion of an expert does not violate this paragraph. However,
1035 the umpire must disclose the expert's fees before retaining the
1036 expert.

1037 (b) An umpire may not engage in any business, provide any
1038 service, or perform any act that would compromise his or her
1039 integrity or impartiality.

1040 (5) SKILL AND EXPERIENCE.—An umpire shall decline or
1041 withdraw from an appraisal or request appropriate assistance
1042 when the facts and circumstances of the appraisal prove to be
1043 beyond his or her skill or experience.

1044 (6) GIFTS AND SOLICITATION.—An umpire or any individual or
1045 entity acting on behalf of an umpire may not solicit, accept,
1046 give, or offer to give, directly or indirectly, any gift, favor,
1047 loan, or other item of value in excess of \$25 to any individual

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1048 who participates in the appraisal, for the purpose of
 1049 solicitation or otherwise attempting to procure future work from
 1050 any person who participates in the appraisal, or as an
 1051 inducement to entering into an appraisal with an umpire. This
 1052 subsection does not prevent an umpire from accepting other
 1053 appraisals where the appraisers agree upon the umpire or the
 1054 court appoints the umpire.

1055 (7) EX PARTE COMMUNICATION.—In any property insurance
 1056 appraisal, ex parte communication between an umpire and an
 1057 appraiser is prohibited. However, an appraiser may communicate
 1058 with another appraiser, if an umpire is not present or does not
 1059 receive the ex parte communication.

1060 626.9968 Conflicts of interest.—An insurer or a
 1061 policyholder may challenge an umpire's impartiality and
 1062 disqualify the proposed umpire only if:

1063 (1) A familial relationship within the third degree exists
 1064 between the umpire and a party or a representative of a party;

1065 (2) The umpire has previously represented a party in a
 1066 professional capacity in the same claim or matter involving the
 1067 same property;

1068 (3) The umpire has represented another person in a
 1069 professional capacity in the same or a substantially related
 1070 matter that includes the claim, the same property or an adjacent
 1071 property, and the other person's interests are materially
 1072 adverse to the interests of a party;

1073 (4) The umpire has worked as an employer or employee of a
 1074 party within the preceding 5 years; or

1075 (5) The umpire has violated s. 626.9966.

1076 Section 30. Section 627.70151, Florida Statutes, is

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1077 repealed.

1078 Section 31. For the 2016-2017 fiscal year, the sums of
 1079 \$24,000 in recurring funds from the Insurance Regulatory Trust
 1080 Fund and \$73,107 in recurring funds and \$39,230 in nonrecurring
 1081 funds from the Administrative Trust Fund are appropriated to the
 1082 Department of Financial Services, and one full-time equivalent
 1083 position with associated salary rate of 47,291 is authorized,
 1084 for the purpose of implementing this act.

1085 Section 32. This act applies to all appraisals requested on
 1086 or after October 1, 2016.

1087 Section 33. This act shall take effect October 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Rob Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: October 19, 2015

I respectfully request that **Senate Bill #336**, relating to Property Insurance Appraisals, 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)

2-16-16

Meeting Date

336

Bill Number (if applicable)

672348, 644752, 602768

Amendment Barcode (if applicable)

Topic Insurance Appraisers & Umpires

Name Greg Thomas

Job Title Director of Agent & Agency Services - DFS

Address 200 East Gaines St

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850-413-5401

Email greg.thomas@myfloridaleg.com

Speaking: For Against Information

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

Representing Department of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/14
Meeting Date

336
Bill Number (if applicable)

Topic Regulated Industries

Amendment Barcode (if applicable)

Name Tom Hayes

Job Title Project Manager

Address 121 S Orange Ave #1526

Phone 407-810-4328

ORLANDO FL 34747
City State Zip

Email AHSCF.tomh@gmail.com

Speaking: For Against Information

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

Representing Advanced Home Solutions

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-2016
Meeting Date

SB 336
Bill Number (if applicable)

Topic UMPIRE LICENSE

Amendment Barcode (if applicable)

Name MARK BOARDMAN

Job Title PUBLIC ADJUSTER

Address 1660 W. MAILAND AVE
Street

Phone 407-830-0635

MAILAND FL 32751
City State Zip

Email MARK@CWSCLAIMS.NET

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

699290

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/2016

Meeting Date

CS/SB 336

Bill Number (if applicable)

Sen. Smith Amendment

Amendment Barcode (if applicable)

Topic Appraisal

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun Street #600

Phone 224-7000

Tallahassee FL 32301

Email

Speaking: For [] Against [x] Information []

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

Representing State Farm Florida Insurance Company

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

336

Bill Number (if applicable)

699790

Amendment Barcode (if applicable)

Topic Property Ins Appraisers + Umpires

Name Christine M. Ashburn

Job Title VP - Communications + Legislative Affairs

Address 2312 Killearn Center Blvd.
Street

Phone 850-513-3746

Tallahassee FL 32309
City State Zip

Email _____

Speaking: For Against Information

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

Representing Citizens Property Insurance Corporation

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)

2/14/16

Meeting Date

336

Bill Number (if applicable)

699790

Amendment Barcode (if applicable)

Topic Unpie & Apprais

Name Lee Jacobson

Job Title Attorney

Address 2876 Osceola Ave

Street

Phone _____

Orlando

City

FL

State

32806

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 1248

INTRODUCER: Banking and Insurance Committee and Senator Diaz de la Portilla

SUBJECT: Prohibited Insurance Practices

DATE: February 18, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1248 expands the prohibition against a licensed contractor adjusting claims unless the contractor is a licensed public adjuster to include a person that performs emergency remediation or restoration services under an insurance policy and subcontractors to a licensed contractor.

The bill also prohibits specified practices related to the repair, mitigation, and restoration services for which property insurance benefits are payable. The bill provides that a person or entity may not directly or indirectly offer, deliver, receive, or accept any compensation, inducement, or reward greater than \$25 for the referral of any business for the repair, mitigation, or restoration of property for which property insurance proceeds are payable. The bill requires that a person or entity that provides emergency remediation or restoration services for an insured under a property insurance policy must provide the insured with a scope of services and materials to be provided for repairs undertaken pursuant to a property insurance claim before the agreement authorizing repairs is executed. The bill also requires notice that any assignment is limited to the scope of the work, that the insured may have claims under the insurance policy, and that the insured may wish to contact a public adjuster or attorney to evaluate other claims and coverages. The bill also specifies that the requirements related to prohibited practices do not prohibit the use of post-loss, partial assignments in homeowner's insurance claims.

The bill provides that the Department of Financial Services (DFS) will enforce the provisions prohibiting referral fees and the provisions requiring notifications. The DFS may seek a cease and desist order and may impose, if the cease and desist order is violated, a fine no greater than

\$10,000 per violation. The DFS may recommend to the appropriate licensing board that disciplinary action be taken if the violator is a licensee.

The bill takes effect July 1, 2016.

II. Present Situation:

Public Adjusters

A public adjuster is hired and paid for by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The DFS regulates all types of adjusters.

Section 626.854, F.S., defines “public adjuster” and contains provisions relating to the practice of public adjusting. For example, an insured has the right to rescind a contract within 3 days of execution.¹

Assignment of Benefits

In recent years, insurers have complained of abuse of the assignment of benefits process by companies that perform emergency remediation and restoration services. An insurance company recently described the issue in a court filing:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and, before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price-gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increases litigation over the vendors’ invoices.²

¹ See s. 626.854(7), F.S.

² See *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case 1D14-1864 (Fla. 1st DCA), Appellant’s Initial Brief at pp. 3-4. (Appellate record citations omitted).

Some of the vendors in litigation involving assignment of benefits are contractors regulated by the Department of Business and Professional Regulation. Water remediation companies are not regulated.

The Public Adjuster Statute and Assignment of Benefits Litigation

Subsection 626.854(16), F.S., prohibits licensed contractors or subcontractors from adjusting claims unless they are licensed as public adjusters. Contractors are allowed to discuss or explain a bid for construction or repair of covered property but are not allowed to adjust the claim. In recent litigation over assignment of benefits, insurers have argued that vendors such as contractors or water remediation companies have acted as public adjusters in violation of the law.³ Section 626.854, F.S., does not contain an explicit prohibition on vendors such as water remediation companies adjusting claims.

Payment for Referrals

Insurers have complained of practices where water remediation companies pay plumbers referral fees if the plumbers refers business to the water remediation companies.⁴ In general, chapter 455, F.S., the licensing statute for many construction professionals, does not prohibit such arrangements.⁵ Subsection 626.854(13), F.S., prohibits public adjusters from paying referral fees.

III. Effect of Proposed Changes:

Section 1 of this bill amends s. 626.854, F.S., to prohibit a person that performs emergency remediation or restoration services from adjusting a claim on behalf of the insured unless the person is licensed as a public adjuster. The bill provides that subcontractors have the same prohibition against adjusting claims as contractors.

Section 2 creates s. 627.716, F.S., which provides that a person or entity may not directly or indirectly offer, deliver, receive, or accept any compensation, inducement, or reward greater than \$25 for the referral of any business for the repair, mitigation, or restoration of property for which property insurance proceeds are payable. Both the person offering the prohibited compensation, inducement, or reward and the person receiving such prohibited payment would be in violation of the statute.

The bill provides that an entity or person, including a contractor licensed under part I of ch. 489 or a subcontractor to the contractor, that provides emergency remediation or restoration services for an insured under a property insurance policy in this state must:

³ See *Bioscience West, Inc. v. Gulfstream Property and Casualty Insurance Co.*, Case No. 2D14-3946 (Fla. 2d DCA February 5, 2016)(rejecting the insurer's argument that the vendor unlawfully acted as a public adjuster); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749 (Fla. 4th DCA 2015)(declining to address the insurer's argument that the vendor acted as a public adjuster); *Restoration 1 CFL A/A/O I. Joy White v. State Farm Florida Insurance Company*, Case No. 5D15-1049 (Fla. 5th DCA) and *Start to Finish Restoration, LLC v. Homeowners Choice Property & Casualty Ins. Co.*, Case No. 2D-2206 (Fla. 2nd DCA)(appellees argue in briefs that the vendors engaged in illegal public adjusting; cases are pending before the courts).

⁴ See, e.g. <http://piff.net/assignment-of-benefits-insurance-reform-2015-legislative-proposals-fact-sheet/> (last accessed February 10, 2016).

⁵ Referral fees are prohibited for some professionals, such as mold remediates. See s. 468.8419(1), F.S.

- Provide an insured with a scope of services and materials to be provided for repairs undertaken pursuant to a property insurance claim before the agreement authorizing such repairs is executed;
- Notify the insured in writing that any assignment accepted by the person or entity is limited to the scope of the work and that the insured may have other claims under their homeowner's insurance policy that are not covered by the assignment; and
- Inform the insured that the insured may wish to contact a public adjuster or attorney to evaluate other claims and coverages.

The bill provides that it does not prohibit the use of post-loss assignments or partial assignments in homeowner's insurance claims.

The bill gives the DFS enforcement authority over contractors, subcontractors, and other persons that perform repair, mitigation, or restoration of property for which property insurance proceeds are payable regarding the requirements created by this section regarding referrals and notice to policyholders. It provides that the DFS may, in a proceeding initiated pursuant to chapter 120, F.S. (the Administrative Procedures Act) seek a cease and desist order against persons who violated s. 627.716, F.S. The bill provides that if a cease and desist order is violated, the DFS may impose an administrative fine of not more than \$10,000 per violation against any person found in violation. Any cease and desist order or administrative fine levied by the DFS may be enforced by appropriate proceedings in the circuit court of the county in which the person resides. The bill provides that the DFS may recommend to the appropriate licensing agency or board that disciplinary action be taken against persons licensed by other agencies or boards.

Section 3 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:

Water remediation companies and contractors working on property covered by property insurance will have to comply with new contractual provisions created by the bill. The fiscal impact is not known.

C. Government Sector Impact:

The bill provides the DFS with regulatory authority over contractors, subcontractors, and other persons performing repairs, mitigations, or restoration of property for which property insurance proceeds are payable. The DFS does not anticipate a fiscal impact from the bill.⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 of the bill inconsistently refers to all “property insurance” and “homeowner’s insurance.” The provisions of Section 2 apply to services for property covered by “property insurance” on lines 51, 55, and 59. The bill on line 64 requires any person providing emergency remediation or restoration services under a property insurance policy to provide a notice that the insured “may have other claims under their homeowner’s insurance policy....” The bill also contains language in line 68 that specifying Section 2 does not prohibit the use of post-loss, partial assignments in “homeowner’s insurance claims.”

VIII. Statutes Affected:

This bill substantially amends section 626.854 of the Florida Statutes.

This bill creates section 627.716 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 16, 2016:

The CS added provisions requiring a person or entity performing emergency remediation or restoration services under a property insurance policy to provide the insured with a scope of services to be performed before the agreement authorizing repairs is executed. It also added provisions requiring notice relating to assignment of benefits and notice that an insured may wish to contact an attorney or public adjuster. The CS removes provisions relating to a right of rescission and a written estimate.

⁶ See Department of Financial Services, *Bill Analysis Senate Bill 1248* (January 13, 2016) (on file with the Committee on Banking and Insurance).

The CS provides that the DFS may not impose a fine until a person or entity has violated a cease and desist order.

B. Amendments:

None.

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



161206

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 56 - 70

and insert:

Section 2. Section 627.716, Florida Statutes, is created to read:

627.716 Prohibited practices related to repair, mitigation, and restoration services; penalties.—

(1) A person or entity may not directly or indirectly offer, deliver, receive, or accept any compensation, inducement,



161206

11 or reward greater than \$25 for the referral of any business for
12 the repair, mitigation, or restoration of property for which
13 property insurance proceeds are payable.

14 (2) An entity or person, including a contractor licensed
15 under part I of chapter 489 or a subcontractor to the
16 contractor, that provides emergency remediation or restoration
17 services for an insured under a property insurance policy in
18 this state must:

19 (a) Provide an insured with a scope of services and
20 materials to be provided for repairs undertaken pursuant to a
21 property insurance claim before the agreement authorizing such
22 repairs is executed.

23 (b) Notify the insured in writing that any assignment
24 accepted by the person or entity is limited to the scope of the
25 work indicated therein; that the insured may have other claims
26 under their homeowner's insurance policy that are not covered by
27 this assignment; and that the insured may wish to contact a
28 public adjuster or attorney to evaluate other claims and
29 coverages. Nothing in this section prohibits the use of post-
30 loss, partial assignments in homeowner's insurance claims.

31 (3) The department may, in a proceeding initiated pursuant
32 to chapter 120, seek a cease and desist order, and if a cease
33 and desist order is violated, impose an administrative fine of
34 not more than \$10,000 per violation against any person found in
35 the proceeding to have violated this section. Any cease and
36 desist order or administrative fine levied by the department
37 under this subsection may be enforced by the department by
38 appropriate proceedings in the circuit court of the county in
39 which the person resides. The department may recommend to the



161206

40 appropriate licensing agency or board that disciplinary action
41 be taken against persons licensed by other agencies or boards.

42

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

44 And the title is amended as follows:

45 Delete lines 6 - 12

46 and insert:

47 627.716, F.S.; prohibiting a person or entity from
48 certain actions relating to the referral of certain
49 business related to certain repair, mitigation, and
50 restoration services; specifying requirements for an
51 entity or person that provides certain emergency
52 remediation or restoration services; authorizing the
53 Department of Financial Services to seek a cease and
54 desist order and administrative fines for certain
55 violations; authorizing the department to enforce such
56 penalties in a specified circuit court; authorizing
57 the department to recommend disciplinary action to
58 other licensing agencies or boards; providing an
59 effective date.



311958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 25 - 70
and insert:
services for an insured under an insurance policy in this state
may not adjust a claim on behalf of an insured unless licensed
and compliant as a public adjuster under this chapter. However,
the contractor or subcontractor may discuss or explain a bid for
construction or repair of covered property with the residential
property owner who has suffered loss or damage covered by a



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11 property insurance policy, or the insurer of such property, if
12 the contractor or subcontractor is doing so for the usual and
13 customary fees applicable to the work to be performed as stated
14 in the contract between the contractor or subcontractor and the
15 insured.

16 Section 2. Section 627.716, Florida Statutes, is created to
17 read:

18 627.716 Prohibited practices related to repair, mitigation,
19 and restoration services; penalties.-

20 (1) A person or entity may not directly or indirectly
21 offer, deliver, receive, or accept any compensation, inducement,
22 or reward greater than \$25 for the referral of any business for
23 the repair, mitigation, or restoration of property for which
24 property insurance proceeds are payable.

25 (2) An entity or person, including a contractor licensed
26 under part I of chapter 489 or a subcontractor to the
27 contractor, that provides emergency remediation or restoration
28 services for an insured under a property insurance policy in
29 this state must:

30 (a) Provide an insured with a scope of services and
31 materials to be provided for repairs undertaken pursuant to a
32 property insurance claim before the agreement authorizing such
33 repairs is executed.

34 (b) Notify the insured in writing that any assignment
35 accepted by the person or entity is limited to the scope of the
36 work indicated therein; that the insured may have other claims
37 under their homeowner's insurance policy that are not covered by
38 this assignment; and that the insured may wish to contact a
39 public adjuster or attorney to evaluate other claims and



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40 coverages. Nothing in this section prohibits the use of post-
41 loss, partial assignments in homeowner's insurance claims.

42 (3) The department may, in a proceeding initiated pursuant
43 to chapter 120, seek a cease and desist order, and if a cease
44 and desist order is violated, impose an administrative fine of
45 not more than \$10,000 per violation against any person found in
46 the proceeding to have violated this section. Any cease and
47 desist order or administrative fine levied by the department
48 under this subsection may be enforced by the department by
49 appropriate proceedings in the circuit court of the county in
50 which the person resides. The department may recommend to the
51 appropriate licensing agency or board that disciplinary action
52 be taken against persons licensed by other agencies or boards.

53
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete lines 3 - 12

57 and insert:

58 amending s. 626.854, F.S.; adding entities and persons
59 that may not adjust a claim on behalf of an insured
60 unless licensed and compliant as a public adjuster;
61 revising an exception to include a subcontractor;
62 creating s. 627.716, F.S.; prohibiting a person or
63 entity from certain actions relating to the referral
64 of certain business related to certain repair,
65 mitigation, and restoration services; specifying
66 requirements for an entity or person that provides
67 certain emergency remediation or restoration services;
68 authorizing the Department of Financial Services to



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69 seek a cease and desist order and administrative fines
70 for certain violations; authorizing the department to
71 enforce such penalties in a specified circuit court;
72 authorizing the department to recommend disciplinary
73 action to other licensing agencies or boards;
74 providing an effective date.

By Senator Diaz de la Portilla

40-01321-16

20161248__

A bill to be entitled

An act relating to prohibited insurance practices; amending s. 626.854, F.S.; providing responsibilities and prohibiting activities of licensed contractors and subcontractors under certain conditions; creating s. 626.8699, F.S.; prohibiting certain persons and entities from giving a referral fee, commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement, in connection with certain repair, mitigation, or restoration services; providing duties of the Department of Financial Services; providing civil penalties; providing an effective date.

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

Section 1. Subsection (16) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(16) Any A licensed contractor licensed under part I of chapter 489, ~~or~~ a subcontractor to the contractor, or entity or person that performs emergency remediation or restoration services for an insured under an insurance policy in this state:

(a) May not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under this chapter. However, the contractor or subcontractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor or subcontractor is doing so for the

Page 1 of 3

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

40-01321-16

20161248__

usual and customary fees applicable to the work to be performed as stated in the contract between the contractor or subcontractor and the insured.

(b) May not interpret or advise the insured as to his or her coverages or obligations under an insurance policy, unless he or she is licensed and compliant as a public adjuster under this chapter.

(c) Must provide the insured a detailed estimate of the services to be provided before the execution of any agreement to provide services.

(d) Must provide the insured a 5-day right of rescission period in the agreement with the insured. The period shall not begin until the insurer has received a copy of the fully executed agreement. The agreement must be sent by certified mail, e-mail, or facsimile to the claim handler, if known, or, if the claim handler is not known, to the specific office handling the claim as indicated in the policy or as requested by the insurance company. If the insured rescinds the agreement during the 5-day period, the agreement is rescinded ab initio, and the contractor, subcontractor, entity, or person is entitled to reasonable compensation for any necessary emergency mitigation services performed before the agreement was rescinded.

Section 2. Section 626.8699, Florida Statutes, is created to read:

626.8699 Prohibited practices related to repair, mitigation, and restoration services; penalties.—

(1) A person or entity may not give a referral fee, commission, bonus, kickback, or rebate, or engage in any split-

Page 2 of 3

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

40-01321-16

20161248__

62 fee arrangement, with any person or entity for any repair,
63 mitigation, or restoration service if the repair, mitigation, or
64 restoration service is for an amount greater than \$25 and is
65 covered under an insurance policy in this state.

66 (2) A penalty for a violation of subsection (1) shall be
67 administered by the department and may include:

68 (a) A fine no greater than \$10,000 per violation.

69 (b) A recommendation by the department to the appropriate
70 licensing board that disciplinary action be taken.

71 Section 3. 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)

February 16, 2016
Meeting Date

1248
Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Director of Policy

Address 136 S. Bronough St.
Street

Phone _____

Tallahassee, FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/16/16

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

1248

Meeting Date

Bill Number (if applicable)

Topic

Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name

Steve Beller

Job Title

~~FAPIA~~ Attorney

Address

200 E. Broward Blvd 18th Floor

Phone

954-491-1120

Street

City

Ft. Lauderdale FL

State

Zip

33301

Email

Steve.Beller@ymlaw.com

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

FAPIA

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)

2/16/16

Meeting Date

SB 1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title _____

Address 101 North Monroe Street, Suite 900

Phone 850-222-8611

Street

Tallahassee

FL

32301

Email fralston@bmolaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist

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)

2/16/16

Meeting Date

1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name PAUL HANDESHAN

Job Title CONSULTANT

Address 120 South Monroe Street

Phone 561 704

Street

Tallahassee FL 32301

Paul@rambacoconsulting

City

State

Zip

Email .com

Speaking: For Against Information

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

Representing FAIR

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)

2/10/10
Meeting Date

1248
Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES

Amendment Barcode (if applicable)

Name RAJKO DIMITROVIC

Job Title MARKETING DIRECTOR

Address 3255 POTTER ST
Street

Phone 850 712-1933

PENSACOLA, FL 32514
City State Zip

Email RAJKO@PROCLEANRESTAURATION.COM

Speaking: For Against Information

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

Representing PRO CLEAN

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)

2-16-16

Meeting Date

1243

Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES

Amendment Barcode (if applicable)

Name Melissa Stough

Job Title Homeowner

Address 536 Alcom Dr.

Phone 407-334-9620

Street

Orlando

City

FL

State

32712

Zip

Email MISSY417@gmail.com

Speaking: For Against Information

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

Representing SELF

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)

2/16/16

Meeting Date

1248

Bill Number (if applicable)

Topic PROHIBITED INS. PRACTICES

Amendment Barcode (if applicable)

Name JOSH BRIGHAM

Job Title OPERATIONS MANAGER

Address 3255 POTTER ST SUITE C

Phone 850-484-8500

Street

PENSACOLA

City

FL

State

32514

Zip

Email josh@procleanrestoration.com

com

Speaking: For Against Information

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

Representing PRO CLEAN

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
12.16.16

Meeting Date

1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Walter Lafreniere

Job Title Owner

Address 6428 NW 28th Lane

Phone 954-984-5740

Street

Margate

FL

33063

Email

City

State

Zip

Speaking: For Against Information

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

Representing All Hours Emergency Water Removal

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
12.16.16

Meeting Date

1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Brian Christensen

Job Title Owner Restoration 1 of CFL

Address 2202 Hoffner Ave

Phone 321-234-0464

Street

Orlando

FL

32809

Email

City

State

Zip

Speaking: For Against Information

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

Representing Restoration 1 of Central Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

1248

Meeting Date

Bill Number (if applicable)

Topic PROHIBITED INSURANCE PRACTICES

Amendment Barcode (if applicable)

Name JOHN CALI

Job Title GM START TO FINISH RESTORATION, LLC

Address 7906-27 AVE W.

Phone 941 792-1146

BRADEN TOWN, FL 34209

Email JOHN@STFRestoration.com

Speaking: For Against Information

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

Representing START TO FINISH, LLC

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)

2-16-16

Meeting Date

1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Kathleen Cali

Job Title Office Manager / owner

Address 7906-27th Ave W

Phone 941-792-1146

Street

Bradenton FL 34209

City

State

Zip

Email KCali@verizon.net

Speaking: For Against Information Waive

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

Representing Start to Finish Restoration

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)

2/16/16
Meeting Date

1248
Bill Number (if applicable)

Topic PROHIBITED INS. PRACTICES

Amendment Barcode (if applicable)

Name Ralph Pokorny

Job Title President

Address 1130 S PowerLine Rd

Phone 561-305-0321

Deerfield Bch FL 33442
City State Zip

Email RPokorny@Restorationxperts.net

Speaking: For Against Information

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

Representing RESTORATION XPERTS

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)

2/10/16

Meeting Date

1248

Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES

Amendment Barcode (if applicable)

Name Tom Hayes

Job Title Project Manager

Address 121 S ORANGE Ave #526

Phone 407-810-4328

Street

ORLANDO

FL

State

34747

Zip

Email ALTSCFotomh@gmail.com

Speaking: For Against Information

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

Representing Advanced Home Solutions Construction Firm

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

2/16/14
Meeting Date

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

1248
Bill Number (if applicable)

Topic PROHIBITED INS. PRACTICES

Amendment Barcode (if applicable)

Name Carole Hayes

Job Title RE Broker

Address 535 Greenbrier Ave

Phone 407-361-6650

Street Celebration, FL 34747
City State Zip

Email caroleahayes@gmail.com

Speaking: For Against Information

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

Representing New World Realty, Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/14
Meeting Date

1248
Bill Number (if applicable)

Topic PROHIBITED INS. PRACTICES

Amendment Barcode (if applicable)

Name CHRIS TREAT

Job Title Project Coordinator

Address 3636 Erindale dr #605

Phone 813-683-4800

Street Vabico
City Vabico State FL Zip 33596

Email drywizard@yahoo.com

Speaking: For Against Information

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

Representing DRYWIZARD DRYWALL SUCS.

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)

2/14/14

Meeting Date

1248

Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES

Amendment Barcode (if applicable)

Name CALEB SUSZKO

Job Title _____

Address 3636 Ecindale dr. #105

Phone 813-683-4100

Street

Valrico

City

FL

State

33596

Zip

Email drywizard@yahoo.com

Speaking: For Against Information

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

Representing DRYWIZARD DRYWALL SVCS.

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)

2/16/14
Meeting Date

1248
Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES
Amendment Barcode (if applicable)

Name JOHN BURROWS American Construction & Plumbing

Job Title President

Address 2094 Beacon Manor Dr.
Street

Phone 239-896-2947

Fort Myers FL 33907
City State Zip

Email john@acpf1.co

Speaking: For Against Information

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

Representing American Construction & Plumbing Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2/14/10

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

1248

Meeting Date

Bill Number (if applicable)

Topic PROHIBITED INS. PRACTICES

Amendment Barcode (if applicable)

Name RICHIE KIDWELL

Job Title President

Address 941 W Morse Blvd #100

Phone 407-233-0493

Street

Winter Park FL

State

32789

Zip

Email Richie@AirQualityAssessors.com

Speaking: For Against Information

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

Representing Air Quality Assessors

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
12.16.16

Meeting Date

1248

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Richie Kidwell

Job Title Owner

Address 941 W. Morse Blvd.

Phone 407-233-0493

Street

Winter Park

FL

32789

Email richie@airqualityassessors.com

City

State

Zip

Speaking: For Against Information

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

WAIVE

Representing Air Quality Assessors

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

2/16/16

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

1248

Meeting Date

Bill Number (if applicable)

Topic Prohibits Insurance Practices

DLA Late Filed Amendment
Amendment Barcode (if applicable)

Name Steve Geller

Job Title Attorney

Address 200 E. Broward Blvd. 18th Floor

Phone 954-491-1120

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Email Steve.geller@dm1aw.com

Speaking: For Against Information

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

Representing FAPIA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE APPEARANCE RECORD

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2/16/16

Meeting Date

SB 1248

Bill Number (if applicable)

161206
Amendment Barcode (if applicable)

Topic Prohibited Insurance Practices

Name Foyt Ralston

Job Title _____

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Phone 850-222-8611

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Tallahassee

FL

32301

Email fralston@bmolaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist

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

2/10/10

Meeting Date

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

1248

Bill Number (if applicable)

Topic PROHIBITED INS PRACTICES

101206

Amendment Barcode (if applicable)

Name RICHIE KIDWELL

AMENDMENT

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WINTER PARK, FL 32789

City

State

Zip

Email RICHIE@ADA.COM

Speaking: For Against Information

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

Representing AIR QUALITY ASSESSORS

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)

2/16/16

Meeting Date

1248

Bill Number (if applicable)

late S.60 amended

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

161206

Name Paul Hangerhan

Job Title Consultant

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Email

City

State

Zip

Speaking: For Against Information

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

Representing FAIR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1442

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senator Garcia

SUBJECT: Out-of-network Health Insurance Coverage

DATE: February 18, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1442 prohibits an out-of-network provider from balance billing members of a preferred provider organization (PPO) or an exclusive provider organization (EPO) for covered emergency services or covered nonemergency services. An insurer is liable for the payment of covered emergency services provided by out-of-network provider. An insurer is liable for the payment of covered nonemergency services provided by an out-of-network provider if the services are provided in a facility that has a contract with an insurer, which would otherwise require the facility to provide the services, and the insured had no ability and opportunity to choose a network provider. Currently, if a member of a PPO or EPO (insurer) obtains covered emergency services from an out-of-network provider, the provider can balance bill the member for the difference between the provider's charges and the insurer's reimbursement. The bill establishes a payment process for insurers to provide reimbursement for such out-of-network services.

The bill requires an insurer to reimburse an out-of-network provider of covered emergency services or nonemergency services as provided in s. 641.513, F.S., which is the lessor of:

- The provider's charges;
- The usual and customary provider charges for similar services in the community where the services are provided; or
- The charge mutually agreed to by the health maintenance organization (HMO) and the provider within 60 days of claim submission.

The bill requires insurers to provide coverage for emergency services without a prior authorization determination and regardless of whether the provider is a participating provider. Applicable cost sharing must be the same for participating or nonparticipating providers for the same services.

Current law requires a member of a health maintenance organization (HMO) to use the HMO's network of providers in order for the HMO to provide payment of benefits. If a HMO is liable for services rendered to a subscriber by a provider, contracted or non-contracted, the HMO is liable for payment of fees to the provider and the subscriber is not liable for payment of fees to the provider. Unlike other health plan types, care is covered only if a subscriber sees a provider within the HMO's network, except in the case of an emergency. In the case of an emergency, Florida law requires HMOs to provide coverage without prior authorization for emergency care, based on a determination by a hospital physician or other personnel, provided by either a contract or non-contract provider. The use of a provider outside the HMO's network, except for emergency care, generally results in the HMO limiting or denying the payment of benefits for non-network services rendered to the member. Further, a provider, regardless of whether contracted or not with the HMO, may not collect or attempt to collect money from a subscriber of an HMO for payment of services for which the HMO is liable, if the provider in good faith knows or should know that the HMO is liable. The reimbursement method for out-of-network providers is established in law.

The bill also provides that willful noncompliance by a provider (health care practitioners subject to regulation under ch. 456, 458, or 459, F.S.) with the balance billing provisions for covered emergency services and nonemergency services are grounds for discipline by the Department of Health if such noncompliance occurs with such frequency as to constitute a general business practice. Other specified providers (hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers) are required to comply with the balance billing provisions as a condition of licensure.

In order to put the public on notice, hospitals are required to maintain information on their websites about insurers and health maintenance organizations for which the hospital is a contracted provider, as well as contact information for practitioners and practice groups contracting with the hospital. The bill adds compliance with these new provisions as a condition of licensure for hospitals, surgical centers, and urgent care centers.

Except as otherwise provided, the effective date of the bill is October 1, 2016.

II. Present Situation:

The Office of Insurance Regulation (OIR) is responsible for the licensure and regulation of insurers, HMOs, and other risk-bearing entities.¹

¹ Section 20.121(3)(a), F.S.

Balance Billing – Preferred Provider Organizations and Exclusive Provider Organizations

Generally, individuals purchase insurance coverage for protecting themselves from future expenses, or in the case of health insurance, unexpected medical bills or large health care costs. Preferred provider organization (PPOs) and exclusive provider organization (EPOs) contract with health care providers at set reimbursement rates for covered medical services. A PPO is a group of licensed health care providers the insurer has contracted for alternative or reduced rates of payment.² An exclusive provider is a provider of health care, or a group of providers of health care, that has entered into a written agreement with an insurer to provide benefits under a health insurance policy.³ In an EPO, an insurer contracts with hospitals, physicians, and other medical facilities. Insureds of an EPO must use the contracted hospitals or providers to receive covered benefits from this type of plan. Providers within an EPO or PPO network are prohibited from billing or otherwise seeking reimbursement from or recourse against any policyholder. Insurers and HMOs may require higher copayments for urgent care or primary care provided in an emergency department and higher copayments for use of out-of-network emergency departments.⁴

Under these types of coverage, an insured individual is responsible for any applicable copayments, coinsurance, or deductibles if services are obtained from a contracted provider. If the insured receives services from a non-contracted provider and the provider does not reach a reimbursement agreement with the PPO or EPO insurer, the provider may balance bill the insured for the difference between the cost of the services and what the PPO or EPO paid for the services. Currently, balance billing is prohibited, however, for health care services under Medicaid,⁵ by an exclusive provider who is part of an EPO,⁶ or a by provider who is under contract with a prepaid limited service organization.⁷ If the insured did not knowingly use a non-contracted provider, especially in an emergency services situation, the bill is often not expected and is known as a “surprise bill.”

A recent survey by the Kaiser Family Foundation found that among insured, non-elderly adults, nearly seven in ten individuals with unaffordable out-of-network medical bills were unaware that the health care provider was not part of their plan’s network at the time they received care.⁸ In these situations, having insurance did not necessarily protect individuals from unaffordable medical bills. In the same survey, one in five working age, insured individuals reported trouble paying medical bills that caused serious financial challenges and the number was higher within

² Section 627.6471, F.S.

³ Section 627.6472, F.S.

⁴ Sections 627.6405 and 641.31(12), F.S.

⁵ Section 409.907(3)(j), F.S.; Medicaid managed care plans and their providers are required to comply with Provider General Handbook, which prohibits balance billing. In addition, the Statewide Medicaid Managed Care Contract (Core Provisions of the MMA Contract (Nov. 1, 2015) version, pp. 104-105) establishes minimum requirements for contracts between the managed care plans and its contracted providers. Except for copayments, the contract prohibits the provider from seeking payment from the enrollee for any covered services, and to seek payment from the managed care plan.

⁶ Section 627.6472(4)(e), F.S.

⁷ Section 636.035(3)-(4), F.S.

⁸ Kaiser Family Foundation, *Surprise Medical Bills* (January 2016), available at <http://kff.org/private-insurance/issue-brief/surprise-medical-bills/> (last visited Jan. 27, 2016).

the uninsured, 53 percent.⁹ Among the insured, 26 percent said they received unexpected claims denials; and 32 percent said they received care from an out-of-network provider their insurance would not cover.¹⁰ Insured individuals with higher deductible health plans were more likely to report medical bill issues than those with lower deductible plans (26 percent compared to 15 percent).¹¹

According to a 2014 Office of Insurance Regulation balance billing data survey, insurers reported \$97.9 million in potential balance billings associated with out-of-network emergency claims. Further, insurers reported \$1.3 billion in potential balance billings associated with out-of-network nonemergency claims.¹²

Balanced Billing – Health Maintenance Organizations

Generally, an HMO member must use the HMO's network of health care providers in order for the HMO to provide payment of benefits, except in the case of an emergency. In an emergency, an HMO is liable for payment of fees for services rendered to a subscriber by a provider, contracted or non-contracted, and the subscriber is not liable for payment of fees to the provider.¹³ A provider, regardless of whether contracted or not with the HMO, may not collect or attempt to collect money from a subscriber of an HMO for payment of services for which the HMO is liable, if the provider in good faith knows or should know that the HMO is liable.¹⁴ However, a provider can balance bill a subscriber in a non-emergency situation if authorization is denied or if a non-contract provider does not seek prior authorization.¹⁵

Florida law requires HMOs to provide coverage without prior authorization for emergency care, based on a determination by a hospital physician or other personnel.¹⁶ Prehospital and hospital-based trauma services and emergency services must be provided to a subscriber of an HMO as required under ss. 395.1041, 395.4045, and 401.45, F.S. When such services are obtained from an out-of-network provider, the statute establishes the reimbursement rate for the provider as the lesser of the provider's charges, the usual and customary charges¹⁷ for similar services in the

⁹ Kaiser Family Foundation, *New Kaiser/New York Times Survey Finds One in Five Working Age Americans With Health Insurance Report Problems Paying Medical Bills* (January 5, 2016) available at <http://kff.org/health-costs/press-release/new-kaisernew-york-times-survey-finds-one-in-five-working-age-americans-with-health-insurance-report-problems-paying-medical-bills/> (last visited Feb. 11, 2016).

¹⁰ Id.

¹¹ Id.

¹² Office of Insurance Regulation, *2014 Balance Billing Data* (Feb. 2015) (on file with Senate Committee on Banking and Insurance).

¹³ Section 641.3154(1), F.S.

¹⁴ Section 641.3154(4), F.S.

¹⁵ See also FLORIDA MEDICAL ASSOCIATION, *Balance Billing*, http://www.flmedical.org/LRC_Balance_billing.aspx (last visited Feb. 11, 2016).

¹⁶ Section 641.513, F.S.

¹⁷ The interpretation of "usual and customary charges" has been the subject of litigation between providers and insurers. In 2010, the court held that the determination of fair market value of a hospital's emergency services could include consideration of amounts billed and accepted by the hospital except for Medicare and Medicaid payments.¹⁷ In determining the fair market value of the services, it is appropriate to consider the amounts billed and the amounts accepted by providers with one exception. The reimbursement rates for Medicare and Medicaid are set by government agencies and cannot be said to be "arms's length." Moreover, in the emergency room context, hospitals do not have the option that private providers have to refuse to provide services to Medicare or Medicaid patients. Thus, it is not appropriate to consider the amounts accepted by

community where the services were provided, or the charges mutually agreed to by the HMO and the provider within 60 days of the claim submittal.¹⁸

Required Description of Coverage

The Florida Insurance Code requires insurers and HMOs to provide a description of coverage, benefits, , and limitations of a policy or contract. This document may include an outline of coverage explaining the principal exclusions and limitations of the policy.¹⁹

Agency for Health Care Administration

The Agency for Health Care Administration (AHCA) licenses and regulates hospitals, ambulatory surgical centers, home health agencies, clinical laboratories, nursing homes, assisted living facilities, and all other types of health care providers under ch. 395, F.S. The AHCA is responsible for inspections and investigations as part of the licensure process, including inspections to investigate emergency access complaints.²⁰

The AHCA also regulates quality of care provided by HMOs and EPOs. Before receiving a certificate of authority from the OIR, an HMO or EPO must receive a Health Care Provider Certificate from the AHCA pursuant to part III of ch. 641, F.S.²¹ As part of the review process to receive a Health Care Provider Certificate for any given area, the plans must demonstrate the ability to provide quality of care consistent with the prevailing standards of care.²²

Access to Emergency Services and Care

Hospital Care

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay.²³ The EMTALA imposes specific obligations on hospitals participating in the Medicare program and which offer emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient, or upon the patient's request, the hospital must transfer the patient to another appropriate facility. A hospital that violates EMTALA is subject to civil penalty; termination of its Medicare agreement; or civil suit by a patient who suffers personal harm. The EMTALA does not provide for civil action against a hospital's physicians.

providers for patients covered by Medicare and Medicaid. *See: Baker County Medical Services, Inc. v. Aetna health Management LLC and Humana Medical Plan*, 31 So.3d 842 (Fla. 1st DCA 2010).

¹⁸ Section 641.513(5), F.S.

¹⁹ Section 627.642, F.S.

²⁰ Section 395.0161(1)(e), F.S.

²¹ Sections 641.21(1) and 641.48, F.S.

²² Section 641.495, F.S.

²³ 42 U.S. Code s. 1395dd.

Florida law imposes a similar duty.²⁴ The law requires the AHCA to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care. If the hospital is at capacity or does not provide the required emergency service, the hospital may transfer the patient to the nearest facility with appropriate available services. Each hospital must ensure the services listed can be provided at all times either directly or through another hospital. A hospital is expressly prohibited from basing treatment and care on a patient's insurance status, economic status, or ability to pay. A hospital that violates Florida's access to care statute is subject to administrative penalties; denial, revocation, or suspension of its license; or civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to a civil suit by a patient who suffers personal harm; and may be found guilty of a second degree misdemeanor for a knowing or intentional violation. Physicians who violate the act are also subject to disciplinary action against their license; or civil action by another hospital or physician suffering financial loss.

In February 2015, the U.S. Department of the Treasury released a regulation impacting charitable hospital organizations. The regulation is based on requirements from the Patient Protection and Affordable Care Act of 2010 (PPACA), which requires certain hospitals to conduct a community health needs assessment and adopt an implementation strategy once every 3 years, to establish a written financial assistance policy (FAP), and a written policy related to care for emergency medical conditions.²⁵ The hospital organization is also required to make reasonable efforts to determine whether an individual is eligible for assistance under a FAP before engaging in extraordinary collection activities.²⁶ In general, the final regulation requires charitable hospitals to:

- Limit charges to no more than the amounts generally billed to patients with insurance;
- Establish and disclose financial assistance policies;
- Abide by reasonable billing and collection requirements; and
- Perform a community health needs assessment at least every 3 years.

Prehospital Care

The Emergency Medical Transportation Services Act²⁷ similarly regulates the services provided by emergency medical technicians, paramedics, and air and ground ambulances. The act establishes minimum standards for emergency medical services personnel, vehicles, services, and medical direction, and provides for monitoring of the quality of patient care. The Florida Department of Health administers and enforces these standards. Ambulance services operate pursuant to a license issued by the department and a certificate of public convenience and necessity issued from each county in which the provider operates.²⁸ A licensee may not deny a

²⁴ See s. 395.1041, F.S.

²⁵ Internal Revenue Service, *Internal Revenue Bulletin: 2015-5, Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return*, (February 2, 2015) available at https://www.irs.gov/irb/2015-5_IRB/ar08.html (last visited Feb. 11, 2016).

²⁶ *Id.*

²⁷ Part III of chapter 401, F.S. (ss. 401.2101-401.465, F.S.)

²⁸ Section 401.25(2)(d), F.S.

person necessary prehospital treatment or transport for an emergency medical condition.²⁹ A violation may result in denial, suspension, or revocation of a license; reprimand; or fine.³⁰

In general, the medical director of an ambulance provider is responsible for issuing standing orders and protocols to the ambulance service provider to ensure that the patient is transported to a facility that offers the type and level of care appropriate to the patient's medical condition, with separate protocols required for stroke patients.³¹ An exception to the general requirement is trauma alert patients are required by statute to be transported to an approved trauma center.³²

Federal Patient Protection and Affordable Care Act (PPACA)

On March 23, 2010, President Obama signed into law Pub. L. No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA. The PPACA provided fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, and other requirements. Emergency services is one of the required essential health benefits.³³

Federal Emergency Room Coverage Regulations

On June 28, 2010, the Department of Health and Human Services issued final regulations relating to coverage for emergency services.³⁴ Such coverage for emergency services is not subject to prior authorization, regardless of whether the provider is a network or participating provider. Services provided by out-of-network providers must be provided with cost sharing that is no greater than that which would apply for a network provider and without regard to any other restriction other than an exclusion or coordination of benefits, an affiliation or waiting period, and cost-sharing. Regulations specify minimum reimbursement that plans must pay a non-network provider for emergency services.³⁵ Plans are required to pay out-of-network providers a reasonable rate, which is defined to be the highest amount of the following:

- The amount negotiated with in-network providers for the emergency service furnished (if the plan has more than one negotiated amount with providers for a particular service, the basis for payment would be the median amount);
- The amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges) but substituting the in-network cost-sharing provisions for the out-of-network cost-sharing; or
- The amount that would be paid under Medicare for the emergency services.

²⁹ Section 401.45, F.S.

³⁰ Section 401.411, F.S.

³¹ Section 395.3041(3), F.S.

³² Section 395.4045, F.S.

³³ 42 U.S.C. s. 300gg-6.

³⁴ 42 U.S.C. s. 300gg-19A.

³⁵ 45 C.F.R. s. 147.138(b).

Subsequently, on September 20, 2010, the Centers for Medicare and Medicaid Services issued guidance relating to coverage for emergency services.³⁶ If a state law prohibits balance billing, plans and issuers are not required to satisfy the payment minimums set forth in the regulations. Similarly, if a plan or issuer is contractually responsible for any amounts balance billed by an out-of-network emergency services provider, the plan or issuer is not required to satisfy the payment minimums. In both situations, however, patients must be provided with adequate and prominent notice of their lack of financial responsibility with respect to such amounts, to prevent inadvertent payment by the patient. Nonetheless, even if state law prohibits balance billing, or if the plan or issuer is contractually responsible for amounts balance billed, the plan or issuer may not impose any copayment or coinsurance requirement that is higher than the copayment or coinsurance requirement that would apply if the services were provided in network.³⁷

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Statewide Provider and Health Plan Claim Dispute Resolution Program provides assistance to contracted and non-contracted providers and HMOs, insurers, prepaid health clinics, EPOs, and Medicaid prepaid health plans for resolution of claim disputes that are not resolved by the provider and the plan. Section 408.7057, F.S., requires the AHCA to contract with a third party resolution organization to timely review and consider claim disputes and to submit recommendations to the AHCA. The AHCA's responsibility is to issue a final order adopting the recommendation of the resolution organization.

Since May 2001, MAXIMUS has been under contract with the AHCA to review claim disputes. The cost of the program is borne by the users of the program. The non-prevailing entity in AHCA's final order must pay the review costs. In cases where both parties prevail in part, the review cost must be shared. The review costs are determined by MAXIMUS and depend largely on the complexity of the cases submitted.

Eligible Claims. The following claim disputes can be submitted by physicians, hospitals, institutions, other licensed health care providers, HMOs, EPOs, PHPs, major medical expense health insurance policies offered by a group or an individual health insurer, and PPOs:

- Claim disputes for services rendered after October 1, 2000.
- Claim disputes related to payment amounts only (provider disputes payment amounts received or HMO disputes payback amounts).
- Hospital and physicians are required to aggregate claims (for one or more patients for same insurer) by type of service to meet certain thresholds:³⁸
 - Hospital Inpatient Claims (contracted providers) \$25,000
 - Hospital Inpatient Claims (non-contracted providers) \$10,000
 - Hospital Outpatient Claims (contracted providers) \$10,000
 - Hospital Outpatient Claims (non-contracted providers) \$ 3,000
 - Physicians \$ 500
 - Rural Hospitals None

³⁶ See Centers for Medicare and Medicaid Services, The Center for Consumer and Insurance Oversight, http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs.html#Out-Of-Network-Emergency-Services (last visited Feb. 11, 2016).

³⁷ *Id.*

³⁸ Claim thresholds are established by Rule 59A-12.030, F.A.C.

- Other Providers None

The following types of claims are ineligible for the program:

- Claims for less than minimum amounts listed above for each type of service.
- Claim disputes that are the basis for an action pending in State/Federal court.
- Claims disputes that are subject to an internal binding managed care organization's resolution process for contracted enter into prior to October 1, 2000.
- Claims solely related to late payment and/or late processing.
- Interest payment disputes.
- Medicare claim disputes that are part of Medicare managed care internal grievance or that qualify for Medicare reconsideration appeal.
- Claims related to health plans not regulated by the state of Florida.
- Claims filed more than 12 months after final determination by the health plan or provider.

During 2014, only 25 claim disputes were filed for consideration. Nine of the 25 claim disputes were accepted as eligible claims for review. At year-end, one case was settled; four cases were under review; and the plans opted out of the remaining four cases.³⁹ In 2015, nine claim disputes were filed for consideration. Of the nine filed disputes, only one was accepted as an eligible claim for review and settled and three are under review for acceptance. The remaining five were ineligible (one was withdrawn by the provider; one was dismissed due to failure to accept the price quote; and the three remaining claims were ineligible.)⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 395.003, F.S., to require hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with the provisions of ss. 627.64194, and 641.513, F.S., as a condition of licensure. Section 627.64194, F.S., is a new section of law that prohibits balance billing, requires EPOs and PPOs to provide coverage for out-of-network emergency services and covered nonemergency services, and provides a payment process for such services. Currently, s. 641.513, F.S., requires HMO plans to be liable for coverage of emergency services and provides a reimbursement process for services provided by an out-of-network provider.

Section 2 amends s. 395.301, F.S., to add website-posting requirements for hospitals. A hospital must post the following information:

- The names and hyperlinks for direct access to the websites of all health insurers and health maintenance organizations (HMOs) for which the hospitals contracts as a network provider or a participating provider;
- A statement that:
 - Services provided in the hospital by health care practitioners may not be included in the hospital's charges;

³⁹ Section 408.7057, F.S., requires the AHCA to submit an annual report to the Governor and the Legislature on the status of the program. See Agency for Health Care Administration. *Statewide Provider and Health Plan Claim Dispute Resolution Program Annual Report* (Feb. 2015) available at: https://ahca.myflorida.com/mchq/Health_Facility_Regulation/Commercial_Managed_Care/docs/SPHPCClaimDRP/AnnualReportFeb-2015.pdf.

⁴⁰ See Agency for Health Care Administration. *Statewide Provider and Health Plan Claim Dispute Resolution Program Annual Report* (Feb. 2016) (on file with Senate Committee on Banking and Insurance).

- Health care practitioners who provide services in the hospital may or may not participate in the same health insurance plans as the hospital;
- Prospective patients should contact the health care practitioner arranging for the services to determine the health care plans in which the health care practitioner participates;
- As applicable, the names, mailing addresses, and telephone numbers of the health care practitioners and practice groups under contract with the hospital to provide services in the hospital, and how to contact them to determine in which health insurers and HMOs they are participating providers.

Section 3 amends s. 408.7057, F.S., to revise the statewide provider and health plan claim dispute resolution program. This section authorizes the provider or a health plan to make an offer to settle a claim dispute when the party submits a request for a claim dispute and provides financial incentives for resolution. The party making the offer to settle must state its total amount and provide the other party 15 days to respond. If the party receiving the offer does not accept the offer and the final order is more than 90 percent or less than 110 percent of the offer amount, the party receiving the offer must pay the final order amount to the offering party and is deemed the nonprevailing party for purposes of this section. The amount of an offer made by a provider to settle an alleged underpayment by a health plan must be greater than 110 percent of the reimbursement amount the provider received. The offer made by a health plan to settle an alleged overpayment to the provider must be less than 90 percent of the alleged overpayment by the health plan. Both parties may agree to settle the disputed claim at any time, for any amount, regardless of whether an offer to settle was made or rejected.

Sections 4 5 and 6 amends ss. 456.072, 458.331, and 459.015, F.S., to add as grounds for discipline of a licensee of the Department of Health for the willful failure to comply with the provision s. 627.64191, F.S., or s. 641.513, F.S., with such frequency as to constitute a general business practice.

Section 7 amends s. 626.9541, F.S., to provide that a willful violation of s. 627.64194, F.S., by an insurer with such frequency as to indicate a general business practice would constitute an unfair insurance trade practice under s. 626.9541(1), F.S.

Section 8 creates s. 627.64194, F.S., to expand protection for out-of-network coverage of emergency services and covered nonemergency services for insureds of PPO and EPO networks. Under this section, the following terms are defined:

- *Emergency services* means the services and care to treat an emergency medical condition, as defined in s. 641.47(8), F.S.⁴¹
- *Facility* means a licensed facility as defined in s. 395.002(16), F.S.,⁴² or an urgent care center as defined in s. 395.002(30), F.S.⁴³

⁴¹ “Emergency services and care” means medical screening, examination, and evaluation by a physician, or to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if it does, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency condition within the service capability of a hospital.

⁴² “Licensed facility” means a hospital, ambulatory surgical center, or mobile surgical center licensed in accordance with this chapter.

⁴³ “Urgent care center” means a facility or clinic that provides immediate but not emergent ambulatory medical care to patients. The term includes an offsite emergency department of a hospital that is presented to the general public in any manner as a department where immediate and not only emergent care is provided. The term also includes: (a) An offsite

- *Nonemergency services* means the services and care to treat a condition other than an emergency medical condition.⁴⁴
- *Nonparticipating provider* means a provider who is not a “preferred provider” as defined in s. 627.6471, F.S.,⁴⁵ or an “exclusive provider” as defined in s. 627.6472, F.S..⁴⁶ For purposes of covered emergency services under this section, a facility licensed under ch. 395, F.S., or an urgent care center is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.
- *Participating provider* means a “preferred provider” as defined in s. 627.6471, F.S., and an “exclusive provider” as defined in s. 627.6472, F.S., but not a facility licensed under ch. 395, F.S.
- *Insured* means a person who is covered under an individual or group health insurance policy delivered or issued for delivery in this state by an insurer authorized to transact business in this state.

The bill requires the insurer to be solely responsible for payment to a non-participating provider for emergency services in accordance with the coverage terms of the health insurance policy. The insured’s liability for payment of fees to a nonparticipating provider of emergency services is limited to applicable coinsurance, copayments, and deductibles. The insurer must provide coverage for emergency services that:

- May not require a prior authorization determination;
- Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider; and
- May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

The insurer, not the insured, is liable for payment of fees to a non-participating provider other than applicable coinsurance, copayments and deductibles, for covered nonemergency services provided to an insured pursuant with coverage terms of the health insurance policy, and such insured is not liable for payment of fees to a nonparticipating provider for covered nonemergency services that are:

facility of a facility licensed under this chapter, or a joint venture between a facility licensed under this chapter and a provider licensed under chapter 458 or chapter 459, that does not require a patient to make an appointment and is presented to the general public in any manner as a facility where immediate but not emergent care is provided. (b) A clinic organization that is licensed under part X of ch. 400, F.S., maintains three or more locations using the same or similar name, does not require a patient to make an appointment, and holds itself out to the public in any manner as a facility or clinic where immediate but not emergent medical care is provided.

⁴⁴ “Emergency medical condition” means (a) A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following: 1. Serious jeopardy to patient health, including a pregnant woman or fetus. 2. Serious impairment to bodily functions. 3. Serious dysfunction of any bodily organ or part. (b) With respect to pregnant women: 1. That there is inadequate time to effect safe transfer to another hospital prior to delivery. 2. That a transfer may pose a threat to the health and safety of the patient or fetus; or 3. That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

⁴⁵ “Preferred provider” means any licensed health care provider with which the insurer has directly or indirectly contracted for an alternative or a reduced rate of payment, which shall include any health care provider listed in s. 627.419(3) and (4), F.S., and shall provide reasonable access to such health care providers.

⁴⁶ “Exclusive provider” means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the insurer to provide benefits under his section, which agreement shall include any health care provider listed in s. 627.419(3) and (4), F.S., and shall provide reasonable access to such health care providers.

- Provided in a facility licensed under ch. 395, F.S., which has a contract with the insurer for nonemergency services which the facility would be otherwise obligated to provide under contract with the insurer; and
- Provided the insured has no ability and opportunity to choose a participating provider at the facility who is available to treat the insured.

The provisions of s. 627.638, F.S., relating to direct payment to licensed hospitals and providers would apply for the covered emergency services and covered nonemergency services provided pursuant to this section.

An insurer must reimburse the nonparticipating provider for services provided to an insured in the manner specified under s. 641.513(5), F.S.,⁴⁷ reduced only by an insured's cost share responsibilities provided in the policy, and within the specified timeframes of s. 627.6131, F.S.⁴⁸ A nonparticipating provider of covered emergency services or nonemergency services may not collect or attempt to collect from the insured any amount in excess, other than applicable coinsurance, copayments, or deductibles. A provider may collect or attempt to collect from an insured an amount due for the provision of uncovered services.

If there is a dispute as to the amount of the reimbursement to the nonparticipating provider of either emergency or nonemergency services, the dispute must be resolved in either a court of competent jurisdiction or by the voluntary dispute resolution process in s. 408.7057, F.S.

Sections 9 and 10 amend s. 627.6471, F.S., relating to insurance contracts and policies for preferred provider networks. Current law requires any insurer issuing a policy under this section to provide each policyholder and certificate holder with a current list of preferred providers. The bill requires the insurer to also make the list available on its website. The bill requires that the preferred provider list be ordered by specialty, where applicable, and include the names, addresses, and telephone numbers of all participating providers, including facilities, and in the case of physicians, their board specialties, languages spoken, and affiliations with local hospitals. The website must be updated on at least a calendar month basis with additions and terminations of providers from the network and any changes in physician hospital affiliations.

Effective upon this bill becoming law, any health insurance policy issued after January 1, 2017, under this section must also include the following specific disclosure to policyholders:

WARNING: LIMITED BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a nonparticipating provider for a covered nonemergency service, benefit payments to the provider are not based upon the amount the provider charges. The basis of the payment will be determined according to your policy's out-of-network

⁴⁷ Under this statute, the nonparticipating provider may be reimbursed for emergency services in an amount which is the lesser of: the provider's charges; the usual and customary provider charges for similar services in the community where the services were provided; or the charge mutually agreed to by the health maintenance organization and the provider within 60 days of submittal of the claim.

⁴⁸ Typically, with an electronically submitted claim, an insurer shall pay the claim within 20 days after receipt or notify the provider or designee if the claim is to be denied or contested.

reimbursement benefit. Nonparticipating providers may bill insureds for any difference in the amount. **YOU MAY BE REQUIRED TO PAY MORE THAN THE COINSURANCE OR COPAYMENT.** Participating providers have agreed to accept discounted payments for services with no additional billing to you other than coinsurance and deductible amounts. You may obtain further information about the providers who have contracted with your insurance plan by consulting your insurer's website or contracting your insurer or agent directly.

Section 11 amends s. 627.662, F.S., to apply the provisions of newly created s. 627.64194, F.S., relating to coverage requirements for services provided by out-of-network provider and payment collection limitations to group health insurance, blanket health insurance, and franchise health insurance.

Section 12 except as otherwise provided, the bill is effective October 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"

Patients covered by an EPO or PPO will not be subject to balance billing for emergency services provided by nonparticipating providers. An insurer is liable for the payment of covered nonemergency services provided by nonparticipating providers if the services are provided in a facility that has a contract with the insurer for the nonemergency services, which the facility would be otherwise obligated to provide under the contract, and the insured does not have the ability and opportunity to select a participating provider.

Hospitals will be required to post and maintain information on their websites about which insurers, HMOs, practitioners, and group practices they contract with to put the public on notice. The hospitals may incur some costs to comply with this notice requirement.

To the extent that the options provided for determining reimbursement of an out-of-network emergency services claim are different from how an insurer or health care provider currently is reimbursed, the formula for reimbursement may have a fiscal impact on the affected party.

C. Government Sector Impact:

The bill adds a new licensing condition for the AHCA to consider when inspecting hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers, which may involve additional time and resources for the completion of an inspection.

The Department of Health may experience additional workload with respect to the new disciplinary grounds.

The impact of the bill on the Division of State Group Insurance is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The effective date of this bill is October 1, 2016, which is in the middle or towards end of the plan year for individual health insurance plans and many group plans. It may be more appropriate for the provisions of at least sections 8 and 11 of this bill to apply to new plans and plan renewals starting after the effective date.

The bill provides that an insured is not liable for payment of fees to a nonparticipating provider for nonemergency services only if the services are provided in a facility contracted for nonemergency services and only if the insured “has no ability and opportunity to choose a participating provider at the facility.” The manner in which that ability and opportunity is to be afforded is not described. It may be appropriate to place responsibility on the insurer and the contracted facility, rather than the consumer, for determining and ensuring that the providers treating the consumer at the contracted facility will be participating providers unless the consumer expressly selects a specific nonparticipating provider.⁴⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.003, 395.301, 408.7057, 456.072, 458.331, 459.015, 626.9541, 627.6471, and 627.662.

This bill creates section 627.64194 of the Florida Statutes.

⁴⁹ Office of Insurance Regulation, *2016 Agency Legislative Bill Analysis* (Feb. 3, 2016) (on file with Senate Committee on Banking and Insurance).

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 16, 2016;**

The CS:

- Excludes emergency transportation and ambulance services from the definition of “emergency services.”
- Provides that a facility licensed under ch. 395, F.S., or an urgent care center is a nonparticipating provider if the facility has not contracted with an insurer to provide emergency services to its insureds at a specified rate.
- Revises the statewide provider and health claim dispute resolution program by creating an offer to settle as mechanism to resolve disputes.
- Expands the bases for violations of the balance billing prohibitions and payment requirements to include physicians licensed under ch. 458 or 459, F.S., and health insurers, but requires the conduct to be willful.
- Applies provisions of the bill to group health insurance as well as individual health insurance.
- Provides technical, conforming changes.

CS by Health Policy on February 1, 2016:

The CS requires:

- Hospitals to post on its website a listing of its contractual relationships with insurers and HMOs, practitioners and practice groups along with contact information and hyperlinks;
- Application of the current HMO reimbursement statute for out of network emergency services for PPO and EPO patients;
- The parties to seek resolution through a court of competent jurisdiction or through the voluntary resolution dispute process for disputes over the reimbursement amount for emergency or nonemergency fees;
- Any issuer of health insurance products in this state for reduced rates of payment to make a list of preferred providers available on its website, with monthly updates; and
- Any issuer of health insurance products in this state for reduced rates of payment to provide additional warning and disclosure language regarding limited benefits and payment when nonparticipating providers are used beginning January 1, 2017.

The CS includes emergency transportation and ambulance services in the definition of emergency services.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
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The Committee on Banking and Insurance (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete lines 78 - 191

and insert:

Section 4. Subsection (11) of section 627.6131, Florida Statutes, is amended to read:

627.6131 Payment of claims.—

(11) A health insurer may not retroactively deny a claim because of insured ineligibility:

(a) At any time, if the health insurer verified the



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11 eligibility of an insured at the time of treatment and provided
12 an authorization number.

13 (b) More than 1 year after the date of payment of the
14 claim.

15 Section 5. Section 627.64194, Florida Statutes, is created
16 to read:

17 627.64194 Coverage requirements for services provided by
18 nonparticipating providers.—

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

20 (a) "Emergency services" means the services and care to
21 treat an emergency medical condition, as defined in s. 641.47.

22 For purposes of this section, the term includes emergency
23 transportation and ambulance services, to the extent permitted
24 by applicable state and federal law.

25 (b) "Facility" means a licensed facility as defined in s.
26 395.002(16) or an urgent care center as defined in s.
27 395.002(30).

28 (c) "Nonemergency services" means the services and care to
29 treat a condition other than an emergency medical condition, as
30 defined in s. 395.002(8).

31 (d) "Nonparticipating provider" means a provider who is not
32 a "preferred provider" as defined in s. 627.6471, an "exclusive
33 provider" as defined in s. 627.6472, or a facility licensed
34 under chapter 395. A provider that is employed by a facility
35 licensed under chapter 395, and that is not a "preferred
36 provider" as defined in s. 627.6471 or an "exclusive provider"
37 as defined in s. 627.6472, is a nonparticipating provider.

38 (e) "Participating provider" means a "preferred provider"
39 as defined in s. 627.6471 or an "exclusive provider" as defined



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40 in s. 627.6472, but not a facility licensed under chapter 395.

41 (f) "Insured" means a person who is covered under an
42 individual or group health insurance policy delivered or issued
43 for delivery in this state by an insurer authorized to transact
44 business in the state.

45 (2) An insurer is solely liable for payment of fees to a
46 nonparticipating provider of emergency services provided to an
47 insured in accordance with the terms of the health insurance
48 policy. Such insured is not liable for payment of fees to a
49 nonparticipating provider of emergency services other than
50 applicable copayments and deductibles. An insurer must provide
51 coverage for emergency services that:

52 (a) May not require prior authorization.

53 (b) Must be provided regardless of whether the service is
54 furnished by a participating or nonparticipating provider.

55 (c) May impose a coinsurance amount, copayment, or
56 limitation of benefits requirement for a nonparticipating
57 provider only if the same requirement applies to a participating
58 provider.

59 (3) An insurer is solely liable for payment of fees to a
60 nonparticipating provider of nonemergency services provided to
61 an insured in accordance with the terms of the health insurance
62 policy. Such insured is not liable for payment of fees to a
63 nonparticipating provider, other than applicable copayments and
64 deductibles, for nonemergency services:

65 (a) That are provided in a facility that has a contract for
66 the nonemergency services with the insurer which the facility
67 would be otherwise obligated to provide under contract with the
68 insurer; and



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69 (b) Where the insured has no ability and opportunity to
70 choose a participating provider at the facility.

71
72 If the insured makes an informed affirmative decision to choose
73 a nonparticipating provider instead of a participating provider
74 who is available at the facility to treat the insured, the
75 provisions of this subsection do not apply.

76 (4) An insurer must reimburse a nonparticipating provider
77 for services under subsections (2) and (3) as specified in s.
78 641.513(5) within the applicable timeframe provided by s.
79 627.6131.

80 (5) A nonparticipating provider of emergency services as
81 provided in subsection (2) or nonemergency services as provided
82 in subsection (3) may not be reimbursed an amount greater than
83 the amount provided in subsection (4) and may not collect or
84 attempt to collect from the patient, directly or indirectly, any
85 excess amount except for copays and deductibles.

86 (6) A dispute with regard to the amount of reimbursement
87 owed to the nonparticipating provider of emergency or
88 nonemergency services as provided in subsection (4) must be
89 resolved in a court of competent jurisdiction or by the
90 voluntary dispute resolution process in s. 408.7057.

91 Section 6. Subsection (2) of section 627.6471, Florida
92 Statutes, is amended, and a new subsection (7) is added to that
93 section, to read:

94 627.6471 Contracts for reduced rates of payment;
95 limitations; coinsurance and deductibles.—

96 (2) Any insurer issuing a policy of health insurance in
97 this state, which insurance includes coverage for the services



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98 of a preferred provider, must provide each policyholder and
99 certificateholder with a current list of preferred providers and
100 must make the list available on its website. The list must
101 include, where applicable and reported, a listing by specialty
102 of the names, addresses, and telephone numbers of all
103 participating providers, including facilities; and in the case
104 of physicians, board certifications, languages spoken, and any
105 affiliations with participating hospitals. Information posted to
106 the insurer's website must be updated on at least a calendar-
107 month basis with additions or terminations of providers from the
108 insurer's network or reported changes in physician's hospital
109 affiliations ~~must make the list available for public inspection~~
110 ~~during regular business hours at the principal office of the~~
111 ~~insurer within the state.~~

112 (7) Any policy issued after January 1, 2017 under this
113 section must include the following disclosure: "WARNING: LIMITED
114 BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED.
115 You should be aware that when you elect to utilize the services
116 of a nonparticipating provider for a covered nonemergency
117 service, benefit payments to the provider are not based upon the
118 amount the provider charges. The basis of the payment will be
119 determined according to your policy's out-of-network
120 reimbursement benefit. Nonparticipating providers may bill
121 insureds for any difference in the amount. YOU MAY BE REQUIRED
122 TO PAY MORE THAN THE COINSURANCE OR COPAYMENT. Participating
123 providers have agreed to accept discounted payments for services
124 with no additional billing to you other than coinsurance and
125 deductible amounts. You may obtain further information about the
126 providers who have contracted with your insurance plan by



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127 consulting your insurer's website or contacting your insurer or
128 agent directly."

129 Section 7. Subsection (10) of section 641.3155, Florida
130 Statutes, is amended to read:

131 641.3155 Prompt payment of claims.—

132 (10) A health maintenance organization may not
133 retroactively deny a claim because of subscriber ineligibility:

134 (a) At any time, if the health maintenance organization
135 verified the eligibility of an insured at the time of treatment
136 and provided an authorization number.

137 (b) More than 1 year after the date of payment of the
138 claim.

139
140 ===== T I T L E A M E N D M E N T =====

141 And the title is amended as follows:

142 Delete lines 2 - 32

143 and insert:

144 An act relating to health care services; amending s.
145 395.003, F.S.; requiring hospitals, ambulatory
146 surgical centers, specialty hospitals, and urgent care
147 centers to comply with certain provisions as a
148 condition of licensure; amending s. 395.301, F.S.;
149 requiring a hospital to post certain information on
150 its website regarding its contracts with health
151 insurers, health maintenance organizations, and health
152 care practitioners and practice groups and a specified
153 statement to patients and prospective patients;
154 amending s. 456.072, F.S.; adding a ground for
155 discipline of referring health care providers by the



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156 Department of Health; amending s. 627.6131, F.S.;
157 prohibiting a health insurer from retroactively
158 denying a claim under specified circumstances;
159 creating s. 627.64194, F.S.; defining terms;
160 specifying requirements for coverage provided by an
161 insurer for emergency services; providing that an
162 insurer is solely liable for payment of certain fees
163 to a provider; providing that an insured is not liable
164 for payment of certain fees; providing limitations and
165 requirements for reimbursements by an insurer to a
166 nonparticipating provider; providing applicability;
167 authorizing a nonparticipating provider or insurer to
168 initiate action in a court of competent jurisdiction
169 or through voluntary dispute resolution; amending s.
170 627.6471, F.S.; requiring an insurer that issues a
171 policy including coverage for the services of a
172 preferred provider to post certain information about
173 participating providers on its website; requiring a
174 specified disclosure to be included in policies
175 providing coverage for the services of a preferred
176 provider; amending s. 641.3155, F.S.; prohibiting a
177 health maintenance organization from retroactively
178 denying a claim under specified circumstances;
179 providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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The Committee on Banking and Insurance (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) is added to subsection (5) of
section 395.003, Florida Statutes, to read:

395.003 Licensure; denial, suspension, and revocation.-
(5)

(d) A hospital, an ambulatory surgical center, a specialty
hospital, or an urgent care center shall comply with ss.



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11 627.64194 and 641.513 as a condition of licensure.

12 Section 2. Subsection (13) is added to section 395.301,
13 Florida Statutes, to read:

14 395.301 Itemized patient bill; form and content prescribed
15 by the agency; patient admission status notification.-

16 (13) A hospital shall post on its website:

17 (a) The names and hyperlinks for direct access to the
18 websites of all health insurers and health maintenance
19 organizations for which the hospital contracts as a network
20 provider or participating provider.

21 (b) A statement that:

22 1. Services provided in the hospital by health care
23 practitioners may not be included in the hospital's charges;

24 2. Health care practitioners who provide services in the
25 hospital may or may not participate in the same health insurance
26 plans as the hospital; and

27 3. Prospective patients should contact the health care
28 practitioner arranging for the services to determine the health
29 care plans in which the health care practitioner participates.

30 (c) As applicable, the names, mailing addresses, and
31 telephone numbers of the health care practitioners and practice
32 groups that the hospital has contracted with to provide services
33 in the hospital and instructions on how to contact these health
34 care practitioners and practice groups to determine the health
35 insurers and health maintenance organizations for which the
36 hospital contracts as a network provider or participating
37 provider.

38 Section 3. Paragraph (h) is added to subsection (2) of
39 section 408.7057, Florida Statutes, and subsection (4) of that



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40 section is amended, to read:

41 408.7057 Statewide provider and health plan claim dispute
42 resolution program.—

43 (2)

44 (h) Either the contracted or noncontracted provider or the
45 health plan may make an offer to settle the claim dispute when
46 it submits a request for a claim dispute and supporting
47 documentation. The offer to settle the claim dispute must state
48 its total amount, and the party to whom it is directed has 15
49 days to accept the offer once it is received. If the party
50 receiving the offer does not accept the offer and the final
51 order amount is more than 90 percent or less than 110 percent of
52 the offer amount, the party receiving the offer must pay the
53 final order amount to the offering party and is deemed a
54 nonprevailing party for purposes of this section. The amount of
55 an offer made by a contracted or noncontracted provider to
56 settle an alleged underpayment by the health plan must be
57 greater than 110 percent of the reimbursement amount the
58 provider received. The amount of an offer made by a health plan
59 to settle an alleged overpayment to the provider must be less
60 than 90 percent of the alleged overpayment amount by the health
61 plan. Both parties may agree to settle the disputed claim at any
62 time, for any amount, regardless of whether an offer to settle
63 was made or rejected.

64 (4) Within 30 days after receipt of the recommendation of
65 the resolution organization, the agency shall adopt the
66 recommendation as a final order. The final order is subject to
67 judicial review pursuant to s. 120.68.

68 Section 4. Paragraph (oo) is added to subsection (1) of



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69 section 456.072, Florida Statutes, to read:

70 456.072 Grounds for discipline; penalties; enforcement.—

71 (1) The following acts shall constitute grounds for which
72 the disciplinary actions specified in subsection (2) may be
73 taken:

74 (oo) Willfully failing to comply with s. 627.64194 or s.
75 641.513 with such frequency as to indicate a general business
76 practice.

77 Section 5. Paragraph (tt) is added to subsection (1) of
78 section 458.331, Florida Statutes, to read:

79 458.331 Grounds for disciplinary action; action by the
80 board and department.—

81 (1) The following acts constitute grounds for denial of a
82 license or disciplinary action, as specified in s. 456.072(2):

83 (tt) Willfully failing to comply with s. 627.64194 or s.
84 641.513 with such frequency as to indicate a general business
85 practice.

86 Section 6. Paragraph (vv) is added to subsection (1) of
87 section 459.015, Florida Statutes, to read:

88 459.015 Grounds for disciplinary action; action by the
89 board and department.—

90 (1) The following acts constitute grounds for denial of a
91 license or disciplinary action, as specified in s. 456.072(2):

92 (vv) Willfully failing to comply with s. 627.64194 or s.
93 641.513 with such frequency as to indicate a general business
94 practice.

95 Section 7. Paragraph (gg) is added to subsection (1) of
96 section 626.9541, Florida Statutes, to read:

97 626.9541 Unfair methods of competition and unfair or



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98 deceptive acts or practices defined.-

99 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
100 ACTS.-The following are defined as unfair methods of competition
101 and unfair or deceptive acts or practices:

102 (gg) Out-of-network reimbursement.-Willfully failing to
103 comply with s. 627.64194 with such frequency as to indicate a
104 general business practice.

105 Section 8. Section 627.64194, Florida Statutes, is created
106 to read:

107 627.64194 Coverage requirements for services provided by
108 nonparticipating providers; payment collection limitations.-

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

110 (a) "Emergency services" means the services and care to
111 treat an emergency medical condition as defined in s. 641.47(8).

112 (b) "Facility" means a licensed facility as defined in s.
113 395.002(16) and an urgent care center as defined in s.
114 395.002(30).

115 (c) "Insured" means a person who is covered under an
116 individual or group health insurance policy delivered or issued
117 for delivery in this state by an insurer authorized to transact
118 business in this state.

119 (d) "Nonemergency services" means the services and care to
120 treat a condition other than an emergency medical condition.

121 (e) "Nonparticipating provider" means a provider who is not
122 a preferred provider as defined in s. 627.6471 or a provider who
123 is not an exclusive provider as defined in s. 627.6472. For
124 purposes of covered emergency services under this section, a
125 facility licensed under chapter 395 or an urgent care center
126 defined in s. 395.002(30) is a nonparticipating provider if the



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127 facility has not contracted with an insurer to provide emergency
128 services to its insureds at a specified rate.

129 (f) "Participating provider" means, for purposes of this
130 section, a preferred provider as defined in s. 627.6471 or an
131 exclusive provider as defined in s. 627.6472.

132 (2) An insurer is solely liable for payment of fees to a
133 nonparticipating provider of covered emergency services provided
134 to an insured in accordance with the coverage terms of the
135 health insurance policy, and such insured is not liable for
136 payment of fees for covered services to a nonparticipating
137 provider of emergency services, other than applicable
138 copayments, coinsurance, and deductibles. An insurer must
139 provide coverage for emergency services that:

140 (a) May not require prior authorization.

141 (b) Must be provided regardless of whether the services are
142 furnished by a participating provider or a nonparticipating
143 provider.

144 (c) May impose a coinsurance amount, copayment, or
145 limitation of benefits requirement for a nonparticipating
146 provider only if the same requirement applies to a participating
147 provider.

148
149 The provisions of s. 627.638 apply to this subsection.

150 (3) An insurer is solely liable for payment of fees to a
151 nonparticipating provider of covered nonemergency services
152 provided to an insured in accordance with the coverage terms of
153 the health insurance policy, and such insured is not liable for
154 payment of fees to a nonparticipating provider, other than
155 applicable copayments, coinsurance, and deductibles, for covered



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156 nonemergency services that are:

157 (a) Provided in a facility that has a contract for the
158 nonemergency services with the insurer which the facility would
159 be otherwise obligated to provide under contract with the
160 insurer; and

161 (b) Provided when the insured does not have the ability and
162 opportunity to choose a participating provider at the facility
163 who is available to treat the insured.

164
165 The provisions of s. 627.638 apply to this subsection.

166 (4) An insurer must reimburse a nonparticipating provider
167 of services under subsections (2) and (3) as specified in s.
168 641.513(5), reduced only by insured cost share responsibilities
169 as specified in the health insurance policy, within the
170 applicable timeframe provided in s. 627.6131.

171 (5) A nonparticipating provider of emergency services as
172 provided in subsection (2) or a nonparticipating provider of
173 nonemergency services as provided in subsection (3) may not be
174 reimbursed an amount greater than the amount provided in
175 subsection (4) and may not collect or attempt to collect from
176 the insured, directly or indirectly, any excess amount, other
177 than copayments, coinsurance, and deductibles. This section does
178 not prohibit a nonparticipating provider from collecting or
179 attempting to collect from the insured an amount due for the
180 provision of noncovered services.

181 (6) Any dispute with regard to the reimbursement to the
182 nonparticipating provider of emergency or nonemergency services
183 as provided in subsection (4) shall be resolved in a court of
184 competent jurisdiction or through the voluntary dispute



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185 resolution process in s. 408.7057.

186 Section 9. Subsection (2) of section 627.6471, Florida
187 Statutes, is amended to read:

188 627.6471 Contracts for reduced rates of payment;
189 limitations; coinsurance and deductibles.—

190 (2) Any insurer issuing a policy of health insurance in
191 this state, which insurance includes coverage for the services
192 of a preferred provider, must provide each policyholder and
193 certificateholder with a current list of preferred providers and
194 must make the list available on its website. The list must
195 include, when applicable and reported, a listing by specialty of
196 the names, addresses, and telephone numbers of all participating
197 providers, including facilities, and, in the case of physicians,
198 must also include board certifications, languages spoken, and
199 any affiliations with participating hospitals. Information
200 posted on the insurer's website must be updated on at least a
201 calendar-month basis with additions or terminations of providers
202 from the insurer's network or reported changes in physicians'
203 hospital affiliations ~~for public inspection during regular~~
204 ~~business hours at the principal office of the insurer within the~~
205 ~~state.~~

206 Section 10. Effective upon this act becoming a law,
207 subsection (7) is added to section 627.6471, Florida Statutes,
208 to read:

209 627.6471 Contracts for reduced rates of payment;
210 limitations; coinsurance and deductibles.—

211 (7) Any policy issued under this section after January 1,
212 2017, must include the following disclosure: "WARNING: LIMITED
213 BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED.



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214 You should be aware that when you elect to utilize the services
215 of a nonparticipating provider for a covered nonemergency
216 service, benefit payments to the provider are not based upon the
217 amount the provider charges. The basis of the payment will be
218 determined according to your policy's out-of-network
219 reimbursement benefit. Nonparticipating providers may bill
220 insureds for any difference in the amount. YOU MAY BE REQUIRED
221 TO PAY MORE THAN THE COINSURANCE OR COPAYMENT AMOUNT.

222 Participating providers have agreed to accept discounted
223 payments for services with no additional billing to you other
224 than coinsurance, copayment, and deductible amounts. You may
225 obtain further information about the providers who have
226 contracted with your insurance plan by consulting your insurer's
227 website or contacting your insurer or agent directly."

228 Section 11. Subsection (15) is added to section 627.662,
229 Florida Statutes, to read:

230 627.662 Other provisions applicable.—The following
231 provisions apply to group health insurance, blanket health
232 insurance, and franchise health insurance:

233 (15) Section 627.64194, relating to coverage requirements
234 for services provided by nonparticipating providers and payment
235 collection limitations.

236 Section 12. Except as otherwise expressly provided in this
237 act and except for this section, which shall take effect upon
238 this act becoming a law, this act shall take effect October 1,
239 2016.

240
241 ===== T I T L E A M E N D M E N T =====

242 And the title is amended as follows:



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243 Delete everything before the enacting clause
244 and insert:

245 A bill to be entitled
246 An act relating to out-of-network health insurance
247 coverage; amending s. 395.003, F.S.; requiring
248 hospitals, ambulatory surgical centers, specialty
249 hospitals, and urgent care centers to comply with
250 certain provisions as a condition of licensure;
251 amending s. 395.301, F.S.; requiring a hospital to
252 post on its website certain information regarding its
253 contracts with health insurers, health maintenance
254 organizations, and health care practitioners and
255 practice groups and specified notice to patients and
256 prospective patients; amending s. 408.7057, F.S.;
257 providing requirements for settlement offers between
258 certain providers and health plans in a specified
259 dispute resolution program; requiring a final order to
260 be subject to judicial review; amending ss. 456.072,
261 458.331, and 459.015, F.S.; providing additional acts
262 that constitute grounds for denial of a license or
263 disciplinary action, to which penalties apply;
264 amending s. 626.9541, F.S.; specifying an additional
265 unfair method of competition and unfair or deceptive
266 act or practice; creating s. 627.64194, F.S.; defining
267 terms; providing that an insurer is solely liable for
268 payment of certain fees to a nonparticipating
269 provider; providing limitations and requirements for
270 reimbursements by an insurer to a nonparticipating
271 provider; providing that certain disputes relating to



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272 reimbursement of a nonparticipating provider shall be
273 resolved in a court of competent jurisdiction or
274 through a specified voluntary dispute resolution
275 process; amending s. 627.6471, F.S.; requiring an
276 insurer that issues a policy including coverage for
277 the services of a preferred provider to post on its
278 website certain information about participating
279 providers and physicians; requiring that specified
280 notice be included in policies issued after a
281 specified date which provide coverage for the services
282 of a preferred provider; amending s. 627.662, F.S.;;
283 providing applicability of provisions relating to
284 coverage for services and payment collection
285 limitations to group health insurance, blanket health
286 insurance, and franchise health insurance; providing
287 effective dates.



561776

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (418472) (with title**
2 **amendment)**

3
4 Between lines 104 and 105
5 insert:

6 Section 8. Subsection (11) of section 627.6131, Florida
7 Statutes, is amended to read:

8 627.6131 Payment of claims.—

9 (11) A health insurer may not retroactively deny a claim
10 because of insured ineligibility.



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11 (a) At any time, if the health insurer verified the
12 eligibility of an insured at the time of treatment and provided
13 an authorization number.

14 (b) More than 1 year after the date of payment of the
15 claim.

16
17 Between lines 235 and 236

18 insert:

19 Section 12. Subsection (10) of section 641.3155, Florida
20 Statutes, is amended to read:

21 641.3155 Prompt payment of claims.—

22 (10) A health maintenance organization may not
23 retroactively deny a claim because of subscriber ineligibility:

24 (a) At any time, if the health maintenance organization
25 verified the eligibility of a subscriber at the time of
26 treatment and provided an authorization number.

27 (b) More than 1 year after the date of payment of the
28 claim.

29
30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

32 Delete lines 246 - 286

33 and insert:

34 An act relating to health care services; amending s.
35 395.003, F.S.; requiring hospitals, ambulatory
36 surgical centers, specialty hospitals, and urgent care
37 centers to comply with certain provisions as a
38 condition of licensure; amending s. 395.301, F.S.;
39 requiring a hospital to post on its website certain



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40 information regarding its contracts with health
41 insurers, health maintenance organizations, and health
42 care practitioners and practice groups and specified
43 notice to patients and prospective patients; amending
44 s. 408.7057, F.S.; providing requirements for
45 settlement offers between certain providers and health
46 plans in a specified dispute resolution program;
47 requiring a final order to be subject to judicial
48 review; amending ss. 456.072, 458.331, and 459.015,
49 F.S.; providing additional acts that constitute
50 grounds for denial of a license or disciplinary
51 action, to which penalties apply; amending s.
52 626.9541, F.S.; specifying an additional unfair method
53 of competition and unfair or deceptive act or
54 practice; amending s. 627.6131, F.S.; prohibiting a
55 health insurer from retroactively denying a claim
56 under specified circumstances; creating s. 627.64194,
57 F.S.; defining terms; providing that an insurer is
58 solely liable for payment of certain fees to a
59 nonparticipating provider; providing limitations and
60 requirements for reimbursements by an insurer to a
61 nonparticipating provider; providing that certain
62 disputes relating to reimbursement of a
63 nonparticipating provider shall be resolved in a court
64 of competent jurisdiction or through a specified
65 voluntary dispute resolution process; amending s.
66 627.6471, F.S.; requiring an insurer that issues a
67 policy including coverage for the services of a
68 preferred provider to post on its website certain



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69 information about participating providers and
70 physicians; requiring that specified notice be
71 included in policies issued after a specified date
72 which provide coverage for the services of a preferred
73 provider; amending s. 627.662, F.S.; providing
74 applicability of provisions relating to coverage for
75 services and payment collection limitations to group
76 health insurance, blanket health insurance, and
77 franchise health insurance; amending s. 641.3155,
78 F.S.; prohibiting a health maintenance organization
79 from retroactively denying a claim under specified
80 circumstances; providing

By the Committee on Health Policy; and Senator Garcia

588-02881-16

20161442c1

1 A bill to be entitled
 2 An act relating to out-of-network health insurance
 3 coverage; amending s. 395.003, F.S.; requiring
 4 hospitals, ambulatory surgical centers, specialty
 5 hospitals, and urgent care centers to comply with
 6 certain provisions as a condition of licensure;
 7 amending s. 395.301, F.S.; requiring a hospital to
 8 post certain information on its website regarding its
 9 contracts with health insurers, health maintenance
 10 organizations, and health care practitioners and
 11 practice groups and a specified statement to patients
 12 and prospective patients; amending s. 456.072, F.S.;
 13 adding a ground for discipline of referring health
 14 care providers by the Department of Health; creating
 15 s. 627.64194, F.S.; defining terms; specifying
 16 requirements for coverage provided by an insurer for
 17 emergency services; providing that an insurer is
 18 solely liable for payment of certain fees to a
 19 provider; providing that an insured is not liable for
 20 payment of certain fees; providing limitations and
 21 requirements for reimbursements by an insurer to a
 22 nonparticipating provider; providing applicability;
 23 authorizing a nonparticipating provider or insurer to
 24 initiate action in a court of competent jurisdiction
 25 or through voluntary dispute resolution; amending s.
 26 627.6471, F.S.; requiring an insurer that issues a
 27 policy including coverage for the services of a
 28 preferred provider to post certain information about
 29 participating providers on its website; requiring a
 30 specified disclosure to be included in policies
 31 providing coverage for the services of a preferred
 32 provider; providing an effective date.

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

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33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Paragraph (d) is added to subsection (5) of
 37 section 395.003, Florida Statutes, to read:
 38 395.003 Licensure; denial, suspension, and revocation.—
 39 (5)
 40 (d) A hospital, ambulatory surgical center, specialty
 41 hospital, or urgent care center shall comply with the provisions
 42 of ss. 627.64194 and 641.513 as a condition of licensure.
 43 Section 2. Subsection (13) is added to section 395.301,
 44 Florida Statutes, to read:
 45 395.301 Itemized patient bill; form and content prescribed
 46 by the agency; patient admission status notification.—
 47 (13) A hospital shall post on its website:
 48 (a) The names and hyperlinks for direct access to the
 49 websites of all health insurers and health maintenance
 50 organizations for which the hospital contracts as a network
 51 provider or a participating provider.
 52 (b) A statement that:
 53 1. Services provided in the hospital by health care
 54 practitioners may not be included in the hospital's charges;
 55 2. Health care practitioners who provide services in the
 56 hospital may or may not participate with the same health
 57 insurance plans as the hospital;
 58 3. Prospective patients should contact the health care
 59 practitioner arranging for the services to determine the health
 60 care plans in which the health care practitioner participates.
 61 (c) As applicable, the names, mailing addresses, and

Page 2 of 7

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

588-02881-16

20161442c1

62 telephone numbers of the health care practitioners and practice
 63 groups that the hospital has contracted with to provide services
 64 in the hospital and instruction on how to contact these health
 65 care practitioners and practice groups to determine the health
 66 insurers and health maintenance organizations for which the
 67 hospital contracts as a network provider or a participating
 68 provider.

69 Section 3. Paragraph (oo) is added to subsection (1) of
 70 section 456.072, Florida Statutes, to read:

71 456.072 Grounds for discipline; penalties; enforcement.—

72 (1) The following acts shall constitute grounds for which
 73 the disciplinary actions specified in subsection (2) may be
 74 taken:

75 (oo) Failing to comply with the provisions of s. 627.64194
 76 or s. 641.513 with such frequency as to constitute a general
 77 business practice.

78 Section 4. Section 627.64194, Florida Statutes, is created
 79 to read:

80 627.64194 Coverage requirements for services provided by
 81 nonparticipating providers.—

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

83 (a) "Emergency services" means the services and care to
 84 treat an emergency medical condition, as defined in s. 641.47.
 85 For purposes of this section, the term includes emergency
 86 transportation and ambulance services, to the extent permitted
 87 by applicable state and federal law.

88 (b) "Facility" means a licensed facility as defined in s.
 89 395.002(16) or an urgent care center as defined in s.
 90 395.002(30).

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91 (c) "Nonemergency services" means the services and care to
 92 treat a condition other than an emergency medical condition, as
 93 defined in s. 395.002(8).

94 (d) "Nonparticipating provider" means a provider who is not
 95 a "preferred provider" as defined in s. 627.6471, an "exclusive
 96 provider" as defined in s. 627.6472, or a facility licensed
 97 under chapter 395. A provider that is employed by a facility
 98 licensed under chapter 395, and that is not a "preferred
 99 provider" as defined in s. 627.6471 or an "exclusive provider"
 100 as defined in s. 627.6472, is a nonparticipating provider.

101 (e) "Participating provider" means a "preferred provider"
 102 as defined in s. 627.6471 or an "exclusive provider" as defined
 103 in s. 627.6472, but not a facility licensed under chapter 395.

104 (f) "Insured" means a person who is covered under an
 105 individual or group health insurance policy delivered or issued
 106 for delivery in this state by an insurer authorized to transact
 107 business in the state.

108 (2) An insurer is solely liable for payment of fees to a
 109 nonparticipating provider of emergency services provided to an
 110 insured in accordance with the terms of the health insurance
 111 policy. Such insured is not liable for payment of fees to a
 112 nonparticipating provider of emergency services other than
 113 applicable copayments and deductibles. An insurer must provide
 114 coverage for emergency services that:

115 (a) May not require prior authorization.

116 (b) Must be provided regardless of whether the service is
 117 furnished by a participating or nonparticipating provider.

118 (c) May impose a coinsurance amount, copayment, or
 119 limitation of benefits requirement for a nonparticipating

588-02881-16 20161442c1

120 provider only if the same requirement applies to a participating
 121 provider.

122 (3) An insurer is solely liable for payment of fees to a
 123 nonparticipating provider of nonemergency services provided to
 124 an insured in accordance with the terms of the health insurance
 125 policy. Such insured is not liable for payment of fees to a
 126 nonparticipating provider, other than applicable copayments and
 127 deductibles, for nonemergency services:

128 (a) That are provided in a facility that has a contract for
 129 the nonemergency services with the insurer which the facility
 130 would be otherwise obligated to provide under contract with the
 131 insurer; and

132 (b) Where the insured has no ability and opportunity to
 133 choose a participating provider at the facility.

134

135 If the insured makes an informed affirmative decision to choose
 136 a nonparticipating provider instead of a participating provider
 137 who is available at the facility to treat the insured, the
 138 provisions of this subsection do not apply.

139 (4) An insurer must reimburse a nonparticipating provider
 140 for services under subsections (2) and (3) as specified in s.
 141 641.513(5) within the applicable timeframe provided by s.
 142 627.6131.

143 (5) A nonparticipating provider of emergency services as
 144 provided in subsection (2) or nonemergency services as provided
 145 in subsection (3) may not be reimbursed an amount greater than
 146 the amount provided in subsection (4) and may not collect or
 147 attempt to collect from the patient, directly or indirectly, any
 148 excess amount except for copays and deductibles.

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149 (6) A dispute with regard to the amount of reimbursement
 150 owed to the nonparticipating provider of emergency or
 151 nonemergency services as provided in subsection (4) must be
 152 resolved in a court of competent jurisdiction or by the
 153 voluntary dispute resolution process in s. 408.7057.

154 Section 5. Subsection (2) of section 627.6471, Florida
 155 Statutes, is amended, and a new subsection (7) is added to that
 156 section, to read:

157 627.6471 Contracts for reduced rates of payment;
 158 limitations; coinsurance and deductibles.—

159 (2) Any insurer issuing a policy of health insurance in
 160 this state, which insurance includes coverage for the services
 161 of a preferred provider, must provide each policyholder and
 162 certificateholder with a current list of preferred providers and
 163 must make the list available on its website. The list must
 164 include, where applicable and reported, a listing by specialty
 165 of the names, addresses, and telephone numbers of all
 166 participating providers, including facilities; and in the case
 167 of physicians, board certifications, languages spoken, and any
 168 affiliations with participating hospitals. Information posted to
 169 the insurer's website must be updated on at least a calendar-
 170 month basis with additions or terminations of providers from the
 171 insurer's network or reported changes in physician's hospital
 172 affiliations ~~must make the list available for public inspection~~
 173 ~~during regular business hours at the principal office of the~~
 174 ~~insurer within the state.~~

175 (7) Any policy issued after January 1, 2017 under this
 176 section must include the following disclosure: "WARNING: LIMITED
 177 BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED."

588-02881-16

20161442c1

178 You should be aware that when you elect to utilize the services
179 of a nonparticipating provider for a covered nonemergency
180 service, benefit payments to the provider are not based upon the
181 amount the provider charges. The basis of the payment will be
182 determined according to your policy's out-of-network
183 reimbursement benefit. Nonparticipating providers may bill
184 insureds for any difference in the amount. YOU MAY BE REQUIRED
185 TO PAY MORE THAN THE COINSURANCE OR COPAYMENT. Participating
186 providers have agreed to accept discounted payments for services
187 with no additional billing to you other than coinsurance and
188 deductible amounts. You may obtain further information about the
189 providers who have contracted with your insurance plan by
190 consulting your insurer's website or contacting your insurer or
191 agent directly."

192 Section 6. This act shall take effect October 1, 2016.

The Florida Senate
State Senator René García
38th District

‡District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

February 2, 2016

The Honorable Lizbeth Benacquisto
Chairman, Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto:

Please have this letter serve as my formal request to have **SB 1442: Out-of-network Health Insurance Coverage**, be heard in the next possible Banking and Insurance Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 38
RG:AD

CC: James Knudson, Sheri Green

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

1442

Bill Number (if applicable)

Topic Health Policy

Amendment Barcode (if applicable)

Name Paul Handerman

Job Title Consultant

Address 120 South Monroe Street

Phone 561 704 0428

Street

Tallahassee FL 32301

City

State

Zip

Email Paul@nanba consulting.com

Speaking: For Against Information

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

Representing FAIR

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)

2/16/16
Meeting Date

1442
Bill Number (if applicable)

Topic Balance Billing

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
APPEARANCE RECORD

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

2/16/16
Meeting Date

1442
Bill Number (if applicable)

Topic As Act Related to out of network services

Amendment Barcode (if applicable)

Name Wences Trancoso

Job Title Vice President + General Counsel

Address 200 W. College Ave

Phone _____

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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2/16/14
Meeting Date

1442
Bill Number (if applicable)

Topic Out of Network Health Ins. Coverage

Amendment Barcode (if applicable)

Name Sharon James

Job Title Insurance Consumer Advocate

Address 200 E. Gaines Street

Phone (850) 413-2868

Street

Tallahassee

City

FL

State

32301

Zip

Email sharon.james@myfloridato.com

Speaking: For Against Information

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

Representing Office of the Insurance Consumer Advocate

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)

2/16/15
Meeting Date

1442
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Steve Eckenia

Job Title _____

Address P.O. Box 551

Phone 850-681-6788

Street

Tallahassee FL 32302

Email Steve@reuphlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing HCA

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

2-16-2016
1:30
110 SOB

2-16-2016

Meeting Date

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

SB 1442

Bill Number (if applicable)

Topic OUT-OF-NETWORK HEALTH INSURANCE COVERAGE

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA OSTIOPATHIC 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
APPEARANCE RECORD

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

2/16/16

Meeting Date

1442

Bill Number (if applicable)

Topic Balance Billing

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Murdon Way

Phone 850 567 1202

Street

Tallahassee FL 32309

City

State

Zip

Email watson.strategies@comcast.net

Speaking: For Against Information

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

Representing Florida CHAIN

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. 17, 14
Meeting Date

1442
Bill Number (if applicable)

418472
Amendment Barcode (if applicable)

Topic Balance Billing

Name Toni Large

Job Title _____

Address 519 E. Park Ave

Street

Tallahassee, FL 32301

City

State

Zip

Phone (850) 556-1461

Email toni@sulawind.net

Speaking: For Against Information

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

Representing Florida College Emergency Physicians & Florida Orthopedic Society

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/10
Meeting Date

SB 1442
Bill Number (if applicable)

418472
Amendment Barcode (if applicable)

Topic Balance Billing

Name Amy Young

Job Title LOBBYIST

Address 403 E. Park Avenue
Street

Phone 561-310-8137

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing FLORIDA SOCIETY OF PATHOLOGISTS

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)

2/16/16

Meeting Date

SB 1442

Bill Number (if applicable)

418472

Amendment Barcode (if applicable)

Topic _____

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850 224-6496

Email j.scott@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.

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THE FLORIDA SENATE
APPEARANCE RECORD

2-16-2016
11:30
110503

2-16-2016

Meeting Date

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

SB 1442

Bill Number (if applicable)

418472 (DETERT)

Amendment Barcode (if applicable)

Topic OUT-OF-NETWORK HEALTH INSURANCE COVERAGE

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Street

Phone 878-7364

TALLAHASSEE

FL

32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

1442

Bill Number (if applicable)

418472

Amendment Barcode (if applicable)

Topic _____

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave

Street

Jacksonville, FL 32204

City

State

Zip

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: For Against Information

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

Representing Florida Chapter, American College of Surgeons

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)

2/16/16

Meeting Date

1492

Bill Number (if applicable)

561776

Amendment Barcode (if applicable)

Topic AN Act Related to Act of Network Services

Name WENCES TRANCOSO

Job Title Vice President + General Counsel

Address 200 W. College Ave

Phone

Street

Jallahessiee FL 32301

Email

City

State

Zip

Speaking: [] For [x] Against [] Information

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

Representing Florida Association of Health Plans

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting Date

SB 1442
Bill Number (if applicable)
561776
Amendment Barcode (if applicable)

Topic _____

Name Paul Sanford

Job Title _____

Address 106 S. Monroe St
Street
Tallahassee, FL 32301
City State Zip

Phone 222-7200

Email _____

Speaking: For Against Information

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

Representing Florida Blue FK

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)

2/16/16
Meeting Date

1696
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee, FL 32303
City State Zip

Email alicevickers@flacp.org

Speaking: For Against Information

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

Representing Florida Alliance for Consumer Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

FLORES

1656

Bill Number (if applicable)

DE

Amendment Barcode (if applicable)

Meeting Date _____

Topic SB 196 - CONSUMER FINANCE

Name JAMES GUTIERREZ

Job Title CEO, INSIKT

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 INSIKT

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)

2-16-201

Meeting Date

Garcia

SB 1442

Bill Number (if applicable)

Topic Out of Network Health Insurance

966946

Amendment Barcode (if applicable)

Name Joy Ryan

by Negrón

Job Title

Address 325 W. College Ave

Street

Phone 425-4000

Tallahassee, FL 32301

City

State

Zip

Email joy@meenarlawfirm.com

Speaking: For Against Information

Amendment

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

Representing America's Health Insurance Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1696

INTRODUCER: Senator Flores

SUBJECT: Consumer Finance Loans

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 1696 establishes the Increased Access to Responsible Small Dollar Loans Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans between \$300 and \$3,000, at a maximum interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of 7 percent of the principal amount of the program loan exclusive of the origination fee or \$90, whichever is less. For a refinance program loan, a program licensee may also charge the borrower an origination fee of 6 percent exclusive of the origination fee or \$75, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a minimum term of 90 days and may not have a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 50 percent of the borrower's gross monthly income.
- The Office of Financial Regulation (OFR) is required to examine licensees at least once every 24 months.
- A program licensee may use a referral partner to perform marketing, servicing, and other services on behalf of the program licensee. The compensation for a referral partner is capped at \$60 per program loan, on average, assessed annually, and \$2 for each payment received by the referral partner on behalf of the program licensee.

- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., and must submit an application and fee as prescribed by rule. A pilot program applicant must be in good standing with the OFR and must not be the subject of an outstanding enforcement action or have a deficiency at the time of the person's application.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans 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. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal from \$3,001 to \$4,000; and
- 18 percent per year on that part of principal from \$4,001 to \$25,000.

II. Present Situation:

Federal Regulation of Consumer Lending

Consumer Financial Protection Bureau

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (Dodd-Frank) was signed into law. Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System, and reassigned most general rulemaking authority of the Truth in Lending Act (TILA) to the CFPB. Dodd-Frank assigned the CFPB broad authority to examine and enforce consumer protection regulations over all mortgage-related businesses, large non-bank financial companies, and banks and credit unions with assets greater than \$10 billion. Dodd-Frank also consolidated and transferred most federal consumer financial protection authority under the CFPB's jurisdiction. Dodd-Frank also granted enforcement and rulemaking authority to the CFPB to protect consumers from unfair, deceptive, or abusive acts or practices under federal law in connection with consumer financial products or services.² The CFPB is also authorized to write rules to ensure consumers receive full, accurate, and effective disclosures relating to consumer financial products and services.³

Currently, the CFPB is considering the framework for proposed rules on short-term and long-term consumer credit products, focusing on stricter underwriting requirements (including borrowers' ability to repay), limitation on rollovers, limits on the number of loans within a 12-month period, an "off-ramp" for the repayment of debt, and restricting lenders' access to a borrower's checking account. The CFPB's proposals would establish minimum consumer

¹ Pub. L. No. 111-203, H.R. 4173.

² 12 U.S.C. s. 5531.

³ 12 U.S.C. s. 5532.

protections for “covered loans,” which could include payday loans, deposit advance products, vehicle title loans, high-cost installment loans, open-end lines of credit, and other loans.⁴

Truth in Lending Act and Regulation Z

The purpose of TILA and Regulation (Reg) Z is to promote the informed use of credit through “a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available.”⁵ As mentioned above, TILA and Reg Z requires the calculation and disclosure of Annual Percentage Rate (APR) for all consumer loans.⁶ The TILA does not include premiums for credit life, accident, or health insurance when calculating the loan’s finance charge, if the insurance products are voluntary, the lender tells the borrower in writing that these products are voluntary, and the borrower consents in writing.⁷

Federal Deposit Insurance Corporation’s Small-Dollar Loan Pilot Program

The Federal Deposit Insurance Corporation’s (FDIC) instituted a 2-year Small-Dollar Loan Pilot Program that concluded in the fourth quarter of 2009.⁸ The pilot was a case study designed to illustrate how banks can profitably offer affordable small-dollar loans as an alternative to high-cost credit products such as payday loans and fee-based overdraft programs. The pilot began with 31 banks and concluded with 28 banks participating across 27 states.

The following are some of the primary features of the program:

- Loan amounts of up to \$2,500;
- Payment periods that extend beyond a single paycheck cycle;
- Loans for 90 days or more;
- APRs below 36 percent;
- Low or no origination fees;
- No prepayment penalties;
- Streamlined underwriting;
- Prompt loan application processing;
- Automatic savings component; and
- Access to financial education

Underwriting processes varied somewhat among pilot banks and were streamlined compared with other loans, but bankers reported that some basic elements were important in minimizing defaults. Notably, most pilot banks required a credit report to help determine loan amounts and repayment ability and to check for fraud or recent bankruptcy. Few banks used credit scoring in the underwriting process, but those that did had low minimum thresholds, such as a Fair Isaac Corporation (FICO) score in the low to mid-500s. In addition to the credit report, all pilot banks required proof of identity, address, and income.

⁴ CONSUMER FINANCIAL PROTECTION BUREAU, *CFPB Considers Proposal to End Payday Debt Traps*, <http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-end-payday-debt-traps/> (last visited Feb. 13, 2016).

⁵ 15 U.S.C. s. 1601(a).

⁶ 15 U.S.C. ss. 1604-1606.

⁷ 15 U.S.C. s. 1605(b).

⁸ See <https://www.fdic.gov/small-dollar-loans/> (last visited Feb. 13, 2016).

Pilot bankers indicated that a longer loan term was critical to loan performance because it gave consumers more time to recover from a financial emergency than a single pay cycle for payday loans, or the immediate repayment often required for fee-based overdrafts. Pilot bankers and other banks that have started or have expressed interest in starting a small-dollar loan program indicated that the primary obstacles to entry are the cost of launching and maintaining the program and concerns about defaults. Given the small size of small dollar loans (\$1,000 or less) and to a lesser extent nearly small dollar loans (between \$1,000 and \$2,500), the interest and fees generated are not always sufficient to achieve robust short-term profitability. It was noted that most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products.

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.⁹ The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. Due to a low lender participation rate, it was replaced by a 2013 pilot program,¹⁰ which will remain in effect until January 1, 2018, unless extended by its state legislature and governor. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.¹¹ The pilot program covers consumer loans of \$300-\$2,499.

The revised California pilot program also allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at \$65 per loan plus \$2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.¹²

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans (\$300-\$499) decreased by 42.3 percent, while larger loans (\$500-\$999) increased by 106 percent.

⁹ See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited Feb. 13, 2016).

¹⁰ See <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=37417715620+20+0+0&WAIAction=retrieve> (last visited Feb. 13, 2016).

¹¹ See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited Feb. 13, 2016).

¹² *Id.*

- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans (\$1,500-\$2,499) saw a more even APR distribution.
- *Delinquency rates:* In 2014, 22.5 percent were delinquent for 7 days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores:* The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the 4-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.
- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than 10. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.¹³

Florida Regulation of Consumer Loans

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensing and regulation of nondepository financial service entities and individuals, and conducts examinations and investigations of licensed entities to determine compliance with Florida law. One of these regulatory programs is the Florida Consumer Finance Act¹⁴ (act), which sets forth licensing requirements for consumer finance lenders¹⁵ and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets forth maximum interest rates for consumer finance loans, which are “loans 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.”¹⁶

Consumer finance loans may be secured or unsecured. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. Consumer finance lenders licensed with the OFR may charge the following interest rates:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal from \$3,001 to \$4,000; and
- 18 percent per year on that part of principal from \$4,001 to \$25,000.¹⁷

¹³ California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited Feb. 13, 2016).

¹⁴ Chapter 516, F.S.

¹⁵ The act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies. [s. 516.02(4), F.S.]

¹⁶ Section 516.01(2), F.S.

¹⁷ The TILA is codified at 15 U.S.C. s. 1601 et seq.; Reg Z is at 12 C.F.R. pt. 226.

These principal amounts are the same as the financed amounts determined by the Federal Truth-in-Lending Act (TILA), and Regulation Z (Reg Z) of the Board of Governors of the Federal Reserve System.¹⁸ The maximum interest rates and finance charges under the act are computed on a simple-interest basis, and not a compounding or other basis. The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by TILA and Reg Z.¹⁹

Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:²⁰

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to \$20.

Credit insurance products for consumer finance loans must be optional (and not made a condition of the loan), and must comply with the applicable Insurance Code provisions.²¹ In particular, credit insurance insures the debtor for loss of life, involuntary unemployment, illness, or damage or loss to any collateral property.²² As described earlier, TILA and Reg Z do not include credit insurance premiums in the finance charge.

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. As of December 2014, there are 150 licensed consumer finance lenders operating in 331 locations in Florida.²³

The OFR also has regulatory authority over other small consumer loans authorized under ch. 520 (retail installment sellers), ch. 537 (title loans), and part IV of ch. 560 (deferred presentment or payday loans), F.S.:

- *Title lenders* provide loans secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest

¹⁸ Section 516.031(1), F.S.

¹⁹ Section 516.031(2), F.S.

²⁰ Section 516.031(3), F.S.

²¹ Section 516.35, F.S.; and part IX, ch. 627, F.S. The Office of Insurance Regulation regulates insurers. [s. 20.121(3)(a), F.S.]

²² ss. 627.682 and 627.6785, F.S.

²³ Office of Financial Regulation, *Fast Facts* (2015), <http://flofr.com/StaticPages/documents/FastFacts2015.pdf>.

rates according to principal amount, similar to the Act. The maturity date of a title loan is 30 days after the agreement date, but the loan can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.²⁴ One major difference between consumer finance loans and title loans is that title lenders are prohibited from selling or charging for any type of insurance in connection with a title loan.²⁵

- *Retail installment lenders* under ch. 520, F.S., authorizes retail installment businesses, motor vehicle sellers, and home improvement businesses to finance personal, family, or household goods or services sold by an installment contract or a revolving charge account to retail buyers.²⁶ Finance charges under ch. 520, F.S., are expressed in dollar amounts (e.g., \$12 per \$100 per year for retail installment contracts).²⁷
- *Deferred presentment or payday lenders* under part IV of ch. 560, F.S., offer currency or a payment instrument (e.g., electronic funds transfer, check, or money order) in exchange for a person's paycheck up to \$500 and agree to hold it for a specified period. Repayment terms range from 7 to 31 days, and the maximum allowable fee is 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5.00 per transaction. Borrowers may have only one active payday loan at a time, but are allowed to secure a new loan 24 hours after paying off the original loan.²⁸

Current law does not require any underwriting or determination of the borrower's ability to repay for any of these loans. Additionally, retail installment loans and consumer finance loans are excluded from the 18 percent per year simple interest cap set forth in the usury statute.²⁹ There is no minimum or maximum loan term. However, every loan made pursuant to ch. 516, F.S., except for lines of credit, is to be repaid in monthly installment as nearly equal as mathematically practicable.

III. Effect of Proposed Changes:

Increased Access to Responsible Small Dollar Loans Pilot Program (Sections 1 and 5)

The bill establishes a pilot program entitled Increased Access to Responsible Small Dollar Loans Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least \$300 and up to a maximum of \$3,000, at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

The bill provides that the new sections 516.40-516.47, F.S., do not exempt a licensee from a licensee from any other provision of the act.

²⁴ Section 537.011(3), F.S.

²⁵ Section 537.013(1)(h), F.S.

²⁶ Parts I, II, and IV, ch. 520, F.S.

²⁷ Section 520.34(6)(a), F.S.

²⁸ Section 560.404(6) and (8), F.S.; Rule 69V-560.801, F.A.C.

²⁹ Section 687.02, F.S.

Definitions (Section 2)

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program or program
- Pilot program license
- Program licensee
- Program loan
- Referral partner
- Refinance program loan

Regulation of Program Licensees (Lenders) and Referral Partners***Program Licensees (Section 6)***

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S., be in good standing with the OFR, and not be the subject of an outstanding enforcement action, or have a deficiency at the time of the person's application. The legislation provides for the establishment of application forms and application fees by rule. Rules adopted by the Financial Services Commission would prescribe the amount of the application fee.

Although s. 516.05, F.S., currently requires a license for each location of a consumer finance company, the bill would allow a program licensee to obtain a license that covers more than one physical business location, if the person only offers program loans to prospective borrowers via an electronic access point through which the licensee's website may be accessed. (Section 3)

The bill requires applicants to be a "data furnisher" with a consumer-reporting agency³⁰ at the time of application, meaning a creditor that furnishes information to a consumer-reporting agency. However, the bill allows the OFR to issue a program license if the OFR has a "reasonable expectation" that the applicant will qualify as a data furnisher (and meet the required lending volume to become a data furnisher) within 6 months after receiving a license. The bill also provides that the OFR must "withdraw" approval for pilot program participation from a program licensee if the applicant fails to become a data furnisher by a consumer-reporting agency within 6 months of commencing lending under the pilot program.

Referral Partners

The bill allows a program licensee to engage in arrangements with referral partners. All such arrangements must be in writing; must contain a provision that the referral partner agrees to

³⁰ The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

comply with s. 516.45, F.S., and must contain a provision allowing the OFR access to the referral partner's books and records related to the referral partner's operations under the agreement with the program licensee.

A referral partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database, assemble credit applications, contact the program licensee to determine the status of the borrower's application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system, obtain a borrower's signature on documents prepared by the program licensee, and deliver final copies of the documents to the borrower; and
- Disburse program loan proceeds to a borrower, and receive program loan payments from a borrower.

Any program payments received by a referral partner must be applied to the program loan and be deemed received by the program licensee at the time the referral partner receives the payment. When payment is made, a referral partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if a referral partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. A referral partner must maintain records related to disbursements and payments for 2 years, or for 1 month following a regular examination by the OFR, whichever is later.

Referral partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and referral partner. The bill requires a referral partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where a referral partner is not permitted to answer questions about the loan program. A program licensee must ensure that consummation of the program loan does not occur until after two-way communication between the applicant and program licensee. The legislation provides a definition for the term "two-way communication."

The bill allows a program licensee to compensate a referral partner. Compensation paid to a referral partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must meet the following requirements:

- Compensation may not be paid to a referral partner until the program loan is consummated.
- Compensation may not be paid to a referral partner based upon the principal amount of the program loan.
- The total compensation paid to a referral partner over the life of a program loan may not exceed the sum of the origination fee and interest charges paid by the borrower in connection with that program loan.

- Subject to certain limitations, the total compensation paid by a program licensee to a referral partner may not exceed the sum of \$60 per program loan, on average; and \$2 per payment received by the referral partner on behalf of the program licensee for the duration of the loan.

The bill prohibits a referral partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee; and
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower.

Terms and Conditions of the Small Dollar Loans (Section 5)

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

- A program loan must be unsecured.
- A program loan must have a minimum term of 90 days, except it may not have a prepayment penalty.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.
- A program loan may not exceed an interest rate of 36 percent, which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day.
- A program licensee must provide a receipt for payments made.

When refinancing a program loan, the principal amount may not include more than 60 days' unpaid interest accrued on the previous program loan. Additionally, a program licensee is prohibited from refinancing a program loan unless the borrower is current on the outstanding program loan at the time the borrower submits an application to refinance.

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income.

Fees. The bill allows a program licensee to contract for and receive an origination fee, which may not exceed:

- 7 percent of the principal amount, exclusive of the origination fee, or \$90, whichever is less, on the first program loan; or
- 6 percent of the principal amount, exclusive of the origination fee, or \$75, whichever is less, on subsequent program loans made to a borrower.

However, the bill prohibits a program licensee from charging the same borrower an origination fee in connection with a refinance program loan until 8 months have elapsed since receipt of the previous origination fee paid by the borrower. Currently, ch. 516, F.S., does not authorize origination fees.

The bill caps the fee for insufficient funds at \$25, and any delinquency charge is capped at \$15 for each payment in default for at least 10 days. Only one delinquency fee may be imposed per delinquent payment, and no more than two delinquency fees may be imposed during a period of 30 consecutive days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Consumer Disclosures. The bill requires a program licensee must provide the following written disclosures to a borrower:

- The amount, date, and maturity date of the program loan.
- The name and address of the borrower and of the program licensee.
- The interest rate charged.
- The monthly installment payment amount.
- The delinquency charge amount.
- A specified statement relating to a borrower's ability to reduce the interest amount by repaying the loan early.
- A statement describing the borrower's right of rescission.

The bill allows a program licensee to provide the disclosures in a mobile or other electronic application if the program licensee complies with certain parameters.

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or invite the borrower to attend a free credit education program or free seminar offered by an independent third party.

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 7)

The legislation requires the OFR to examine program licensees at least once every 24 months. Costs of examination are borne by the program licensee.

Reporting Requirements (Sections 4, 5, 7, and 9)

Program Licensee. The bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history. (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with a referral partner. Such information includes the referral partner's identifying information, and a provision that allows the OFR to request any other information. A program licensee is required to file, on or before March 15 of each year, a report with the OFR in a manner prescribed by rule.

OFR Program Report. The bill directs the OFR to post a report on its website by January 1, 2018, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of entities that applied and were accepted for program participation.
- The reasons for program rejection.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.
- The number and type of referral partners used by program licensees.
- The number and percentage of borrowers who obtained one or more program loans where delinquency charges were assessed.
- The total amount of delinquency charges assessed.
- The average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.
- The number and types of documented violations of ss. 516.40-516.47, F.S., by referral partners and program licensees.
- The number of times the OFR disqualified a referral partner from performing services, barred a referral partner from performing services at a specific location, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.
- The number and nature of complaints received about a program licensee or referral partner.
- Recommendations for improving the program, and whether the program should be reenacted after January 1, 2022.
- The findings of a random sample survey regarding a borrower's experience and program licensees' compliance with ss. 516.40-516.47, F.S.

If readily available, the following information must be included in the report:

- Comparable delinquency data for unsecured loans made by licensed persons under ss. 516.001-516.36, F.S., and part IV of ch. 560, F.S., for principal loan amounts between \$300 and \$3,000.
- Comparable delinquency data for unsecured extensions of credit made by state-chartered banks and credit unions under the OFR's jurisdiction in principal loan amounts between \$300 and \$3,000.

Section 9 provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2022, unless reenacted or superseded by another enacted law before that date.

Section 10 provides the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Persons that want to participate in the Increased Access to Responsible Small Dollar Loans Pilot Program (program) would be required to obtain a consumer finance license

as well as a program license. The fee for a program licensee would be prescribed by commission rule.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, referral partners, and borrowers who would participate in this pilot program is unknown at this time.

C. Government Sector Impact:

The OFR resources will be required to process applications; process complaints; examine records of program licensees and referral partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. The state of California currently has eight program licensees. Assuming a comparable number of businesses apply to become a program licensee, the Division of Consumer Finance believes it can absorb the workload associated with the above-mentioned tasks.

However, implementation of the bill will require updates to the OFR's licensing and examination software as well as information technology support and increased data storage to integrate applications by program licensees. The bill would likely require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost the agency approximately \$116,650.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OFR provided the following comments and concerns regarding the implementation of the bill:³²

The bill would require the OFR through the Financial Services Commission to amend existing rules. The OFR recommends an effective date of no earlier than January 1, 2017, (instead of July 1, 2016) to allow sufficient time for rulemaking.

Upon enactment, the legislation would allow the OFR to withdraw approval for a licensee's participation in the program if the program licensee fails to meet a certain requirement. Such language conflicts with the provisions in s. 120.60, F.S., which mandates that an agency must provide notice and an opportunity to request a hearing when an agency attempts to withdraw a license. Additionally, the language of the bill is silent as to what happens to loans held by program licensees once withdrawal has taken place.

³¹ Office of Financial Regulation, 2016 Agency Legislative Bill Analysis (Jan. 28, 2016)(on file with Senate Committee on Banking and Insurance).

³² Id.

The legislation directs a program licensee and referral partner to comply with the enacted provisions. However, the provisions do not provide the OFR a mechanism to enforce violations.

The legislation allows the OFR to examine the records of referral partners but makes no mention as to whether such records become public record once examined by the OFR. Pursuant to ch. 119, F.S., records held by an agency are public records, unless expressly exempted.

It is unclear how ss. 516.01-516.36, F.S., interact with the language of this bill. For example, s. 516.07, F.S., provides the OFR with the necessary authority to take certain administrative actions such as assessing administrative fines, revoking a license, or denying a license application of a consumer finance company. However, the bill does not clearly explain the OFR's authority to take similar actions against a program licensee.

Section 516.45(6), F.S., in the bill prohibits the OFR from barring a referral partner's location. This appears to conflict with s. 516.47(1), F.S., in the bill which directs the OFR to report the barring of a referral partner's location.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.40, 516.41, 516.42, 516.43, 516.44, 516.45, 516.46, and 516.47.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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. Section 516.40, Florida Statutes, is created to
read:

516.40 Access to Responsible Credit Pilot Program.—

(1) There is created within the Office of Financial
Regulation the Access to Responsible Credit Pilot Program.

(2) The Legislature finds that demand for responsible



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11 consumer finance loans in principal amounts of at least \$300 and
12 no more than \$3,000 exceeds the supply of these loans. As a
13 first step toward addressing this gap, the Access to Responsible
14 Credit Pilot Program would allow more Floridians to obtain
15 responsible consumer finance loans of at least \$300 and no more
16 than \$3,000. The pilot program is also intended to assist
17 consumers in building their credit and has additional consumer
18 protections for these loans which exceed current protections
19 under general law.

20 Section 2. Section 516.41, Florida Statutes, is created to
21 read:

22 516.41 Definitions.—As used in ss. 516.40-516.46, the term:

23 (1) "Consumer reporting agency" has the same meaning as in
24 s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s.
25 1681a(p).

26 (2) "Credit score" has the same meaning as in s.
27 609(f) (2) (A) of the Fair Credit Reporting Act, 15 U.S.C. s.
28 1681g(f) (2) (A).

29 (3) "Data furnisher" has the same meaning as the term
30 "furnisher" in 12 C.F.R. s. 1022.41(c).

31 (4) "Pilot program" or "program" means the Access to
32 Responsible Credit Pilot Program.

33 (5) "Pilot program license" means a permit issued under ss.
34 516.40-516.46 authorizing a program licensee to make and collect
35 pilot program loans.

36 (6) "Program branch office license" means a location, other
37 than a program licensee's or referral partner's principal place
38 of business:

39 (a) The address of which appears on business cards,



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40 stationery, or advertising used by the program licensee in
41 connection with business conducted under this chapter;

42 (b) At which the program licensee's name, advertising or
43 promotional materials, or signage suggests that program loans
44 are originated, negotiated, funded, or serviced; or

45 (c) At which program loans are originated, negotiated,
46 funded, or serviced by a program licensee.

47 (7) "Program licensee" means a person who is licensed to
48 make and collect program loans under this chapter and who is
49 approved by the office to participate in the program.

50 (8) "Program loan" means a consumer finance loan with a
51 principal amount of at least \$300 and no more than \$3,000.

52 (9) "Referral partner" means an entity that, at the
53 referral partner's physical location for business, performs one
54 or more of the permitted services in s. 516.44(2) on behalf of a
55 program licensee. A referral partner is not a credit service
56 organization as defined in s. 817.7001 or a loan broker as
57 defined in s. 687.14.

58 (10) "Refinance program loan" means a program loan that
59 extends additional principal to a borrower and replaces and
60 revises an existing program loan contract with the borrower. A
61 refinance program loan does not include an extension, a
62 deferral, or a rewrite of the program loan.

63 Section 3. Section 516.42, Florida Statutes, is created to
64 read:

65 516.42 Approval required; program application requirements;
66 fees.—

67 (1) A program licensee may not offer or make a program
68 loan, or impose any charges or fees pursuant to s. 516.43,



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69 without prior approval from the office to participate in the
70 program.

71 (2) (a) In order to participate in the program, a person
72 must:

73 1. Be licensed to make consumer finance loans under s.
74 516.05.

75 2. Not be the subject of any insolvency proceedings.

76 3. Not be subject to the issuance of a cease and desist
77 order; the issuance of a removal order; the denial, suspension,
78 or revocation of a license; or any other action within the
79 authority of the office or any financial regulatory agency in
80 this state; or must not have a deficiency at the time of the
81 person's application.

82 4. Pay a nonrefundable application fee of \$1,000 to the
83 office at the time of making the application pursuant to rule of
84 the commission.

85 (b) The applicant must file with the office a digital
86 application in a form and manner prescribed by rule of the
87 commission which contains all of the following information with
88 respect to the program applicant:

89 1. The legal business name and any other name the applicant
90 operates under other than the legal business name.

91 2. The applicant's main address.

92 3. The telephone number and e-mail address.

93 4. The address of each program branch office.

94 5. The contact person's name, title, address, telephone
95 number, and e-mail address.

96 6. The license number, if licensed under this chapter.

97 7. A statement as to whether the applicant intends to use



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98 the services of one or more referral partners under s. 516.44.

99 8. A statement that the applicant has been accepted as a
100 data furnisher by a consumer reporting agency and will report to
101 a consumer reporting agency the payment performance of each
102 borrower on all loans made under this program.

103 9. The signature and certification of an authorized person
104 of the applicant.

105 (3) A program licensee who desires to participate in the
106 program but who is not licensed to make consumer finance loans
107 pursuant to s. 516.05 must submit concurrently the following two
108 digital applications to the office, in a form and manner
109 specified in this chapter:

110 (a) An application and a fee pursuant to s. 516.03 for
111 licensure to make consumer finance loans; and

112 (b) An application and a fee for admission to the program
113 in accordance with subsection (2).

114 (4) Except as otherwise provided in ss. 516.40-516.46, a
115 program licensee is subject to all the laws and rules governing
116 consumer finance loans under this chapter.

117 (5) All program licensees shall be assessed a nonrefundable
118 biennial renewal fee of \$1,000 pursuant to rule of the
119 commission.

120 (6) Notwithstanding s. 516.05(3), only one pilot program
121 license is required for a person to make program loans under ss.
122 516.40-516.46, regardless of whether the program licensee offers
123 program loans to prospective borrowers at its own physical
124 business locations, through referral partners, or via an
125 electronic access point through which a prospective borrower may
126 directly access the website of the program licensee.



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127 (7) Each branch office of a program licensee must be
128 licensed under this section.

129 (8) The office shall issue a program branch office license
130 to a program licensee after the office determines that the
131 program licensee has submitted a completed electronic
132 application for a program branch office license in a form
133 prescribed by rule of the commission and payment of an initial
134 nonrefundable program branch office license fee of \$30 per
135 branch office as prescribed by rule of the commission.
136 Application fees may not be prorated for partial years of
137 licensure. The program branch office license shall be issued in
138 the name of the program licensee that maintains the branch
139 office. An application is considered received for purposes of s.
140 120.60 upon receipt of a completed application form and the
141 required fees. The application for a program branch office
142 license must contain the following information:

143 (a) The legal business name and any other name the
144 applicant operates under other than the legal business name.

145 (b) The applicant's main address.

146 (c) The telephone number and e-mail address.

147 (d) The address of each program branch office.

148 (e) The contact person's name, title, address, telephone
149 number and e-mail address.

150 (f) The license number, if licensed under this chapter.

151 (g) The signature and certification of an authorized person
152 of the applicant.

153 (9) A program branch office license must be renewed
154 biennially at the time of renewing the program license under
155 subsection (5). A nonrefundable branch renewal fee of \$30 per



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156 program branch office, by rule of the commission, must be
157 submitted at the time of renewal.

158 Section 4. Section 516.43, Florida Statutes, is created to
159 read:

160 516.43 Requirements for program loans.-

161 (1) GENERAL REQUIREMENTS.-A program licensee must comply
162 with each of the following requirements in making program loans:

163 (a) A program loan must be unsecured.

164 (b) A program loan must have a minimum term of 120 days,
165 except it may not have a prepayment penalty.

166 (c) A program loan must be repayable by the borrower in
167 substantially equal weekly, biweekly, semimonthly, or monthly
168 installments.

169 (d) A program loan must include a borrower's right to
170 rescind the program loan by notifying the program licensee of
171 the borrower's intent to rescind the program loan and return the
172 principal advanced by the end of the business day after the day
173 the program loan is consummated.

174 (e) Notwithstanding s. 516.031, the interest rate charged
175 on a program loan to the borrower may not exceed 34 percent. The
176 interest rate must be fixed for the life of the program loan and
177 must accrue on a simple-interest basis through the application
178 of a daily periodic rate to the actual unpaid principal balance
179 each day.

180 (f) The program licensee shall reduce the rate on each
181 subsequent program loan to the same borrower by a minimum of
182 one-twelfth of 1 percent per month, if all of the following
183 conditions are met:

184 1. The subsequent program loan is originated no more than



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185 180 days after the prior program loan is fully repaid.
186 2. The borrower was never more than 15 days delinquent on
187 the prior program loan.
188 3. The prior program loan was outstanding for at least one-
189 half of its original term prior to its repayment.
190 (g) A program licensee may not refinance a program loan
191 unless all of the following conditions are met at the time the
192 borrower submits an application to refinance:
193 1. The principal amount payable may not include more than
194 60 days' unpaid interest accrued on the previous program loan in
195 accordance with s. 516.031(5);
196 2. The borrower has repaid at least 60 percent of the
197 outstanding principal remaining on his or her existing program
198 loan;
199 3. The borrower is current on his or her outstanding
200 program loan;
201 4. The program licensee must underwrite the new program
202 loan in accordance with subsection (7); and
203 5. The borrower has not previously refinanced the
204 outstanding program loan.
205 (h) In lieu of the provisions of s. 687.08, a program
206 licensee or its approved referral partner, if applicable, must
207 make available to the borrower by electronic or physical means,
208 at the time that a payment is made by the borrower, a plain and
209 complete receipt of payment. For audit purposes, a program
210 licensee must maintain an electronic record for each receipt
211 made available to a borrower, which must include a copy of the
212 receipt and the date and time that the receipt was generated.
213 Each receipt of payment must show all of the following:



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- 214 1. The name of the borrower.
- 215 2. The name of the referral partner, if applicable.
- 216 3. The total payment amount received.
- 217 4. The date of payment.
- 218 5. The program loan balance before and after application of
219 the payment.
- 220 6. The amount of the payment that was applied to the
221 principal, interest, and fees.
- 222 7. The type of payment made by the borrower.
- 223 8. The following statement, prominently displayed in a type
224 size equal to or greater than the type size used to display the
225 other items on the receipt: "If you have any questions about
226 your loan now or in the future, you should direct those
227 questions to ...(name of program licensee)... by ...(at least
228 two different ways in which a borrower may contact the program
229 licensee)...."
- 230 (2) WRITTEN DISCLOSURES.—
- 231 (a) Notwithstanding s. 516.15(1), the loan contract and all
232 written disclosures and statements may be provided in English or
233 another language in which the loan is negotiated.
- 234 (b) A program licensee must provide those disclosures
235 required by all licensees in s. 516.15.
- 236 (3) ORIGINATION FEES.—
- 237 (a) Notwithstanding s. 516.031, a program licensee may
238 contract for and receive a nonrefundable origination fee from a
239 borrower on a program loan. The program licensee may either
240 deduct the origination fee from the principal amount of the loan
241 disbursed to the borrower or capitalize the origination fee into
242 the principal balance of the loan. The origination fee is fully



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243 earned immediately and nonrefundable upon making the program
244 loan in an amount not to exceed 6 percent of the principal
245 amount exclusive of the origination fee or \$75, whichever is
246 less, on a program loan made to that borrower.

247 (b) A program licensee may not charge the same borrower an
248 origination fee more than twice in any 12-month period.

249 (4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—
250 Notwithstanding s. 516.031, a program licensee approved by the
251 office to participate in the program may:

252 (a) Require payment from a borrower of no more than \$25 for
253 fees incurred by the program licensee from a dishonored payment
254 due to insufficient funds of the borrower.

255 (b) Notwithstanding s. 516.031(3)(a)9., contract for and
256 receive a delinquency charge of no more than \$14 for each
257 payment in default for at least 7 days if the charge is agreed
258 upon in writing between the parties before imposing the charge.
259 A delinquency fee imposed by a program licensee is subject to
260 all of the following:

261 1. No more than one delinquency fee may be imposed per
262 delinquent payment.

263 2. No more than two delinquency fees may be imposed during
264 a period of 30 consecutive days.

265 3. The program licensee or any wholly owned subsidiary of
266 the program licensee may not sell or assign an unpaid debt to an
267 independent third party for collection purposes unless the debt
268 has been delinquent for at least 30 days.

269 (5) CREDIT EDUCATION.—Before disbursement of program loan
270 proceeds to the borrower, the program licensee must:

271 (a) Direct the borrower to the consumer credit counseling



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272 services offered by an independent third party; or

273 (b) Provide a credit education program or materials to the
274 borrower. The borrower may not be required to participate in any
275 of these education programs or seminars. A credit education
276 program or seminar offered pursuant to this subsection must be
277 provided at no cost to the borrower.

278 (6) CREDIT REPORTING.—

279 (a) The program licensee must report each borrower's
280 payment performance to at least one consumer reporting agency
281 that compiles and maintains files on consumers on a nationwide
282 basis. As used in this section, the term "consumer reporting
283 agency that compiles and maintains files on consumers on a
284 nationwide basis" has the same meaning as in s. 603(p) of the
285 Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

286 (b) The office may not approve a licensee for the program
287 before the licensee has been accepted as a data furnisher by a
288 consumer reporting agency.

289 (c) The program licensee must provide each borrower with
290 the name or names of the consumer reporting agency or agencies
291 to which it will report the borrower's payment history.

292 (7) PROGRAM LOAN UNDERWRITING.—

293 (a) The program licensee shall underwrite each program loan
294 to determine a borrower's ability and willingness to repay the
295 program loan pursuant to the program loan terms. The program
296 licensee may not make a program loan if it determines that the
297 borrower's total monthly debt service payments at the time of
298 origination, including the program loan for which the borrower
299 is being considered and all outstanding forms of credit that can
300 be independently verified by the program licensee, exceed 50



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301 percent of the borrower's gross monthly income.

302 (b)1. The program licensee shall seek information and
303 documentation pertaining to all of a borrower's outstanding debt
304 obligations during the loan application and underwriting
305 process, including loans that are self-reported by the borrower
306 but not available through independent verification. The program
307 licensee shall verify that information using a credit report
308 from at least one consumer reporting agency that compiles and
309 maintains files on consumers on a nationwide basis or through
310 other available electronic debt verification services that
311 provide reliable evidence of a borrower's outstanding debt
312 obligations.

313 2. The program licensee is not required to consider a
314 borrower's loans from friends or family for purposes of
315 determining the borrower's debt-to-income ratio.

316 (c) The program licensee shall also verify the borrower's
317 income to determine the debt-to-income ratio using information
318 from:

319 1. Electronic means or services that provide reliable
320 evidence of the borrower's actual income; or

321 2. Internal Revenue Service Form W-2, tax returns, payroll
322 receipts, bank statements, or other third-party documents that
323 provide reasonably reliable evidence of the borrower's actual
324 income.

325 (8) PROVISIONS ON WAIVERS.-

326 (a) A program licensee may not require, as a condition of
327 providing the program loan, that the borrower:

328 1. Waive any right, penalty, remedy, forum, or procedure
329 provided for in any law applicable to the program loan,



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330 including the right to file and pursue a civil action or file a
331 complaint with or otherwise communicate with the office, any
332 court, or other governmental entity.

333 2. Agree to the application of laws other than those of
334 this state.

335 3. Agree to resolve disputes in a jurisdiction outside of
336 this state.

337 (b) A waiver by a borrower, other than one prohibited under
338 paragraph (a), must be knowing, voluntary, in writing, and not
339 expressly made a condition of doing business with the program
340 licensee. A waiver that is required as a condition of doing
341 business with the program licensee is presumed involuntary,
342 unconscionable, against public policy, and unenforceable. The
343 program licensee has the burden of proving that a waiver of any
344 rights, penalties, forums, or procedures was knowing, voluntary,
345 and not expressly made a condition of the contract with the
346 borrower.

347 (c) A program licensee may not refuse to do business with
348 or discriminate against a borrower or an applicant on the basis
349 that the borrower or applicant refuses to waive any right,
350 penalty, remedy, forum, or procedure, including the right to
351 file and pursue a civil action or complaint with, or otherwise
352 notify, the office, a court, or any other governmental entity.
353 The exercise of a person's right to refuse to waive any right,
354 penalty, remedy, forum, or procedure, including a rejection of a
355 contract requiring a waiver, does not affect any otherwise legal
356 terms of a contract or an agreement.

357 (d) This subsection does not apply to any agreement to
358 waive any right, penalty, remedy, forum, or procedure, including



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359 any agreement to arbitrate a claim or dispute, after a claim or
360 dispute has arisen. This subsection does not affect the
361 enforceability or validity of any other provision of the
362 contract.

363 Section 5. Section 516.44, Florida Statutes, is created to
364 read:

365 516.44 Referral partners.—

366 (1) REFERRAL PARTNER AGREEMENT.—All arrangements between a
367 program licensee and a referral partner must be specified in a
368 written referral partner agreement between the parties. The
369 agreement must contain a provision that the referral partner
370 agrees to comply with this section and all rules adopted under
371 this section regarding the activities of referral partners, and
372 that the office has access to the referral partner's books and
373 records pertaining to the referral partner's operations under
374 the agreement with the program licensee in accordance with s.
375 516.45(4).

376 (2) PERMITTED SERVICES.—A program licensee may use the
377 services of one or more referral partners as provided in this
378 section. A referral partner may perform one or more of the
379 following services for a program licensee at the referral
380 partner's physical business location:

381 (a) Distributing, circulating, using, or publishing printed
382 brochures, flyers, fact sheets, or other written materials
383 relating to program loans that the program licensee may make or
384 negotiate. The written materials must be reviewed and approved
385 in writing by the program licensee before being distributed,
386 circulated, or published.

387 (b) Providing written factual information about program



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388 loan terms, conditions, or qualification requirements to a
389 prospective borrower which have either been prepared by the
390 program licensee or reviewed and approved in writing by the
391 program licensee. A referral partner may discuss the information
392 with a prospective borrower in general terms.

393 (c) Notifying a prospective borrower of the information
394 needed in order to complete a program loan application.

395 (d) Entering information provided by the prospective
396 borrower on a preprinted or an electronic application form or in
397 a preformatted computer database.

398 (e) Assembling credit applications and other materials
399 obtained in the course of a credit application transaction for
400 submission to the program licensee.

401 (f) Contacting the program licensee to determine the status
402 of a program loan application.

403 (g) Communicating a response that is returned by the
404 program licensee's automated underwriting system to a borrower
405 or a prospective borrower.

406 (h) Obtaining a borrower's signature on documents prepared
407 by the program licensee and delivering final copies of the
408 documents to the borrower.

409 (i) Disbursing program loan proceeds to a borrower if this
410 method of disbursement is acceptable to the borrower, subject to
411 the requirements of subsection (3). A loan disbursement made by
412 a referral partner under this paragraph is deemed to be made by
413 the program licensee on the date that the funds are disbursed or
414 otherwise made available by the referral partner to the
415 borrower.

416 (j) Receiving a program loan payment from the borrower if



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417 this method of payment is acceptable to the borrower, subject to
418 the requirements of subsection (3).

419 (k) Operating an electronic access point through which a
420 prospective borrower may directly access the website of the
421 program licensee to apply for a program loan.

422 (3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

423 (a) A loan payment made by a borrower to a referral partner
424 under paragraph (2)(j) must be applied to the borrower's program
425 loan and deemed received by the program licensee as of the date
426 the payment is received by the referral partner.

427 (b) A referral partner that receives loan payments must
428 deliver or cause to be delivered to the borrower, at the time
429 that the payment is made by the borrower, a plain and complete
430 receipt showing all of the information specified in s.
431 516.43(1)(g).

432 (c) A borrower who submits a loan payment to a referral
433 partner under this subsection is not liable for a failure or
434 delay by the referral partner in transmitting the payment to the
435 program licensee.

436 (d) A referral partner that disburses or receives loan
437 payments pursuant to paragraph (2)(i) or paragraph (2)(j) must
438 maintain records of all disbursements made and loan payments
439 received for a period of at least 2 years.

440 (4) PROHIBITED ACTIVITIES.—A referral partner may not
441 engage in any of the following activities:

442 (a) Providing counseling or advice to a borrower or
443 prospective borrower with respect to any loan term.

444 (b) Providing loan-related marketing material that has not
445 previously been approved by the program licensee to a borrower



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446 or a prospective borrower.

447 (c) Negotiating a loan term between a program licensee and
448 a prospective borrower.

449 (d) Offering information pertaining to a single prospective
450 borrower to more than one program licensee, except if a program
451 licensee has declined to offer a program loan to a prospective
452 borrower and has so notified that prospective borrower in
453 writing, the referral partner may then offer information
454 pertaining to a single prospective borrower to another program
455 licensee with whom it has a referral partner agreement.

456 (e) Requiring a borrower to pay any fees or charges to the
457 referral partner or to any other person in connection with a
458 program loan other than those permitted under ss. 516.40-516.46.

459 (5) DISCLOSURE NOTICE AND COMMUNICATION.—

460 (a) At the time the referral partner receives or processes
461 an application for a program loan, the referral partner shall
462 provide the following statement to the applicant on behalf of
463 the program licensee, in no smaller than 10-point type, and must
464 request that the applicant acknowledge receipt of the statement
465 in writing:

466
467 Your loan application has been referred to us by
468 ...(name of referral partner).... We may pay a fee to
469 ...(name of referral partner)... for the successful
470 referral of your loan application. If you are approved
471 for the loan, ...(name of program licensee)... will
472 become your lender. If you have any questions about
473 your loan, now or in the future, you should direct
474 those questions to ...(name of program licensee)... by



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475 ...(insert at least two different ways in which a
476 borrower may contact the program licensee).... If you
477 wish to report a complaint about ...(name of referral
478 partner)... or ...(name of program licensee)...
479 regarding this loan transaction, you may contact the
480 Division of Consumer Finance of the Office of
481 Financial Regulation at 850-487-9687 or
482 <http://www.flofr.com>.

483
484 (b) If the loan applicant has questions about the program
485 loan which the referral partner is not permitted to answer, the
486 referral partner shall make a good faith effort to assist the
487 applicant in making direct contact with the program licensee
488 before the program loan is consummated.

489 (c) If the program loan is consummated, the program
490 licensee must provide to the borrower a written copy of the
491 disclosure notice within 2 weeks after the date of the program
492 loan consummation. A program licensee may include the disclosure
493 in its loan contract or as a separate document to the borrower
494 via any means acceptable to the borrower.

495 (6) COMPENSATION.-

496 (a) The program licensee may compensate a referral partner
497 in accordance with a written agreement and a compensation
498 schedule that is mutually agreed to by the program licensee and
499 the referral partner, subject to the requirements in paragraph
500 (b).

501 (b) The compensation of a referral partner by a program
502 licensee is subject to all of the following requirements:

503 1. Compensation may not be paid to a referral partner in



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504 connection with a loan application unless that program loan is
505 consummated.

506 2. Compensation may not be paid to a referral partner based
507 upon the principal amount of the program loan.

508 3. Compensation may not be directly or indirectly passed on
509 to a borrower through a fee or other compensation, or a portion
510 of a fee or other compensation charged to a borrower.

511 4. Subject to the limitations specified in subparagraphs
512 1., 2., and 3., the total compensation paid by a program
513 licensee to a referral partner for the services specified in
514 subsection (2) may not exceed the sum of:

515 a. Sixty dollars per program loan, on average, assessed
516 annually whether paid at the time of consummation, through
517 installments, or in a manner otherwise agreed upon by the
518 program licensee and the referral partner; and

519 b. Two dollars per payment received by the referral partner
520 on behalf of the program licensee for the duration of the
521 program loan, if the referral partner receives borrower loan
522 payments on the program licensee's behalf in accordance with
523 subsection (3).

524 5. The referral partner's location for services and other
525 information required by subsection (7) must be reported to the
526 office.

527 (c) Neither the program licensee nor any referral partner
528 may pass on to a borrower, whether directly or indirectly, any
529 additional cost or other charge for compensation paid to a
530 referral partner under this program.

531 (7) NOTICE TO OFFICE.—A program licensee that uses the
532 service of a referral partner must notify the office, in a form



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533 and manner prescribed by the commission, within 15 days after
534 entering into a contract with a referral partner regarding all
535 of the following:

536 (a) The name, business address, and licensing details of
537 the referral partner and all locations at which the referral
538 partner will perform services under this section.

539 (b) The name and contact information for an employee of the
540 referral partner who is knowledgeable about, and has the
541 authority to execute, the referral partner agreement.

542 (c) The name and contact information of one or more
543 employees of the referral partner who are responsible for that
544 referral partner's referring activities on behalf of the program
545 licensee.

546 (d) A statement by the program licensee that it has
547 conducted due diligence with respect to the referral partner and
548 has confirmed that none of the following applies:

549 1. The filing of a petition under the United States
550 Bankruptcy Code for bankruptcy or reorganization by the referral
551 partner.

552 2. The commencement of an administrative or a judicial
553 license suspension or revocation proceeding, or the denial of a
554 license request or renewal, by any state, the District of
555 Columbia, any United States territory, or any foreign country in
556 which the referral partner operates, plans to operate, or is
557 licensed to operate.

558 3. A felony indictment involving the referral partner or an
559 affiliated party. As used in this subparagraph, the term
560 "affiliated party" means a director, an officer, a responsible
561 person, an employee, or a foreign affiliate of a referral



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562 partner; or a person who has a controlling interest in a
563 referral partner.

564 4. The felony conviction, guilty plea, or plea of nolo
565 contendere, regardless of adjudication, of the referral partner
566 or an affiliated party.

567 5. Any suspected criminal act perpetrated in this state
568 relating to activities regulated under this chapter by a
569 referral partner.

570 6. Notification by a law enforcement or prosecutorial
571 agency that the referral partner is under criminal investigation
572 including, but not limited to, subpoenas to produce records or
573 testimony and warrants issued by a court of competent
574 jurisdiction which authorize the search and seizure of any
575 records relating to a business activity regulated under this
576 chapter.

577 (e) Any other information requested by the office, subject
578 to the limitations specified in s. 516.45(4).

579 (8) NOTICE OF CHANGES.—A referral partner must provide the
580 program licensee with a written notice sent by registered mail
581 within 30 days of any changes to the information specified in
582 paragraphs (7) (a)-(7) (c) or the occurrence or knowledge of,
583 whichever time period is greater, any of the events specified in
584 paragraph (7) (d).

585 (9) RESPONSIBILITY FOR ACTS OF A REFERRAL PARTNER.—A
586 program licensee is responsible for any act of its referral
587 partner if the program licensee should have known of the act or
588 had actual knowledge that such act is a violation of this
589 chapter, and the program licensee allowed the act to continue.
590 Such responsibility is limited to conduct engaged in by the



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591 referral partner pursuant to the authority granted to it by the
592 program licensee under the contract between the referral partner
593 and the program licensee.

594 (10) REFERRAL PARTNER FEE.—The program licensee shall pay
595 to the office, at the time it files a referral partner notice
596 with the office, a one-time nonrefundable fee of \$30 for each
597 referral partner as prescribed by rule of the commission.

598 Section 6. Section 516.45, Florida Statutes, is created to
599 read:

600 516.45 Examinations and grounds for disciplinary action.—

601 (1) Notwithstanding any other law, commencing on January 1,
602 2018, the office must examine each program licensee that is
603 accepted into the program in accordance with this chapter;
604 provided that such examination occurs at least once every 24
605 months.

606 (2) Notwithstanding subsection (1), the office may waive
607 one or more branch office examinations if the office deems that
608 such examinations are not necessary for the protection of the
609 public due to the centralized operations of the program licensee
610 or other factors acceptable to the office.

611 (3) The examined program licensee must pay for the cost of
612 an examination to the office, pursuant to rule of the
613 commission, and the office may maintain an action for the
614 recovery of the cost in any court of competent jurisdiction. In
615 determining the cost of the examination, the office may use the
616 estimated average hourly cost for all persons performing
617 examinations of program licensees or other persons subject to
618 ss. 516.40-516.46 for the fiscal year.

619 (4) The scope of any investigation or examination of a



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620 program licensee or referral partner shall be limited to those
621 books, accounts, records, documents, materials, and matters
622 reasonably necessary to determine compliance with this chapter.

623 (5) A program licensee who violates any applicable
624 provision of this chapter is subject to disciplinary action
625 pursuant to s. 516.07(2). Any such disciplinary action shall be
626 subject to the provisions in s. 120.60. A program licensee is
627 also subject to disciplinary action for a violation of s. 516.44
628 committed by any of its referral partners.

629 (6) The office may take any of the following actions
630 against a referral partner who violates the provisions of s.
631 516.44:

632 (a) Disqualify the referral partner from performing
633 services under this chapter,

634 (b) Bar the referral partner from performing services at
635 one or more specific locations of that referral partner,

636 (c) Terminate a written agreement between a referral
637 partner and a program licensee,

638 (d) Impose an administrative fine not to exceed \$1,000 for
639 each act of the referral partner, and,

640 (e) If the office deems that action in the public interest,
641 prohibit the use of that referral partner by all program
642 licensees accepted to participate in the program.

643 Section 7. Section 516.46, Florida Statutes, is created to
644 read:

645 516.46 Report by the office.—

646 (1) On or before March 15 of each year, commencing in 2019,
647 a program licensee shall file a report with the office
648 containing aggregated or anonymized data, without reference to



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649 any borrower's nonpublic personal information or any proprietary
650 or trade secret information of the program licensee, on each of
651 the items specified in subsection (4).

652 (2) On or before January 1, 2020, the office must post a
653 report on its website summarizing the use of the program based
654 upon the information contained in the report filed by each
655 program licensee under subsection (1).

656 (3) The report must state the information in aggregate so
657 as not to identify data by specific program licensee.

658 (4) The office's report must specify the period to which
659 the report corresponds and must include, but not be limited to,
660 the following for that period:

661 (a) The number of entities that applied to participate in
662 the program.

663 (b) The number of entities accepted to participate in the
664 program.

665 (c) The reasons for rejecting applications for
666 participation, if applicable. This information must be provided
667 in a manner that does not identify the entity or entities
668 rejected.

669 (d) The number of program loan applications received by
670 program licensees participating in the program, the number of
671 program loans made pursuant to the program, the total amount
672 loaned, the distribution of loan lengths upon origination, and
673 the distribution of interest rates and principal amounts upon
674 origination among those program loans.

675 (e) The number of borrowers who obtained more than one
676 program loan and the distribution of the number of program loans
677 per borrower.



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678 (f) Of the borrowers who obtained more than one program
679 loan, the percentage of those borrowers whose credit scores
680 increased between successive loans, based on information from at
681 least one major credit bureau, and the average size of the
682 increase.

683 (g) The income distribution of borrowers upon program loan
684 origination, including the number of borrowers who obtained at
685 least one program loan and who resided in a low-income or
686 moderate-income census tract at the time of their loan
687 applications.

688 (h) The number of borrowers who obtained program loans for
689 the following purposes, based on borrower responses at the time
690 of their loan applications, and an indication whether the
691 primary purpose for which the program loan was obtained was to:

692 (i) The income distribution of borrowers upon program loan
693 origination, including the number of borrowers who obtained at
694 least one program loan and who resided in a low-income or
695 moderate-income census tract at the time of their loan
696 applications.

697 (j) The number of borrowers who obtained program loans for
698 the following purposes, based on borrower responses at the time
699 of their loan applications indicating the primary purpose for
700 which the program loan was obtained:

- 701 1. Pay medical expenses.
- 702 2. Pay for vehicle repair or a vehicle purchase.
- 703 3. Pay bills.
- 704 4. Consolidate debt.
- 705 5. Build or repair credit history.
- 706 6. Pay other expenses.



707 (k) The number of borrowers who self-report that they had a
708 bank account at the time of their loan application and the
709 number of borrowers who self-report that they did not have a
710 bank account at the time of their loan application.

711 (l) With respect to refinance program loans, the report
712 must specifically include the following information:

713 1. The number and percentage of borrowers who applied for a
714 refinance program loan.

715 2. Of those borrowers who applied for a refinance program
716 loan, the number and percentage of borrowers who obtained a
717 refinance program loan.

718 (m) The number and type of referral partners used by
719 program licensees.

720 (n) The number and percentage of borrowers who obtained one
721 or more program loans on which delinquency charges were
722 assessed, the total amount of delinquency charges assessed, and
723 the average delinquency charge assessed by dollar amount and as
724 a percentage of the principal amount loaned.

725 (o) The performance of program loans under the program as
726 reflected by all of the following:

727 1. The number and percentage of borrowers who experienced
728 at least one delinquency lasting between 7 and 29 days and the
729 distribution of principal loan amounts corresponding to those
730 delinquencies.

731 2. The number and percentage of borrowers who experienced
732 at least one delinquency lasting between 30 and 59 days and the
733 distribution of principal loan amounts corresponding to those
734 delinquencies.

735 3. The number and percentage of borrowers who experienced



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736 at least one delinquency lasting 60 days or more and the
737 distribution of principal loan amounts corresponding to those
738 delinquencies.

739 (p) The number and types of violations of ss. 516.40-516.46
740 by referral partners which were documented by the office.

741 (q) The number and types of violations of ss. 516.40-516.46
742 by program licensees which were documented by the office.

743 (r) The number of times that the office disqualified a
744 referral partner from performing services, barred a referral
745 partner from performing services at one or more specific
746 locations of the referral partner, terminated a written
747 agreement between a referral partner and a program licensee, or
748 imposed an administrative penalty.

749 (s) The number of complaints received by the office about a
750 program licensee or a referral partner and the nature of those
751 complaints.

752 Section 8. Sections 516.40-516.46, Florida Statutes, are
753 repealed on December 31, 2022, unless reenacted or superseded by
754 another law enacted by the Legislature before that date.

755 Section 9. This act shall take effect October 1, 2017.

756
757 ===== T I T L E A M E N D M E N T =====

758 And the title is amended as follows:

759 Delete everything before the enacting clause
760 and insert:

761 A bill to be entitled
762 An act relating to consumer finance loans; creating s.
763 516.40, F.S.; establishing the Access to Responsible
764 Credit Pilot Program; providing legislative findings



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765 and intent; creating s. 516.41, F.S.; defining terms;
766 creating s. 516.42, F.S.; prohibiting a person from
767 certain activities without prior approval from the
768 Office of Financial Regulation; specifying
769 requirements for participating in the program to make
770 certain consumer finance loans; specifying
771 requirements for an application and a fee; providing
772 applicability of laws and regulations to a program
773 licensee; requiring an approved program licensee to
774 pay a specified renewal fee; providing that only one
775 pilot program license is required for a person to make
776 program loans; requiring each branch office of a
777 program licensee to be licensed; requiring the office
778 to issue a program branch office license after making
779 certain determinations; specifying requirements for a
780 program branch office license application; providing
781 requirements for renewal of a program branch office
782 license; creating s. 516.43, F.S.; providing general
783 requirements for a program loan; requiring a program
784 licensee to provide specified written disclosures to a
785 borrower; specifying requirements for origination
786 fees; specifying requirements for insufficient funds
787 fees and delinquency charges; specifying requirements
788 for a program licensee relating to credit education
789 for a borrower; specifying requirements for reporting
790 borrower payment performance to credit reporting
791 agencies; prohibiting the office from approving a
792 licensee for the program before it has been accepted
793 as a data furnisher; requiring a program licensee to



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794 provide a borrower with certain information relating
795 its credit reporting; specifying requirements for a
796 program licensee to underwrite program loans;
797 prohibiting a program licensee from requiring certain
798 waivers from a borrower; specifying requirements for
799 permissible waivers; prohibiting certain actions by a
800 program licensee; providing applicability; creating s.
801 516.44, F.S.; requiring a program licensee and a
802 referral partner to enter into a written referral
803 partner agreement; specifying permitted services by a
804 referral partner; specifying procedures for receipt or
805 disbursement by a referral partner of program loan
806 payments made by a borrower; providing that a borrower
807 who submits a loan payment to a referral partner is
808 not liable under certain circumstances; requiring a
809 referral partner to maintain certain records;
810 prohibiting certain activities by a referral partner;
811 specifying disclosure notice requirements; specifying
812 requirements, prohibitions, and limitations for
813 compensation from a program licensee to a referral
814 partner; requiring a program licensee to provide the
815 office with a specified notice after contracting with
816 a referral partner; requiring a referral partner to
817 provide the program licensee with a certain written
818 notice within a specified time; specifying the program
819 licensee's responsibility for acts of its referral
820 partner; requiring a program licensee to pay a
821 specified fee to the office to file a referral partner
822 notice; creating s. 516.45, F.S.; requiring the office



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823 to examine program licensees at specified intervals
824 beginning on a specified date; providing an exception;
825 requiring program licensees to pay the cost of
826 examinations; authorizing the office to maintain an
827 action of recovery of the cost; authorizing a manner
828 to determine the cost of examinations; providing
829 limitations of an investigation; providing that a
830 program licensee is subject to certain disciplinary
831 action for certain violations; authorizing the office
832 to take certain disciplinary actions; creating s.
833 516.46, F.S.; requiring a program licensee to file a
834 certain report with the office at certain intervals
835 beginning on a certain date; requiring the office to
836 post a report to its website summarizing the use of
837 the program by a certain date; specifying information
838 to be contained in the office's report; providing for
839 conditional future repeal of the program; providing an
840 effective date.

By Senator Flores

37-01450C-16

20161696__

1 A bill to be entitled
 2 An act relating to consumer finance loans; creating s.
 3 516.40, F.S.; establishing the Increased Access to
 4 Responsible Small Dollar Loans Pilot Program;
 5 providing legislative findings and intent; providing
 6 applicability; creating s. 516.41, F.S.; defining
 7 terms; creating s. 516.42, F.S.; prohibiting a person
 8 from certain activities without prior approval from
 9 the Office of Financial Regulation; specifying
 10 requirements for participating in the program to make
 11 certain consumer finance installment loans; specifying
 12 requirements for an application and fee; authorizing
 13 the office to grant a person a license covering more
 14 than one physical location under certain
 15 circumstances; creating s. 516.43, F.S.; requiring a
 16 program licensee to file annual reports; creating s.
 17 516.44, F.S.; providing general requirements for a
 18 program loan; requiring a program licensee to provide
 19 specified written disclosures to a borrower;
 20 specifying requirements for origination fees;
 21 specifying requirements for insufficient funds fees
 22 and delinquency charges; requiring a program licensee
 23 to offer certain credit education to a borrower;
 24 specifying requirements for reporting borrower payment
 25 performance to credit reporting agencies; defining the
 26 term "consumer reporting agency that compiles and
 27 maintains files on consumers on a nationwide basis";
 28 authorizing the office to approve a licensee for the
 29 program before it has been accepted as a data
 30 furnisher under certain circumstances; requiring a
 31 program licensee to provide certain information
 32 relating to credit reporting agencies; specifying

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

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33 requirements for a program licensee to underwrite
 34 program loans; prohibiting a program licensee from
 35 requiring certain waivers from a borrower; specifying
 36 requirements for permissible waivers; prohibiting
 37 certain actions by a program licensee; providing
 38 applicability; creating s. 516.45, F.S.; requiring a
 39 program licensee and a referral partner to enter into
 40 a written referral partner agreement; specifying
 41 permitted services by a referral partner; specifying
 42 procedures for receipt or disbursement by a referral
 43 partner of program loan payments made by a borrower;
 44 providing that a borrower who submits a loan payment
 45 to a referral partner is not liable under certain
 46 circumstances; requiring a referral partner to
 47 maintain certain records; prohibiting certain
 48 activities by a referral partner; specifying
 49 disclosure notice requirements; specifying two-way
 50 communication requirements between a program licensee
 51 and an applicant; defining the term "two-way
 52 communication"; specifying requirements and
 53 prohibitions for compensation from a program licensee
 54 to a referral partner; requiring a program licensee to
 55 provide the office with a specified notice after
 56 contracting with a referral partner; creating s.
 57 516.46, F.S.; requiring the office to examine program
 58 licensees at specified intervals; providing an
 59 exception; requiring program licensees to pay the cost
 60 of examinations; authorizing the office to maintain an
 61 action of recovery of the cost; authorizing a manner

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62 to determine the cost of examinations; creating s.
63 516.47, F.S.; requiring the office to post a report to
64 its website summarizing the use of the program by a
65 certain date; specifying information to be contained
66 in the report; requiring the office to conduct a
67 specified survey of borrowers and include the results
68 in the report; providing for conditional future repeal
69 of the program; providing an effective date.

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

72
73 Section 1. Section 516.40, Florida Statutes, is created to
74 read:

75 516.40 Increased Access to Responsible Small Dollar Loans
76 Pilot Program.-

77 (1) The Increased Access to Responsible Small Dollar Loans
78 Pilot Program is hereby established.

79 (2) The Legislature finds that demand for responsible
80 consumer finance installment loans in principal amounts of at
81 least \$300 and no more than \$3,000 exceeds the supply of these
82 loans. As a first step toward addressing this gap, the Increased
83 Access to Responsible Small Dollar Loans Pilot Program would
84 allow more Floridians to obtain responsible consumer finance
85 installment loans of at least \$300 and no more than \$3,000. The
86 pilot program is also intended to assist consumers in building
87 their credit and has additional consumer protections for these
88 installment loans which exceed current protections under Florida
89 law.

90 (3) Except as otherwise provided, ss. 516.40-516.47 do not

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91 exempt a licensee from any other provision of this chapter.

92 Section 2. Section 516.41, Florida Statutes, is created to
93 read:

94 516.41 Definitions.-For purposes of ss. 516.40-516.47, the
95 term:

96 (1) "Pilot program" or "program" means the Increased Access
97 to Responsible Small Dollar Loans Pilot Program.

98 (2) "Program licensee" means a person who is licensed to
99 make consumer finance installment loans under this chapter and
100 who is approved by the office to participate in the program.

101 (3) "Program loan" means a consumer finance installment
102 loan with a principal amount of at least \$300 and no more than
103 \$3,000.

104 (4) "Referral partner" means a person who markets program
105 loans, and administers and processes program loan applications
106 on behalf of a program licensee at the referral partner's
107 physical business location.

108 (a) The term does not include a person whose sole means of
109 bringing a program licensee and a prospective borrower together
110 at that person's physical business location is an electronic
111 access point through which a prospective borrower may directly
112 access the website of a program licensee.

113 (b) A referral partner is not a credit service organization
114 as that term is defined in s. 817.7001 or a loan broker as
115 defined in s. 687.141.

116 (5) "Refinance program loan" means a program loan that
117 replaces and revises an existing program loan contract with a
118 borrower and which results in an extension of additional
119 principal to that borrower.

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120 Section 3. Section 516.42, Florida Statutes, is created to
121 read:

122 516.42 Approval required; program application requirements;
123 fees.-

124 (1) A program licensee may not offer or make a program
125 loan, impose any charges or fees pursuant to s. 516.44, or use a
126 referral partner pursuant to s. 516.45 without prior approval
127 from the office to participate in the program.

128 (2) In order to participate in the program, a program
129 licensee must be licensed to make consumer finance installment
130 loans under this chapter, be in good standing with the office,
131 and not be the subject of an outstanding enforcement action or
132 have a deficiency at the time of the person's application. The
133 applicant must file with the office an application in a form and
134 manner prescribed by rule of the commission and pay a fee to the
135 office in an amount determined by rule of the commission. In
136 determining the fee, the commission must consider the office's
137 costs to administer the program.

138 (3) A program licensee who desires to participate in the
139 program but who is not licensed to make consumer finance
140 installment loans pursuant to this chapter shall submit a
141 combined application to the office, in a form and manner
142 prescribed by rule of the commission, for licensure under this
143 chapter to make consumer finance installment loans and for
144 admission to the program. The applicant shall pay a fee to the
145 office in an amount equal to the fees that would have been
146 imposed if the applicant had submitted separate applications. To
147 be eligible to apply in this manner, a person must not be the
148 subject of an outstanding enforcement or other disciplinary

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149 action by any financial regulatory agency in this state.

150 (4) Notwithstanding s. 516.05, the office may grant a
151 person a license that covers more than one physical business
152 location if the person only offers program loans to prospective
153 borrowers via an electronic access point through which the
154 person's website may be directly accessed.

155 Section 4. Section 516.43, Florida Statutes, is created to
156 read:

157 516.43 Annual report.-On or before March 15 of each year, a
158 program licensee shall file a report with the office in a manner
159 prescribed by rule of the commission. The report is in addition
160 to any other annual report the program licensee may be required
161 to file.

162 Section 5. Section 516.44, Florida Statutes, is created to
163 read:

164 516.44 Requirements for program loans.-

165 (1) GENERAL REQUIREMENTS.-A program licensee must comply
166 with each of the following requirements in making program loans:

167 (a) A program loan must be unsecured.

168 (b) A program loan must have a minimum term of 90 days,
169 except it may not have a prepayment penalty.

170 (c) A program loan must include a borrower's right to
171 rescind the program loan by notifying the program licensee of
172 the borrower's intent to rescind the program loan and return the
173 principal advanced by the end of the business day after the day
174 the program loan is consummated.

175 (d) Notwithstanding s. 516.031, the interest rate charged
176 on a program loan to the borrower may not exceed 36 percent. The
177 interest rate must be fixed for the life of the program loan and

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178 must accrue on a simple-interest basis through the application
 179 of a daily periodic rate to the actual unpaid principal balance
 180 each day.

181 (e) For a refinance program loan, the principal amount
 182 payable may not include more than 60 days' unpaid interest
 183 accrued on the previous program loan in accordance with s.
 184 516.031(5). A program licensee may not refinance a program loan
 185 made under this section unless the borrower is current on his or
 186 her outstanding program loan at the time the borrower submits an
 187 application to refinance.

188 (f) A program licensee must provide a receipt for payments
 189 made in accordance with s. 687.08.

190 (g) A program licensee must comply with the other
 191 provisions of this section.

192 (2) WRITTEN DISCLOSURES.—

193 (a) A program licensee must provide the following written
 194 disclosures in clear and distinct terms to the borrower at the
 195 time of application:

196 1. The amount and date of the program loan and the date of
 197 its maturity.

198 2. The name and address of the borrower and of the program
 199 licensee.

200 3. The rate of interest charged.

201 4. The payment amount of each monthly installment.

202 5. The delinquency charge amount.

203 6. The following statement: "Repaying your loan early will
 204 lower your borrowing costs by reducing the amount of interest
 205 you will pay. This loan has no prepayment penalty."

206 7. A statement describing the borrower's right of

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207 rescission as provided in paragraph (1)(c).

208 (b) The written disclosures required in paragraph (a) must
 209 be in a typeface of at least 12-point type. A program licensee
 210 may provide the disclosures in a mobile or other electronic
 211 application on which the size of the typeface of the disclosure
 212 can be manually modified by a prospective borrower, if the
 213 prospective borrower is given the option to print the disclosure
 214 in a typeface of at least 12-point size or is provided a printed
 215 copy of the disclosure by the program licensee with a typeface
 216 of at least 12-point size before the program loan is
 217 consummated.

218 (3) ORIGINATION FEES.—

219 (a) Notwithstanding s. 516.031, a program licensee may
 220 contract for and receive an origination fee from a borrower on a
 221 program loan. The origination fee must be fully earned
 222 immediately upon making the program loan in an amount not to
 223 exceed the following:

224 1. Seven percent of the principal amount exclusive of the
 225 origination fee or \$90, whichever is less, on the first program
 226 loan made to a borrower.

227 2. Six percent of the principal amount exclusive of the
 228 origination fee or \$75, whichever is less, on the second and
 229 subsequent program loans made to that borrower.

230 (b) A program licensee may not charge the same borrower an
 231 origination fee more than once in any 4-month period.

232 (c) Notwithstanding paragraph (1)(e), a program licensee
 233 may not contract for or charge an origination fee in connection
 234 with a refinance program loan unless at least 8 months have
 235 elapsed since the receipt of a previous origination fee paid by

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236 the borrower. For a program loan that is not a refinance program
 237 loan, only one origination fee may be contracted for or received
 238 until the program loan has been repaid in full.

239 (4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—
 240 Notwithstanding s. 516.031, a program licensee approved by the
 241 office to participate in the program may:

242 (a) Require reimbursement from a borrower of no more than
 243 \$25 for fees incurred by the program licensee from a dishonored
 244 payment due to insufficient funds of the borrower.

245 (b) Contract for and receive a delinquency charge of no
 246 more than \$15 for each payment in default for at least 10 days
 247 if the charge is agreed upon in writing between the parties
 248 before imposing the charge in accordance with s. 516.031(3)(a)9.
 249 A delinquency fee imposed by a program licensee is subject to
 250 all of the following:

251 1. No more than one delinquency fee may be imposed per
 252 delinquent payment.

253 2. No more than two delinquency fees may be imposed during
 254 a period of 30 consecutive days.

255 3. The program licensee or its wholly owned subsidiaries
 256 must attempt to collect a delinquent payment for a period of at
 257 least 30 days after the start of the delinquency before selling
 258 or assigning that unpaid debt to an independent party for
 259 collection.

260 (5) CREDIT EDUCATION.—Before disbursement of program loan
 261 proceeds to the borrower, the program licensee must either
 262 direct the borrower to the consumer credit counseling services
 263 promoted by the office in accordance with s. 516.32 or invite
 264 the borrower to a credit education program or seminar offered by

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265 an independent third party. The borrower may not be required to
 266 participate in either of these education programs or seminars. A
 267 credit education program or seminar offered pursuant to this
 268 subsection must be provided at no cost to the borrower.

269 (6) CREDIT REPORTING.—
 270 (a) The program licensee must report each borrower's
 271 payment performance to at least one consumer reporting agency
 272 that compiles and maintains files on consumers on a nationwide
 273 basis upon acceptance as a data furnisher by that consumer
 274 reporting agency. For purposes of this section, the term
 275 "consumer reporting agency that compiles and maintains files on
 276 consumers on a nationwide basis" has the same meaning as in s.
 277 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).
 278 A program licensee that is accepted as a data furnisher after
 279 admittance into the program must report the payment performance
 280 of all its borrowers since its inception of lending under the
 281 program as soon as practicable, but no more than 6 months after
 282 its acceptance into the program.

283 (b)1. The office may approve a licensee for the program
 284 before the licensee has been accepted as a data furnisher by a
 285 consumer reporting agency if the office has a reasonable
 286 expectation based on information supplied by the licensee that:

287 a. The licensee will be accepted as a data furnisher once
 288 it achieves a lending volume required of data furnishers of its
 289 type by a consumer reporting agency; and

290 b. The required lending volume will be achieved within the
 291 first 6 months after the licensee commences lending.

292 2. The office shall withdraw approval for pilot program
 293 participation from a program licensee that fails to become

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294 accepted as a data furnisher by a consumer reporting agency
 295 within 6 months after commencing lending under the pilot
 296 program.

297 (c) The program licensee must provide each borrower with
 298 the name or names of the consumer reporting agency or agencies
 299 to which it will report the borrower's payment history. A
 300 program licensee that is accepted as a data furnisher after
 301 admittance into the program must provide its borrowers as soon
 302 as practicable following acceptance as a data furnisher with the
 303 name or names of the consumer reporting agency or agencies to
 304 which it will report those borrowers' payment histories.

305 (7) PROGRAM LOAN UNDERWRITING.-

306 (a) The program licensee shall underwrite each program loan
 307 to determine a borrower's ability and willingness to repay the
 308 program loan pursuant to its terms. The program licensee may not
 309 make a program loan if it determines that the borrower's total
 310 monthly debt service payments at the time of origination,
 311 including the program loan for which the borrower is being
 312 considered and all outstanding forms of credit that can be
 313 independently verified by the program licensee, exceed 50
 314 percent of the borrower's gross monthly income.

315 (b)1. The program licensee shall seek information and
 316 documentation pertaining to all of a borrower's outstanding debt
 317 obligations during the loan application and underwriting
 318 process, including loans that are self-reported by the borrower
 319 but not available through independent verification. The program
 320 licensee shall verify that information using a credit report
 321 from at least one consumer reporting agency that compiles and
 322 maintains files on consumers on a nationwide basis or through

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323 other available electronic debt verification services that
 324 provide reliable evidence of a borrower's outstanding debt
 325 obligations.

326 2. The program licensee is not required to consider a
 327 borrower's loans from friends or family for purposes of
 328 determining the borrower's debt-to-income ratio.

329 (c) The program licensee shall also verify the borrower's
 330 income to determine the debt-to-income ratio using information
 331 from either of the following:

332 1. Electronic means or services that provide reliable
 333 evidence of the borrower's actual income.

334 2. Internal Revenue Service Form W-2, tax returns, payroll
 335 receipts, bank statements, or other third-party documents that
 336 provide reasonably reliable evidence of the borrower's actual
 337 income.

338 (8) PROVISIONS ON WAIVERS.-

339 (a) A program licensee may not require, as a condition of
 340 providing the program loan, that the borrower:

341 1. Waive any right, penalty, remedy, forum, or procedure
 342 provided for in any law applicable to the program loan,
 343 including the right to file and pursue a civil action or file a
 344 complaint with or otherwise communicate with the office, any
 345 court, or other governmental entity.

346 2. Agree to the application of laws other than those of
 347 this state.

348 3. Agree to resolve disputes in a jurisdiction outside of
 349 this state.

350 (b) A waiver by a borrower, other than one prohibited under
 351 paragraph (a), must be knowing, voluntary, and in writing and

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352 not expressly made a condition of doing business with the
 353 program licensee. A waiver that is required as a condition of
 354 doing business with the program licensee is presumed
 355 involuntary, unconscionable, against public policy, and
 356 unenforceable. The program licensee has the burden of proving
 357 that a waiver of any rights, penalties, forums, or procedures
 358 was knowing, voluntary, and not expressly made a condition of
 359 the contract with the borrower.

360 (c) A program licensee may not refuse to do business with
 361 or discriminate against a borrower or applicant on the basis
 362 that the borrower or applicant refuses to waive any right,
 363 penalty, remedy, forum, or procedure, including the right to
 364 file and pursue a civil action or complaint with, or otherwise
 365 notify, the office, a court, or any other governmental entity.
 366 The exercise of a person's right to refuse to waive any right,
 367 penalty, remedy, forum, or procedure, including a rejection of a
 368 contract requiring a waiver, does not affect any otherwise legal
 369 terms of a contract or an agreement.

370 (d) This subsection does not apply to any agreement to
 371 waive any right, penalty, remedy, forum, or procedure, including
 372 any agreement to arbitrate a claim or dispute, after a claim or
 373 dispute has arisen. This subsection does not affect the
 374 enforceability or validity of any other provision of the
 375 contract.

376 Section 6. Section 516.45, Florida Statutes, is created to
 377 read:

378 516.45 Referral partners.—

379 (1) REFERRAL PARTNER AGREEMENT.—All arrangements between a
 380 program licensee and a referral partner must be set forth in a

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381 written referral partner agreement between the parties. The
 382 agreement must contain a provision that the referral partner
 383 agrees to comply with this section and all rules adopted under
 384 this section regarding the activities of referral partners, and
 385 that the office has access to all of the referral partner's
 386 books and records pertaining to the referral partner's
 387 operations under the agreement with the program licensee.

388 (2) PERMITTED SERVICES.—A program licensee may use the
 389 services of one or more referral partners as provided in this
 390 section. A referral partner may perform one or more of the
 391 following services for a program licensee at the referral
 392 partner's physical business location:

393 (a) Distributing, circulating, using, or publishing printed
 394 brochures, flyers, fact sheets, or other written materials
 395 relating to program loans that the program licensee may make or
 396 negotiate. The written materials must be reviewed and approved
 397 in writing by the program licensee before being distributed,
 398 circulated, or published.

399 (b) Providing written factual information about program
 400 loan terms, conditions, or qualification requirements to a
 401 prospective borrower which have either been prepared by the
 402 program licensee or reviewed and approved in writing by the
 403 program licensee. A referral partner may discuss the information
 404 with a prospective borrower in general terms but may not provide
 405 counseling or advice to a prospective borrower.

406 (c) Notifying a prospective borrower of the information
 407 needed in order to complete a program loan application without
 408 providing counseling or advice to the prospective borrower.

409 (d) Entering information provided by the prospective

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410 borrower on a preprinted or electronic application form or in a
 411 preformatted computer database without providing counseling or
 412 advice to a prospective borrower.

413 (e) Assembling credit applications and other materials
 414 obtained in the course of a credit application transaction for
 415 submission to the program licensee.

416 (f) Contacting the program licensee to determine the status
 417 of a program loan application.

418 (g) Communicating a response that is returned by the
 419 program licensee's automated underwriting system to a borrower
 420 or a prospective borrower.

421 (h) Obtaining a borrower's signature on documents prepared
 422 by the program licensee and delivering final copies of the
 423 documents to the borrower.

424 (i) Disbursing program loan proceeds to a borrower if this
 425 method of disbursement is acceptable to the borrower, subject to
 426 the requirements of subsection (3). A loan disbursement made by
 427 a referral partner under this paragraph is deemed to be made by
 428 the program licensee on the date the funds are disbursed or
 429 otherwise made available by the referral partner to the
 430 borrower.

431 (j) Receiving a program loan payment from the borrower if
 432 this method of payment is acceptable to the borrower, subject to
 433 the requirements of subsection (3).

434 (3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

435 (a) A loan payment made by a borrower to a referral partner
 436 under paragraph (2)(j) must be applied to the borrower's program
 437 loan and deemed received by the program licensee as of the date
 438 the payment is received by the referral partner.

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439 (b) A referral partner that receives loan payments must
 440 deliver or cause to be delivered to the borrower, at the time
 441 that the payment is made by the borrower, a plain and complete
 442 receipt showing all of the following:

443 1. The name of the referral partner.

444 2. The total payment amount received.

445 3. The date of payment.

446 4. The program loan balance before and after application of
 447 the payment.

448 5. The amount of the payment that was applied to principal,
 449 interest, and fees.

450 6. The type of payment made by the borrower.

451 7. The following statement, prominently displayed in a type
 452 size equal to or greater than the type size used to display the
 453 other items on the receipt: "If you have any questions about
 454 your loan now or in the future, you should direct those
 455 questions to (Name of program licensee) by (At least two
 456 different ways in which a borrower may contact the program
 457 licensee)."

458 (c) A borrower who submits a loan payment to a referral
 459 partner under this subsection is not liable for a failure or
 460 delay by the referral partner in transmitting the payment to the
 461 program licensee.

462 (d) A referral partner that disburses or receives loan
 463 payments pursuant to paragraph (2)(i) or paragraph (2)(j) must
 464 maintain records of all disbursements made and loan payments
 465 received for a period of at least 2 years, or for 1 month
 466 following the completion of a regular examination by the office
 467 under s. 516.46, whichever is later.

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468 (4) PROHIBITED ACTIVITIES.—A referral partner may not
 469 engage in any of the following activities:
 470 (a) Providing counseling or advice to a borrower or
 471 prospective borrower with respect to any loan term.
 472 (b) Providing loan-related marketing material that has not
 473 previously been approved by the program licensee to a borrower
 474 or a prospective borrower.
 475 (c) Negotiating a loan term between a program licensee and
 476 a prospective borrower.
 477 (d) Offering information pertaining to a single prospective
 478 borrower to more than one program licensee, except if a program
 479 licensee has declined to offer a program loan to a prospective
 480 borrower and has so notified that prospective borrower in
 481 writing, the referral partner may then offer information
 482 pertaining to a single prospective borrower to another program
 483 licensee with whom it has a referral partner agreement.
 484 (5) DISCLOSURE NOTICE AND COMMUNICATION.—
 485 (a) At the time the referral partner receives or processes
 486 an application for a program loan, the referral partner must
 487 provide the following statement to the applicant on behalf of
 488 the program licensee, in no smaller than 10-point type, and must
 489 request that the applicant acknowledge receipt of the statement
 490 in writing:
 491 Your loan application has been referred to us by (Name of
 492 referral partner). We may pay a fee to (Name of referral
 493 partner) for the successful referral of your loan application.
 494 IF YOU ARE APPROVED FOR THE LOAN, (Name of program licensee)
 495 WILL BECOME YOUR LENDER. If you have any questions about your
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497 loan, now or in the future, you should direct those questions to
 498 (Name of program licensee) by (Insert at least two different
 499 ways in which a borrower may contact the program licensee). If
 500 you wish to report a complaint about (Name of referral partner)
 501 or (Name of program licensee) regarding this loan transaction,
 502 you may contact the Division of Consumer Finance of the Office
 503 of Financial Regulation at 850-487-9687.
 504
 505 (b) If the loan applicant has questions about the program
 506 loan which the referral partner is not permitted to answer, the
 507 referral partner must make a good faith effort to assist the
 508 applicant in making direct contact with the program licensee
 509 before the program loan is consummated. This effort must at a
 510 minimum include assisting the applicant with establishing a two-
 511 way communication with the program licensee as soon as
 512 reasonably practicable.
 513 (c) The program licensee must ensure that a program loan is
 514 not consummated until the program licensee has completed a two-
 515 way communication with the applicant.
 516 (d) For purposes of this subsection, the term "two-way
 517 communication" includes telephone, e-mail, or another form of
 518 communication which allows both the applicant and program
 519 licensee to communicate and respond. The term does not include
 520 the sending of a voicemail or electronic message to the
 521 applicant without a prior inquiry or subsequent response from
 522 the applicant.
 523 (e) If the program loan is consummated, the program
 524 licensee must provide to the borrower a written copy of the
 525 disclosure notice within 2 weeks after the date of the program

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526 loan consummation. A program licensee may include the disclosure
 527 in its loan contract or as a separate document to the borrower
 528 via any means acceptable to the borrower.

529 (6) COMPENSATION.—

530 (a) The program licensee may compensate a referral partner
 531 in accordance with a written agreement and a compensation
 532 schedule that is mutually agreed to by the program licensee and
 533 the referral partner, subject to the requirements in paragraph
 534 (b).

535 (b) The compensation of a referral partner by a program
 536 licensee is subject to all of the following requirements:

537 1. Compensation may not be paid to a referral partner in
 538 connection with a loan application unless that program loan is
 539 consummated.

540 2. Compensation may not be paid to a referral partner based
 541 upon the principal amount of the program loan.

542 3. The total compensation paid by a program licensee to a
 543 referral partner over the life of a program loan may not exceed
 544 the sum of the origination fee and interest charges paid by the
 545 borrower in connection with that program loan.

546 4. Subject to the limitations set forth in subparagraphs
 547 1., 2., and 3., the total compensation paid by a program
 548 licensee to a referral partner for the services set forth in
 549 subsection (2) may not exceed the sum of:

550 a. Sixty dollars per program loan, on average, assessed
 551 annually whether paid at the time of consummation, through
 552 installments, or in a manner otherwise agreed upon by the
 553 program licensee and the referral partner; and

554 b. Two dollars per payment received by the referral partner

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555 on behalf of the program licensee for the duration of the
 556 program loan, if the referral partner receives borrower loan
 557 payments on the program licensee's behalf in accordance with s.
 558 516.45(3).

559 5. The referral partner's location for services and other
 560 information required by subsection (7) must be reported to the
 561 office, and the referral partner may not be barred from
 562 providing services at that location by the office.

563 (c) A program licensee may not directly or indirectly pass
 564 on to a borrower a fee or other compensation, or a portion of a
 565 fee or other compensation, which the program licensee pays to a
 566 referral partner in connection with that borrower's program
 567 loan.

568 (7) NOTICE TO OFFICE.—A program licensee that uses the
 569 service of a referral partner must notify the office within 15
 570 days after entering into a contract with a referral partner, on
 571 a form prescribed by rule of the commission, regarding all of
 572 the following:

573 (a) The name, business address, and licensing details of
 574 the referral partner and all locations at which the referral
 575 partner will perform services under this section.

576 (b) The name and contact information for an employee of the
 577 referral partner who is knowledgeable about, and has the
 578 authority to execute, the referral partner agreement.

579 (c) The name and contact information of one or more
 580 employees of the referral partner who are responsible for that
 581 referral partner's referring activities on behalf of the program
 582 licensee.

583 (d) Any other information requested by the office.

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584 Section 7. Section 516.46, Florida Statutes, is created to
585 read:

586 516.46 Examinations.-

587 (1) Notwithstanding any other law, the office must examine
588 each program licensee that is accepted into the program at least
589 once every 24 months.

590 (2) Notwithstanding subsection (1), the office may waive
591 one or more branch office examinations if the office deems that
592 the branch office examinations are not necessary for the
593 protection of the public due to the centralized operations of
594 the program licensee or other factors acceptable to the office.

595 (3) The examined program licensee must pay for the cost of
596 an examination to the office and the office may maintain an
597 action for the recovery of the cost in any court of competent
598 jurisdiction. In determining the cost of the examination, the
599 office may use the estimated average hourly cost for all persons
600 performing examinations of program licensees or other persons
601 subject to ss. 516.40-516.47 for the fiscal year.

602 Section 8. Section 516.47, Florida Statutes, is created to
603 read:

604 516.47 Report by the office.-

605 (1) On or before January 1, 2018, the office must post a
606 report on its website summarizing the use of the program.

607 (2) If there is more than one program licensee approved to
608 participate in the program, the office's report must state the
609 information in aggregate so as not to identify data by specific
610 program licensee.

611 (3) The office's report must specify the period to which
612 the report corresponds and must include, but not be limited to,

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613 the following for that period:

614 (a) The number of entities that applied to participate in
615 the program.

616 (b) The number of entities accepted to participate in the
617 program.

618 (c) The reasons for rejecting applications for
619 participation, if applicable. This information must be provided
620 in a manner that does not identify the entity or entities
621 rejected.

622 (d) The number of program loan applications received by
623 program licensees participating in the program, the number of
624 program loans made pursuant to the program, the total amount
625 loaned, the distribution of loan lengths upon origination, and
626 the distribution of interest rates and principal amounts upon
627 origination among those program loans.

628 (e) The number of borrowers who obtained more than one
629 program loan and the distribution of the number of program loans
630 per borrower.

631 (f) Of the number of borrowers who obtained more than one
632 program loan, the percentage of those borrowers whose credit
633 scores increased between successive loans, based on information
634 from at least one major credit bureau, and the average size of
635 the increase.

636 (g) The income distribution of borrowers upon program loan
637 origination, including the number of borrowers who obtained at
638 least one program loan and who resided in a low-income or
639 moderate-income census tract at the time of their loan
640 applications.

641 (h) The number of borrowers who obtained program loans for

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642 the following purposes, based on borrower responses at the time
 643 of their loan applications indicating the primary purpose for
 644 which the program loan was obtained:

- 645 1. Pay medical expenses.
- 646 2. Pay for vehicle repair or a vehicle purchase.
- 647 3. Pay bills.
- 648 4. Consolidate debt.
- 649 5. Build or repair credit history.
- 650 6. Pay other expenses.

651 (i) The number of borrowers who self-report that they had a
 652 bank account at the time of their loan application and the
 653 number of borrowers who self-report that they did not have a
 654 bank account at the time of their loan application.

655 (j) With respect to refinance program loans, the report
 656 must specifically include the following information:

- 657 1. The number and percentage of borrowers who applied for a
 658 refinance program loan.
- 659 2. Of those borrowers who applied for a refinance program
 660 loan, the number and percentage of borrowers who obtained a
 661 refinance program loan.

662 (k) The number and type of referral partners used by
 663 program licensees.

664 (l) The number and percentage of borrowers who obtained one
 665 or more program loans on which delinquency charges were
 666 assessed, the total amount of delinquency charges assessed, and
 667 the average delinquency charge assessed by dollar amount and as
 668 a percentage of the principal amount loaned.

669 (m)1. The performance of program loans under the program as
 670 reflected by all of the following:

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671 a. The number and percentage of borrowers who experienced
 672 at least one delinquency lasting between 7 and 29 days and the
 673 distribution of principal loan amounts corresponding to those
 674 delinquencies.

675 b. The number and percentage of borrowers who experienced
 676 at least one delinquency lasting between 30 and 59 days and the
 677 distribution of principal loan amounts corresponding to those
 678 delinquencies.

679 c. The number and percentage of borrowers who experienced
 680 at least one delinquency lasting 60 days or more and the
 681 distribution of principal loan amounts corresponding to those
 682 delinquencies.

683 2. To the extent data are readily available to the office,
 684 the office shall include in its report comparable delinquency
 685 data for unsecured loans made by licensed persons under ss.
 686 516.001-516.36 and part IV of chapter 560 for principal loan
 687 amounts between \$300 and \$3,000, and for unsecured extensions of
 688 credit made by state-chartered banks and credit unions under the
 689 office's jurisdiction in principal loan amounts between \$300 and
 690 \$3,000.

691 (n) The number and types of violations of ss. 516.40-516.47
 692 by referral partners which were documented by the office.

693 (o) The number and types of violations of ss. 516.40-516.47
 694 by program licensees which were documented by the office.

695 (p) The number of times that the office disqualified a
 696 referral partner from performing services, barred a referral
 697 partner from performing services at one or more specific
 698 locations of the referral partner, terminated a written
 699 agreement between a referral partner and a program licensee, or

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700 imposed an administrative penalty.

701 (q) The number of complaints received by the office about a
702 program licensee or a referral partner and the nature of those
703 complaints.

704 (r) Recommendations for improving the program.

705 (s) Recommendations regarding whether the program should be
706 continued after January 1, 2022.

707 (4) The office shall conduct a random sample survey of
708 borrowers who have participated in the program to obtain
709 information regarding the borrowers' experience and program
710 licensees' compliance with ss. 516.40-516.47. The results of
711 this survey shall be included in the report required by this
712 section.

713 Section 9. Sections 516.40-516.47, Florida Statutes, are
714 repealed on January 1, 2022, unless reenacted or superseded by
715 another law enacted by the Legislature before that date.

716 Section 10. 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 22, 2016

I respectfully request that **Senate Bill #1696**, relating to Consumer Finance Loans, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting Date

1696
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee, FL 32303
City State Zip

Email alicevickers@flacp.org

Speaking: For Against Information

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

Representing Florida Alliance for Consumer Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Flores

1656

Bill Number (if applicable)

DE

Amendment Barcode (if applicable)

Meeting Date

Topic SB 166 - CONSUMER FINANCE

Name JAMES GUTIERREZ

Job Title CEO, INSIKT

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 INSIKT

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.

CourtSmart Tag Report

Room: EL 110 Case No.:
Caption: Senate Banking and Insurance Committee

Type:
Judge:

Started: 2/16/2016 1:36:11 PM
Ends: 2/16/2016 3:22:23 PM Length: 01:46:13

1:36:17 PM Meeting called to order.
1:36:22 PM Roll call - quorum present
1:36:48 PM TAB 4 - SB 1696 Flores - Consumer Finance Loans
1:37:25 PM Senator Flores recognized to present the bill.
1:39:41 PM James Gutierrez
1:42:28 PM Senator Hukill for question
1:46:38 PM Senator Detert for question
1:52:42 PM Senator Montford for question.
1:54:04 PM Senator Smith for question.
1:55:49 PM Senator Negron for question.
1:56:58 PM Alice Vickers, FL Alliance for Consumer Protection
2:00:37 PM Senator Flores recognized - requested bill be tp'd
2:01:41 PM TAB 3 CS/S B 1442 Garcia out of network health insur. coverage
2:02:25 PM Sen. Garcia recognized to present bill.
2:02:34 PM Delete all amd. 418472 - explanation of amd. by Sen. Garcia
2:04:49 PM Amds. 966946 and 561776 withdrawn
2:05:17 PM Delete all amd. adopted - two
2:10:42 PM Roll call vote on CS/CS/S 1442 - Favorable
2:12:08 PM TAB 1 CS/SB 336
2:13:10 PM TAB 1 CS/SB 336 Sen. Richter Property Ins. Appraisers
2:13:29 PM Senator Richter recognized to present the bill.
2:15:11 PM Amd. 644752 - explanation of Amd. by Sen. Richter
2:16:11 PM Greg Thomas, Dept. of Financial Services
2:16:47 PM Amend. adopted w/o objection
2:16:57 PM Amd. 602768 - explanation of amd. by Sen. Negron
2:17:52 PM Amd. adopted w/o objection
2:18:02 PM Amd. 672348 - adopted w/o objection
2:18:22 PM Amd. 699790 - withdrawn
2:19:50 PM Rep. Artilles recognized to answer questions on bill.
2:25:52 PM Greg Thomas - Dept. of Financial Services recognized to answer question.
2:26:50 PM Mark Boardman, Public Adjuster - against bill
2:32:25 PM Tom Hayes, Advanced Home Solutions
2:33:19 PM Reggie Garcia, The FL Justice Association
2:40:50 PM Greg Thomas - Dept. of Financial Services recognized for information.
2:45:18 PM Senator Richter recognized to close on bill.
2:46:19 PM Roll call CS/CS/SB 336 - Favorable
2:46:53 PM TAB 2 - S 1248 Diaz de la Partilla - Prohibited Insur. Practices
2:47:15 PM Sen. Diaz de la Portilla recognized to present the bill.
2:48:12 PM Amd. 161206 withdrawn
2:48:21 PM Hand written amendment taken up- Sen. Diaz de la Portilla explains amendment.
2:50:45 PM Richie Kidwell, Air Quality Accessors
2:52:17 PM Foyt Ralston, FL Assoc. of Restoration Specialist
2:53:36 PM Steve Geller - FI Assoc. of Insurance Adjusters
2:56:27 PM Handwritten amd. adopted two
2:57:12 PM John Burrows, President, American Construction and Plumbing Inc.
2:59:34 PM Tom Hayes, Advanced Home Solutions Construction Firm
3:04:45 PM Ralph Pokorny, Restoration Xperts
3:08:15 PM John Cali, Start to Finish, LLC.
3:09:40 PM Brian Christensen, Restoration 1 of Central Florida
3:14:32 PM Walter Lafreniere, All Hours Emergency Water Removal
3:16:24 PM Josh Brigham, Pro Clean
3:17:25 PM Paul Handerham, FAIR

3:18:35 PM Carolyn Johnson, Florida Chamber of Commerce
3:19:59 PM Sen. Clemens with remarks
3:20:20 PM Senator Diaz de la Portilla to close on bill.
3:21:09 PM Roll Call on CS/SB 1248 - Favorable
3:21:31 PM Remark by Chairman
3:22:13 PM Meeting adjourned.