

Tab 1	SB 1454 by Brandes; (Compare to CS/H 00097) Florida Hurricane Catastrophe Fund					
145570	A	S	L	WD	BI, Brandes	btw L.14 - 15: 02/20 02:35 PM

Tab 2	CS/SB 1494 by HP, Montford (CO-INTRODUCERS) Grimsley, Powell; (Similar to CS/CS/H 00351) Prescription Drug Pricing Transparency					
784728	A	S	RCS	BI, Montford	Delete L.52 - 82: 02/20 02:35 PM	

Tab 3	SB 1568 by Farmer; Prohibited Activities under the Workers' Compensation Law					
951928	D	S	L	RCS	BI, Farmer	Delete everything after 02/20 02:35 PM

Tab 4	SB 1866 by Broxson; (Identical to H 01235) Loss-sensitive Workers' Compensation Insurance Programs					
647458	D	S	RCS	BI, Broxson	Delete everything after 02/20 02:35 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Flores, Chair
Senator Steube, Vice Chair

MEETING DATE: Tuesday, February 20, 2018

TIME: 1:30—3:30 p.m.

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

MEMBERS: Senator Flores, Chair; Senator Steube, Vice Chair; Senators Bracy, Bradley, Braynon, Broxson, Gainer, Garcia, Grimsley, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1454 Brandes (Compare CS/H 97)	Florida Hurricane Catastrophe Fund; Deleting the cash build-up factor in the formula used for determining insurer reimbursement premiums paid to the fund, etc. BI 02/20/2018 Favorable AGG AP	Favorable Yeas 8 Nays 3
2	CS/SB 1494 Health Policy / Montford (Similar CS/CS/H 351)	Prescription Drug Pricing Transparency; Requiring pharmacists to inform customers of less expensive, generically equivalent drugs for their prescriptions and as to whether customers' cost-sharing obligations exceed the retail price of their prescriptions; requiring a pharmacy benefit manager to register with the Office of Insurance Regulation, etc. HP 02/06/2018 Fav/CS BI 02/20/2018 Fav/CS AP	Fav/CS Yeas 10 Nays 0
3	SB 1568 Farmer	Prohibited Activities under the Workers' Compensation Law; Requiring employers to comply with specified provisions relating to the unlawful employment of aliens, unfair immigration-related employment practices, and penalties for document fraud; providing a criminal penalty for violating such provisions, etc. BI 02/20/2018 Fav/CS CM RC	Fav/CS Yeas 6 Nays 4
4	SB 1866 Broxson (Identical H 1235)	Loss-sensitive Workers' Compensation Insurance Programs; Providing that a qualified insurer's form for offering a qualified loss-sensitive program of reinsurance, which accompanies the issuance of a certain guaranteed cost workers' compensation insurance policy to a qualified insured, must be filed with the Office of Insurance Regulation but does not require approval, etc. BI 02/20/2018 Fav/CS CM RC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 20, 2018, 1:30—3:30 p.m.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1454

INTRODUCER: Senator Brandes

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1454 eliminates the cash build-up factor for the Florida Hurricane Catastrophe Fund (FHCF). The cash build-up factor is collected in addition to premiums paid to the FHCF by policyholders of residential property insurance with coverage for losses from wind. The current cash build-up factor is 25 percent of the FHCF premium.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt¹ fund created in 1993² after Hurricane Andrew³ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)⁴ and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)⁵ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

¹ s. 215.555(1)(f), F.S.

² ch. 93-409, L.O.F.

³ <https://www.nhc.noaa.gov/1992andrew.html> (last viewed February 17, 2018).

⁴ <https://www.sbafla.com/fsb/> (last viewed February 17, 2018).

⁵ s. 215.555(2)(e), F.S.

FHCF Mandatory Coverage

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.⁶ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer). Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 5 percent of loss adjustment expenses.⁷

Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the FHCF for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention. To access the FHCF an insurer must have incurred losses above the retention levels calculated and set by statute.⁸ When faced with a multi-storm season, insurers must reach their full retention levels on the two largest storms of the season. The retention level is then reduced to one-third the normal amount for any other storms that season.

FHCF Premiums

The FHCF must charge insurers the actuarially indicated premium⁹ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.¹⁰ The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.¹¹

Cash Build-up Factor

The premium charged by the FHCF includes an additional 25 percent cash build-up factor. The Legislature enacted the cash build-up factor in 2009¹² when the cash balance of the fund was

⁶ s. 215.555(4)(c)1., F.S.

⁷ s. 215.555(4)(b), F.S.

⁸ s. 215.555(2)(e), F.S.

⁹ s. 215.555(2)(a), F.S.

¹⁰ <https://www.sbafla.com/method/> (last viewed February 17, 2018).

¹¹ https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last viewed February 17, 2018).

¹² ch. 2009-87, L.O.F.

approximately \$4.564 billion¹³ and, due to optional layer options available at that time, the single season obligations of the FHCF was around \$28 billion. The factor was phased in over a 5-year period beginning with 5 percent in the 2009-2010 contract year and increasing by 5 percent each contract year until capped at the current 25 percent level that it has been at since the 2013-2014 contract year. The cash build-up factor premium for the current (2017-2018) contract year is calculated to be \$222,405,534.¹⁴ The following chart details the growth in the FHCF balance in recent years.

Contract Year¹⁵	FHCF Balance¹⁶	Maximum FHCF Statutory Obligation¹⁷
2009-2010	\$4.5 billion	\$27.8 billion
2010-2011	\$5.9 billion	\$23.1 billion
2011-2012	\$7.2 billion	\$18.8 billion
2012-2013	\$8.5 billion	\$18.4 billion
2013-2014	\$9.8 billion	\$17.0 billion
2014-2015	\$11.0 billion	\$17.0 billion
2015-2016	\$12.7 billion	\$17.0 billion
2016-2017	\$13.8 billion	\$17.0 billion

The FHCF balance as of December 31, 2017, was \$14.9 billion. When taking into account expected 2018 premiums that include the cash build up factor, minus approximately \$2 billion in projected claims payments for losses due to Hurricane Irma in 2017, the projected fund balance on December 31, 2018, is expected to be approximately \$14.1 billion.¹⁸

FHCF Bonding and Assessment Authority

When the moneys in the FHCF are or will be insufficient to cover losses, the law¹⁹ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.²⁰ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.²¹

¹³https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787 (last viewed February 17, 2018).

¹⁴https://www.sbafla.com/fhcf/Portals/fhcf/Content/AdvisoryCouncil/2017/20170323_FINAL_2017_RatemakingFormulaReport.pdf (last viewed February 17, 2018).

¹⁵https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last viewed February 17, 2018).

¹⁶ Totals include the collection of premium including the cash buildup factor and investment income.

¹⁷https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943 (last viewed February 17, 2018).

¹⁸ Email from FHCF staff on February 19, 2018 (on file with the Committee on Banking and Insurance).

¹⁹ s. 215.555(6), F.S.

²⁰ s. 215.555(6)(b), F.S.

²¹ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

III. Effect of Proposed Changes:

The bill eliminates the cash build-up factor for the Florida Hurricane Catastrophe Fund. The cash build-up factor premium for the current (2017-2018) contract year is calculated to be \$222,405,534. Eliminating the cash build-up factor will reduce the premiums paid by insurers for FHCF coverage.

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:

If the reduction in FHCF premiums paid by insurers is factored into rates, and not used to purchase additional reinsurance, residential property insurance policyholders with coverage for wind will see an average reduction in their overall insurance premium of approximately 2 percent.²²

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is effective upon becoming law, however, the FHCF has already begun executing contracts with insurers for the 2018-2019 hurricane season. Insurers made their purchasing decisions with the inclusion of the cash buildup factor. It is possible had insurers known the cash

²² Report by the FHCF "Potential Impact of Changes to the Florida Hurricane Catastrophe Fund Maximum Limit and Cash Build-Up Factor" December 27, 2017 (on file with the Committee on Banking and Insurance).

build up factor was being phased out some might have contracted differently for their FHCF coverages. Application of the bill to the 2019-2020 contact year would resolve this issue.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 627.062 and 627.351.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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



145570

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/20/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Between lines 14 and 15

insert:

(4) REIMBURSEMENT CONTRACTS.—

(b)1. The contract must ~~shall~~ contain a promise by the board to reimburse the insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's retention, plus the equivalent percentage ~~5 percent~~ of the reimbursed losses paid by the Citizens Property Insurance



145570

11 Corporation to cover loss adjustment expenses, not to exceed 15
12 percent.

13 2. The insurer must elect one of the percentage coverage
14 levels specified in this paragraph and may, upon renewal of a
15 reimbursement contract, elect a lower percentage coverage level
16 if no revenue bonds issued under subsection (6) after a covered
17 event are outstanding, or elect a higher percentage coverage
18 level, regardless of whether or not revenue bonds are
19 outstanding. All members of an insurer group must elect the same
20 percentage coverage level. Any joint underwriting association,
21 risk apportionment plan, or other entity created under s.
22 627.351 must elect the 90-percent coverage level.

23 3. The contract must ~~shall~~ provide that reimbursement
24 amounts shall not be reduced by reinsurance paid or payable to
25 the insurer from other sources.

26
27 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

28 And the directory clause is amended as follows:

29 Delete lines 12 - 13

30 and insert:

31 Section 1. Paragraph (b) of subsection (4) and paragraph
32 (b) of subsection (5) of section 215.555, Florida Statutes, are
33 amended to read:

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete line 3

38 and insert:

39 Fund; amending s. 215.555, F.S.; revising requirements



40 for loss adjustment expense reimbursements in
41 reimbursement contracts between insurers and the State
42 Board of Administration; deleting the cash

By Senator Brandes

24-00833C-18

20181454__

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; deleting the cash build-up factor in the formula used for determining insurer reimbursement premiums paid to the fund; amending ss. 627.062 and 627.351, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula must ~~shall~~ specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4) (b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the board to be appropriate. ~~The formula must provide for a cash build-up factor. For the 2009-2010 contract year, the~~

Page 1 of 6

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24-00833C-18

20181454__

~~factor is 5 percent. For the 2010-2011 contract year, the factor is 10 percent. For the 2011-2012 contract year, the factor is 15 percent. For the 2012-2013 contract year, the factor is 20 percent. For the 2013-2014 contract year and thereafter, the factor is 25 percent.~~ The formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

Section 2. Paragraph (k) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(k)1. A residential property insurer may make a separate filing limited solely to an adjustment of its rates for reinsurance, the cost of financing products used as a replacement for reinsurance, and financing costs incurred in the purchase of reinsurance, ~~and the actual cost paid due to the application of the cash build-up factor pursuant to s. 215.555(5)(b)~~ if the insurer:

a. Elects to purchase financing products such as a liquidity instrument or line of credit, in which case the cost included in filing for the liquidity instrument or line of

Page 2 of 6

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24-00833C-18 20181454__

59 credit may not result in a premium increase exceeding 3 percent
60 for any individual policyholder. All costs contained in the
61 filing may not result in an overall premium increase of more
62 than 15 percent for any individual policyholder.

63 b. Includes in the filing a copy of all of its reinsurance,
64 liquidity instrument, or line of credit contracts; proof of the
65 billing or payment for the contracts; and the calculation upon
66 which the proposed rate change is based demonstrating that the
67 costs meet the criteria of this section.

68 2. An insurer that purchases reinsurance or financing
69 products from an affiliated company may make a separate filing
70 only if the costs for such reinsurance or financing products are
71 charged at or below charges made for comparable coverage by
72 nonaffiliated reinsurers or financial entities making such
73 coverage or financing products available in this state.

74 3. An insurer may make only one filing per 12-month period
75 under this paragraph.

76 4. An insurer that elects to implement a rate change under
77 this paragraph must file its rate filing with the office at
78 least 45 days before the effective date of the rate change.
79 After an insurer submits a complete filing that meets all of the
80 requirements of this paragraph, the office has 45 days after the
81 date of the filing to review the rate filing and determine if
82 the rate is excessive, inadequate, or unfairly discriminatory.
83

84 The provisions of this subsection do not apply to workers'
85 compensation, employer's liability insurance, and motor vehicle
86 insurance.

87 Section 3. Paragraph (n) of subsection (6) of section

24-00833C-18 20181454__

88 627.351, Florida Statutes, is amended to read:
89 627.351 Insurance risk apportionment plans.—
90 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
91 (n)1. Rates for coverage provided by the corporation must
92 be actuarially sound and subject to s. 627.062, except as
93 otherwise provided in this paragraph. The corporation shall file
94 its recommended rates with the office at least annually. The
95 corporation shall provide any additional information regarding
96 the rates which the office requires. The office shall consider
97 the recommendations of the board and issue a final order
98 establishing the rates for the corporation within 45 days after
99 the recommended rates are filed. The corporation may not pursue
100 an administrative challenge or judicial review of the final
101 order of the office.

102 2. In addition to the rates otherwise determined pursuant
103 to this paragraph, the corporation shall impose and collect an
104 amount equal to the premium tax provided in s. 624.509 to
105 augment the financial resources of the corporation.

106 3. After the public hurricane loss-projection model under
107 s. 627.06281 has been found to be accurate and reliable by the
108 Florida Commission on Hurricane Loss Projection Methodology, the
109 model shall be considered when establishing the windstorm
110 portion of the corporation's rates. The corporation may use the
111 public model results in combination with the results of private
112 models to calculate rates for the windstorm portion of the
113 corporation's rates. This subparagraph does not require or allow
114 the corporation to adopt rates lower than the rates otherwise
115 required or allowed by this paragraph.

116 4. The rate filings for the corporation which were approved

24-00833C-18 20181454__

117 by the office and took effect January 1, 2007, are rescinded,
 118 except for those rates that were lowered. As soon as possible,
 119 the corporation shall begin using the lower rates that were in
 120 effect on December 31, 2006, and provide refunds to
 121 policyholders who paid higher rates as a result of that rate
 122 filing. The rates in effect on December 31, 2006, remain in
 123 effect for the 2007 and 2008 calendar years except for any rate
 124 change that results in a lower rate. The next rate change that
 125 may increase rates shall take effect pursuant to a new rate
 126 filing recommended by the corporation and established by the
 127 office, subject to this paragraph.

128 5. Beginning on July 15, 2009, and annually thereafter, the
 129 corporation must make a recommended actuarially sound rate
 130 filing for each personal and commercial line of business it
 131 writes, to be effective no earlier than January 1, 2010.

132 6. Beginning on or after January 1, 2010, and
 133 notwithstanding the board's recommended rates and the office's
 134 final order regarding the corporation's filed rates under
 135 subparagraph 1., the corporation shall annually implement a rate
 136 increase which, except for sinkhole coverage, does not exceed 10
 137 percent for any single policy issued by the corporation,
 138 excluding coverage changes and surcharges.

139 ~~7. The corporation may also implement an increase to~~
 140 ~~reflect the effect on the corporation of the cash buildup factor~~
 141 ~~pursuant to s. 215.555(5)(b).~~

142 ~~7.8-~~ The corporation's implementation of rates as
 143 prescribed in subparagraph 6. shall cease for any line of
 144 business written by the corporation upon the corporation's
 145 implementation of actuarially sound rates. Thereafter, the

Page 5 of 6

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24-00833C-18 20181454__

146 corporation shall annually make a recommended actuarially sound
 147 rate filing for each commercial and personal line of business
 148 the corporation writes.

149 Section 4. This act shall take effect upon becoming a law.

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores
Chair, Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #1454**, relating to the **Florida Hurricane Catastrophe Fund**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18

Meeting Date

SB 1454

Bill Number (if applicable)

Topic FL Cat Fund

Amendment Barcode (if applicable)

Name Jay Neal

Job Title Pres. + CEO FAIR

Address 2900 East Oakland Park Blvd

Phone 754 200 4538

Street

Fort Lauderdale FL 33306

Email jneal@floridainsurancereform.org

City

State

Zip

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

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

Representing Florida Association for Insurance Reform

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

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

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

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)

2/20/18

Meeting Date

SB 1454

Bill Number (if applicable)

Topic The Florida Hurricane Catastrophe Fund

Amendment Barcode (if applicable)

Name Paul Handershan

Job Title Consultant

Address 120 South Monroe Street

Phone 861 704 0428

Street

Tallahassee FL

PAUL@RANTASCONSULTING.COM

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.

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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)

1454

1454

2/20/18

Meeting Date

Bill Number (if applicable)

Topic FL Hurricane Catastrophe Fund

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1200

Street

Tallahassee FL 32301

City

State

Zip

Email cjohnson@fldchamber.com

Speaking: [] For [X] 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 [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)

2.20.18

Meeting Date

1454

Bill Number (if applicable)

Topic CAT Fund

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 1020 E College #502

Phone 222-9075

Street

Tallahassee FL 32308

City

State

Zip

Email akalifeh@capitol.org

Speaking: [] For [] Against [] Information

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

Representing AIF

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)

2/20/18

Meeting Date

SB 1454

Bill Number (if applicable)

Topic FL Hurricane Catastrophe Fund

Amendment Barcode (if applicable)

Name William Stander

Job Title

Address P.O. Box 454

Phone 850-212-3250

Street

Tallahassee FL 32302

Email william@williamstander.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Property & Casualty Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1494

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senator Montford and others

SUBJECT: Prescription Drug Pricing Transparency

DATE: February 20, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Johnson</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 1494 requires a pharmacist or his or her authorized employee to inform customers of potential lower cost generically equivalent alternatives for their prescriptions and whether a prescription's cost sharing amount exceeds the retail price in the absence of insurance coverage. The bill also requires pharmacy benefit managers (PBMs) to register with the Office of Insurance Regulation (OIR) and pay a biennial registration fee not to exceed \$500. A PBM is a person or entity doing business in this state, which contracts to administer or manage prescription drug benefits on behalf of a health insurer or a health maintenance organization (HMO) to residents of this state.

Further, the bill requires that contracts of PBMs with insurers or HMOs must require the PBM to update the maximum allowable cost (MAC) information every seven calendar days and include specific terms to prohibit PBMs from limiting a pharmacist's ability to disclose to customers when cost sharing may exceed the retail price of a drug or the availability of a more affordable alternative drug. The bill also prohibits any contract between a PBM and a health insurer or HMO from requiring a customer to pay an amount that exceeds the applicable cost-sharing amount or the retail price of the drug in the absence of prescription drug coverage.

The bill has an estimated fiscal impact of \$79,141 on the Office of Insurance Regulation for the funding of one FTE and technology upgrades.

The effective date of the act is July 1, 2018.

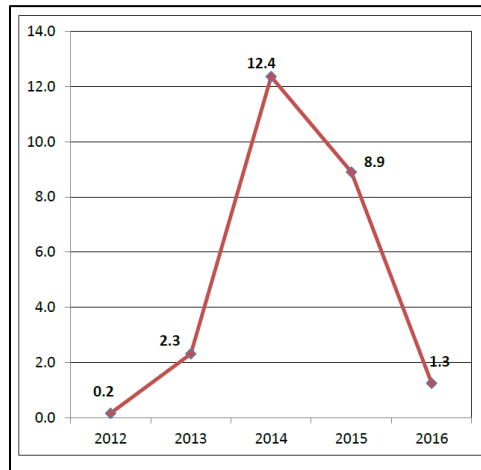
II. Present Situation:

Prescription Drugs Costs

In 2016, total health care expenditures in the United States reached \$3.3 trillion, a 4.3 percent increase over the 2015 level.¹ Of that amount, prescription drug coverage accounted for \$328.6 billion, up from \$324.5 billion which was only a year to year growth rate of 1.3 percent.² In the prior year, 2014 to 2015, the annual growth trend in prescription drugs had been 8.9 percent and then 12.4 percent in the annual period of 2013 to 2014.³ The significant growth rates of these periods are attributed largely to new medicines for hepatitis C and higher use rates for brand-names medications due to losses in certain patent protections.⁴

The graph below from the Centers for Medicare and Medicaid Services, Office of the Actuary, shows the Annual Growth in Retail Prescription Drug Spending from 2012 through 2016 highlighting the moderate increase in spending from 2015 to 2016 of 1.3.⁵ The 2016 decline in spending is linked to the approval of fewer new drugs, slower growth in brand name drugs, and a drop in spending in hepatitis C drugs.⁶

Graph 1 - Annual Growth in Retail Prescription Drug Spending - 2012 - 2016



SOURCE: Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics

¹ Micah Hartman, Anne B. Martin, Nathan Espinosa, et al, *National Health Care Spending in 2016: Spending and Enrollment Growth Slow After Initial Coverage Expansions*, Health Affairs – January 2018 (Dec. 6, 2017), p. 152, available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.1299> (last viewed Feb. 15, 2018).

² *Id.* at 153.

³ *Id.*

⁴ *Id.* at 155.

⁵ Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group, *Annual Growth in Retail Prescription Drug Spending, 2012-2016*, Slide 12, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/NHE-Presentation-Slides.pdf> (last viewed Feb. 9, 2018).

⁶ *Id.*

As shown in Table 1, the largest payer for prescription drugs is private health insurance coverage at 43 percent.⁷

Utilization data shows an increase in 2016 in the number of prescriptions dispensed, especially for drugs that treat high blood pressure, high cholesterol, and mental health.⁸ An increase in the use of specialty drugs may have also played a part in the increased costs. Expenditures on specialty drugs are rising more rapidly than on other drugs; however, there is no clear definition of what is a “specialty drug.”

Payer	Percentage of Market	Percent Growth	
		2015	2016
Overall – All Payers	100%	8.9%	1.3%
Private Health Insurance	43%	10.4	0.8
Medicare	29%	9.3	2.8
Medicaid	10%	13.4	5.5
Out-of-pocket spending	14%	1.6	(1.0)

A different review of national prescription drug data from 2010 to 2014 attributes the rise in prescription drug spending to multiple factors from 2010 to 2014: population growth (10 percent), an increase in the number of prescriptions dispensed per person (30 percent), economy-wide inflation (30 percent), and the remaining 30 percent to changes in the composition of drugs prescribed toward higher priced products or price increases for drugs which drove average price increases in excess of general inflation.¹¹

Pharmacy Benefits Managers (PBMs)

Health insurers, HMOs, and other purchasers of health benefits coverage increasingly utilize PBMs to provide a range of services related to the acquisition and management of prescription drugs. The PBMs negotiate with retail pharmacies to obtain various discounts on prescription drug prices. PBMs also provide the following services to its customers:

- Pharmacy claims processing;
- Mail-order pharmacy services;
- Rebate negotiations with drug manufacturers;
- Development of pharmacy networks;
- Formulary management;¹²
- Prospective and retrospective drug utilization reviews;
- Offer incentives to plan participations to use generic drug substitutions; and

⁷ *Supra* note 5, at 155.

⁸ *Supra* note 1, at 156.

⁹ *Id.*

¹⁰ Centers for Medicare and Medicaid Services, National Health Expenditure Data – Historical, 2016 - Table 16 – Retail Prescription Expenditures (Average Annual Percent Change from Previous Year Shown) (Jan. 8, 2018) available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html> (last viewed Feb. 15, 2018).

¹¹ *Supra* note 6, at 5.

¹² A list of drugs that a health plan uses to make reimbursement decisions.

- Disease management programs.

The decision of plan sponsors to use PBMs to control pharmacy benefit costs, however, can shift business away from retail pharmacies. A PBM can often use aggregate volume to offer its clients savings with discounts from pharmaceutical manufacturers and pharmacies.¹³ An estimated 266 million Americans have their pharmacy benefits managed by a PBM.¹⁴ An industry advocacy group estimates that PBMs have saved an average of \$941 per person per year compared to unmanaged expenditures,¹⁵ including a total of \$43.4 billion across all payors in Florida.¹⁶

Approximately 60 PBMs are operational nationally, and the three largest – Express Scripts, CVS/Caremark, and OptumRx – report filling or managing a combined 5.1 billion prescriptions annually.^{17,18,19} PBMs use different tools and methods to reduce costs and find savings for payors through reductions in the unit costs of drugs, the mix of drugs that are prescribed, and in the modification of patient behavior through either reduction of inappropriate use of certain prescriptions or improvements in patient adherence to drug regimens.²⁰

Examples of unit cost reductions may be in discounts to pharmacy network participants, use of manufacturer rebates, or the increased use of mail order pharmacies. PBMs may also encourage a greater use of generic drugs over certain brand name drugs, require step therapy, or implement tiered copayment levels for different types of prescriptions to achieve desired savings. Reducing or eliminating certain types of patient behaviors through quantity limits, prior authorization requirements, or other patient management programs are also tools that may be used.²¹ Each PBM may generate savings from these actions which may also translate into savings for the patient and the payor.

Most patients assume that their share of cost of that prescription will be less than the actual retail cost of the prescription (or the non-insured cash price) of the drug. However, this may not always be the case. In cases where the retail price of the drug is less than a patient's applicable cost share, a patient could pay the regular cost sharing, regardless of the retail price; pay the lower retail price; or, some other amount based on the contract terms between the PBM and the pharmacy. If a pharmacist is obligated to charge this higher price, the PBM may collect as

¹³ Bill Alpert, *Pharmacy Benefit Managers Under Pressure*, Barrons (July 23, 2016) available at <https://www.barrons.com/articles/pharmacy-benefit-managers-under-fire-1469247082> (last visited Feb. 1, 2018).

¹⁴ Visante, Prepared for the Pharmaceutical Care Management Association, *The Return on Investment on PBM Services* (November 2016), Slide 2, available at <https://www.pcmanet.org/wp-content/uploads/2016/11/ROI-on-PBM-Services-FINAL.pdf> (last visited Feb. 1, 2018).

¹⁵ *Id.*

¹⁶ Pharmaceutical Care Management Association, *How Much PBMs are Saving: State by State* <http://drugbenefitsolutions.com/prescription-costs/> (last visited Feb. 1, 2018).

¹⁷ Express Scripts, *Corporate Overview* <https://lab.express-scripts.com/about/> (last visited Feb. 1, 2018).

¹⁸ CVS Health, *Investor Fact Sheet* (November 2017) available at http://investors.cvshealth.com/~/_media/Files/C/CVS-IR-v3/documents/cvs-factsheet-111017.pdf (last visited Feb. 1, 2018).

¹⁹ OptumRx, *About Optum* <https://www.optum.com/about.html> (last visited Feb. 1, 2018).

²⁰ *Supra* note 15, at 4.

²¹ *Id.*

revenue the difference between a patient's cost share and the lower retail price.²² One recent *New York Times* article cited a statistic that for up to 10 percent of drug transactions, the patient could have gotten a better price without an insurance card for a prescription than with his or her coverage.²³

Maximum Allowable Cost Pricing List

Contracts between a PBM and health plan sponsors, insurers, or HMOs specify how much such entities will pay the PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price²⁴ for brand-name drugs and at a maximum allowable cost (MAC)²⁵ for generic drugs, plus a dispensing fee. The MAC represents the upper limit price that a payor, such as a state or a plan sponsor has through its PBM, will pay or reimburse for generic and brand drugs that have generic versions available.²⁶ A national survey represents that 92 percent of large employers have such a list in place through their PBM.²⁷

A MAC pricing list creates a standard reimbursement amount for identical products, and is a common cost management tool developed from a proprietary survey of wholesale prices in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors. The purpose of the MAC pricing list is to ensure that the pharmacy is motivated to seek and purchase generic drugs at the lowest price in the marketplace. The federal Medicare Part D program and 44 state Medicaid programs use some type of MAC price lists to reduce costs.²⁸

Regulation of Pharmacies and Pharmacy Benefit Management Companies

In Florida, PBMs are not regulated or licensed. However, the Board of Pharmacy under ch. 465, F.S., regulates pharmacies, adopts rules to implement the provisions of the Pharmacy Act, and takes other actions according to duties conferred upon it.²⁹ Each pharmacy is subject to inspection by the Department of Health (DOH) and may be disciplined for violations of applicable laws and rules relating to a pharmacy.³⁰

²² National Community Pharmacists Association. *Statement for the Record: National Community Pharmacists Association*, U.S. House Committee on Oversight and Government Reform, (Feb. 4, 2016), available at <http://www.ncpa.co/pdf/ncpa-ogr-statement.pdf> (last visited Feb. 1, 2018).

²³ Charles Ornsstein, *When Buying Prescription Drugs, Some Pay More With Insurance Than Without It*, *The New York Times*, (December 9, 2017), available at <https://www.nytimes.com/2017/12/09/health/drug-prices-generics-insurance.html> (last visited Feb. 1, 2018).

²⁴ Average wholesale price is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies, and others, such as hospitals.

²⁵ Maximum allowable cost is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.

²⁶ Brent J. Eberle, RPh, Alan Van Amber, *Your PBM's MAC List Impacts Your Bottom Line*, *Managed Healthcare Executive*, (December 1, 2008), available at <http://managedhealthcareexecutive.modernmedicine.com/managed-healthcare-executive/content/your-pbms-mac-list-impacts-your-bottom-line> (last visited Feb. 15, 2018).

²⁷ *Id.*

²⁸ Medicaid.gov, *Medicaid Covered Outpatient Prescription Drug Reimbursement Information by State (Quarter Ending September 2017)*, available at <https://www.medicaid.gov/medicaid/prescription-drugs/state-prescription-drug-resources/drug-reimbursement-information/index.html> (last viewed Feb. 15, 2018).

²⁹ Sections 465.005 and 465.022, F.S.

³⁰ Sections 465.015 and 465.016, F.S.

A PBM administers the prescription drug part of a health plan on behalf of plan sponsors, insurers, and HMOs. Some states require PBMs to either register with state insurance regulators or be licensed as third-party administrators.³¹ Types of state regulation of PBMs include:³²

Licensure/Registration of PBMs		Patient Protections and Pricing Transparency	Both Licensure and Patient Protections
Iowa (2007) Kansas (2006) Kentucky (2016) Maryland (2003) New Mexico (2016)	North Dakota (2005) Rhode Island (2004) South Dakota (2004) Wyoming (2016)	Georgia (2017) Louisiana (2016) North Carolina (2017) Tennessee (2009) Texas (2017)	Arkansas (2015) Connecticut (2007, 2017) Washington (2014)

A PBM may obtain accreditation from various accrediting bodies that determine if certain national standards are met. Accreditation is an evaluative, rigorous, transparent, and comprehensive process in which a health care organization undergoes an examination of its systems, processes, and performance by an accrediting body to ensure that it is conducting business in a manner that meets predetermined criteria and is consistent with national standards. Current law provides that a contract between a PBM and a pharmacy must include requirements that the PBM:

- Update the MAC pricing at least every seven calendar days; and
- Maintain a process to eliminate drugs in a timely manner from the MAC lists or drug price lists, and to remain consistent with changes in pricing data that is used in formulating the MAC prices and product availability.³³

However, no state agency is responsible for enforcing these provisions.

III. Effect of Proposed Changes:

Section 1 amends s. 465.0244, F.S., to require a pharmacist or his or her authorized employee to notify customers:

- If a less expensive, generically equivalent drug product is available for his or her prescription; and
- If the customer’s cost sharing obligation for his or her prescription exceeds the retail price of the customer’s prescription in the absence of prescription drug coverage.

Section 2 repeals s. 465.1862, F.S., relating to contracts between pharmacy benefit manager and pharmacies.

Section 3 creates s. 624.490, F.S., to require the OIR to implement a PBM registration and biennial registration renewal process beginning January 1, 2019. The bill also defines a

³¹ Joanne Wojcik, *States Try to Regulate Pharmacy Benefit Managers*, Business Insurance (August 22, 2010), available at <http://www.businessinsurance.com/article/20100822/ISSUE07/308229997> (last visited Feb. 15, 2018).

³² See also Pharmacists United for Truth and Transparency, *State Regulations in Pharmacy Benefit Management*, available at https://www.marleydrug.com/wp-content/uploads/2016/05/PUTT_State-Regulations_061713a.pdf (last viewed Feb. 15, 2018), and National Association of Community Pharmacists, *State Laws Reforming the Practices of Pharmacy Benefit Managers (PBMs)*, available at http://www.ncpanet.org/pdf/leg/nov12/pbm_enacted_legislation.pdf (last viewed Feb. 15, 2018).

³³ Section 465.1862(2), F.S.

pharmacy benefit manager to mean a person or entity who is doing business in this state, which contracts to administer prescription drug benefits on behalf of a health insurer or a health maintenance organization to residents of this state.

To register, a PBM is required to submit a completed registration on a form, which contains the name and address of the registrant and the directors and officers of the registrant. Upon receipt of a completed registration form, the registration fee, and required documents, the OIR must issue a registration certification to the PBM. The registration certificate is valid for 2 years. The certificate is nontransferable.

The PBM must report to the OIR any changes in the information required for registration within 60 days of the change. The Financial Services Commission must adopt by rule an initial registration fee not to exceed \$500 and a registration renewal fee not to exceed \$500. The commission must adopt rules to implement the registration process.

Sections 4, 5 and 6 create ss. 627.64741, 627.6572, and 641.314, F.S., respectively, to require a contract between a PBM and a health insurer, or a PBM and a HMO, mandate that the PBM:

- Update its MAC information at least every seven calendar days. The term “MAC” is defined as the per unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees.
- Maintain a process that will, in a timely manner, eliminate drugs from the MAC lists or modify drug prices to remain consistent with changes in pricing data used in formulating MAC and product availability.
- May not limit a pharmacist’s ability to disclose to the consumer whether the consumer’s cost sharing obligation exceeds the retail price for a covered prescription drug and disclosure of the availability of a more affordable alternative drug.

These provisions would apply to individual and group policies and contracts of insurers and HMOs, respectively. Further, these sections prohibit a PBM from requiring a consumer to pay for a prescription in an amount that exceeds the lesser of the applicable cost sharing amount or the retail price in the absence of prescription drug coverage. The changes in these sections are effective for contracts entered into or renewed on or after July 1, 2018.

Section 6 provides an effective date for the act of July 1, 2018.

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 creates a registration program within the Office of Insurance Regulation for pharmacy benefit managers. The Financial Services Commission must adopt by rule an initial registration fee that may not exceed \$500 and a renewal fee that may not exceed \$500.

B. Private Sector Impact:

Each pharmacy benefit manager seeking to do business in the state will be required to complete the new registration process with the OIR and will be required to pay a biennial registration fee and renewal fee. The PBM will incur administrative costs to complete the registration process and to maintain updated information with the OIR.

The bill prohibits a PBM from limiting a pharmacist from notifying a patient if the patient’s cost sharing obligation exceeds the retail price for a covered drug and of the availability of a more affordable alternative drug. This could reduce the out-of-pocket costs of some consumers. However, some insurers suggest that this practice may increase the costs of health care.

C. Government Sector Impact:

The bill requires the OIR to implement and maintain a registration process for PBMs. The initial registration fee and the biennial registration certificate fees are capped at \$500 each, and the Financial Services Commission must adopt by rule such fees.

The OIR’s fiscal impact statement includes a request for one additional FTE to administer the PBM registrations, renewals, and updates to registrations. Costs to upgrade technology for the new PBM registration process are also shown in the chart below.

Office of Insurance Regulation – Fiscal Analysis³⁴		
Item	Description	Total
Reinsurance/Financial Specialist (1 FTE)	Work initial registration filings from PBMs and continued administration of registrants due to changes in controlling interests and monitoring/documenting renewals of registrations expiring at the end of 2 years from the date of issuance.	\$74,141
<u>Contracted Services</u> Technology System Upgrade (one time)	Update technology systems and operations to create registration process for PBMs.	\$5,000
FIRST YEAR ANNUAL TOTAL:		\$79,141

³⁴ Office of Insurance Regulation, *Senate Bill 1494 Analysis* (January 15, 2018), p. 4 (on file with the Senate Committee on Health Policy and Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

PBM Registration Process. The OIR notes that the bill does not include any guidelines by which the OIR could evaluate, approve, or disapprove the registration application or renewal of a PBM other than the completeness of a form.³⁵ This may result in the approval of an individual with a criminal background, for example.

OIR Oversight and Enforcement Authority. The OIR requests the statutory authority to conduct market examinations on the registered PBMs and to require the PBMs to pay for the costs of those exams under s. 624.3161, F.S., as is done for all other market conduct examinations. The bill does not provide the OIR with statutory authority to determine or enforce a PBM's compliance with the provisions of this bill.

VIII. Statutes Affected:

This bill substantially amends section 465.0244 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 624.490, 627.64741, 627.6572, and 641.314.

This bill repeals section 465.1862 of the Florida Statutes.

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

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

CS/CS by Banking and Insurance on February 20, 2018:

The CS/CS revises the Office of Insurance Regulation (OIR) registration process for pharmacy benefit managers (PBMs) in the following manner:

- Requires PBMs to register with the OIR beginning January 1, 2019.
- Caps the initial registration fee at \$500 and renewal fee at \$500.
- Clarifies that the PBM must submit all required registration information prior to the issuance of the registration certificate by the OIR.
- Provides technical conforming changes.

CS by Health Policy on February 6, 2018:

The CS adds the ability for a pharmacist's authorized employee, in addition to the requirement for a pharmacist, to inform a customer of the availability of less expensive, generically equivalent drug product for his or her prescription and as to whether a customer's cost-sharing obligation exceeds the retail price of the prescription drug in the absence of prescription drug coverage.

³⁵ *Id.*

The CS repeals s. 465.1862, F.S., relating to pharmacy benefits manager contracts; however, these provisions are moved to the insurance code under the jurisdiction of the OIR.

Additionally, the CS modifies the PBM registration process by:

- Eliminating requirements for an individual's social security number;
- Removing the requirement that PBM's submit the names of those individuals or entities with 10 percent or greater controlling ownership interest with the registration or biennial renewal;
- Deleting the definition of controlling interest;
- Extending the notice period for information changes to 60 days from 30 days; and
- Capping the maximum fees that may be charged by the OIR for administering the process at \$500.

The CS deletes the requirement that the contracts between PBMs and insurers and HMOs include a prohibition against limiting the ability of the pharmacy or PBM to substitute a less expensive, generically equivalent drug product for a brand name drug.

For contracts between health insurers and HMOs and the PBMs, the CS amends the comparison points relating to the consumer's out of pocket cost for prescription drugs from three to two, so the consumer pays the lesser of the applicable cost-sharing amount or the retail price of the drug in the absence of prescription drug coverage. The third reference point, the allowable claim amount for the prescription drug, is deleted. The CS also creates s. 627.6572, F.S, making the provisions relating to PBM contract reporting on MAC cost information and contract provision requirements applicable to group health insurance policies.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 52 - 82

and insert:

- (2) Beginning January 1, 2019, a pharmacy benefit manager must register with the office to conduct business in this state. To initially register or renew a registration, a pharmacy benefit manager must submit:
- (a) A nonrefundable fee;
 - (b) A copy of the registrant's corporate charter, articles



784728

11 of incorporation, or other charter document; and
12 (c) A completed registration on a form adopted by the
13 commission which contains:
14 1. The name and address of the registrant; and
15 2. The name, address, and official position of each officer
16 and director of the registrant.
17 (3) The registrant shall report any change in information
18 required by subsection (2) to the office in writing within 60
19 days after the change occurs.
20 (4) Upon receipt of a completed registration form, required
21 documents, and the registration fee, the office shall issue a
22 registration certificate. The certificate may be in paper or
23 electronic form, and must indicate the expiration date of the
24 registration. Registration certificates are nontransferable.
25 (5) A registration certificate is valid for 2 years from
26 its date of issue. The commission shall adopt by rule an initial
27 registration fee not to exceed \$500 and a registration renewal
28 fee not to exceed \$500, both of which are nonrefundable.
29 (6) The commission shall adopt rules necessary to implement

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

32 And the title is amended as follows:

33 Delete lines 12 - 17

34 and insert:

35 the Office of Insurance Regulation beginning on a
36 specified date; providing requirements and terms of
37 registration, including the payment of a nonrefundable
38 fee; requiring the office to issue certificates of
39 registration; specifying that certificates are



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40 nontransferable; requiring the Financial Services
41 Commission to set an initial registration fee and a
42 renewal fee which are nonrefundable and may not exceed
43 a specified amount; requiring the commission to

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

588-02927-18

20181494c1

1 A bill to be entitled
 2 An act relating to prescription drug pricing
 3 transparency; amending s. 465.0244, F.S.; requiring
 4 pharmacists to inform customers of less expensive,
 5 generically equivalent drugs for their prescriptions
 6 and as to whether customers' cost-sharing obligations
 7 exceed the retail price of their prescriptions;
 8 repealing s. 465.1862, F.S., relating to pharmacy
 9 benefit manager contracts; creating s. 624.490, F.S.;
 10 defining the term "pharmacy benefit manager";
 11 requiring a pharmacy benefit manager to register with
 12 the Office of Insurance Regulation; providing
 13 requirements and terms of registration, including the
 14 payment of a registration fee; requiring the office to
 15 issue certificates of registration and to set an
 16 initial registration fee and a renewal fee, which may
 17 not exceed a specified amount; requiring the office to
 18 adopt rules; creating ss. 627.64741, 627.6572, and
 19 641.314, F.S.; defining the terms "maximum allowable
 20 cost" and "pharmacy benefit manager"; requiring that
 21 certain terms be included in a contract between a
 22 health insurer or a health maintenance organization
 23 and a pharmacy benefit manager; providing
 24 applicability; providing an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 465.0244, Florida Statutes, is amended
 29 to read:

Page 1 of 7

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

588-02927-18

20181494c1

30 465.0244 Information disclosure.-
 31 (1) Every pharmacy shall make available on its website a
 32 hyperlink to the health information that is disseminated by the
 33 Agency for Health Care Administration pursuant to s. 408.05(3)
 34 and shall place in the area where customers receive filled
 35 prescriptions notice that such information is available
 36 electronically and the address of its Internet website.
 37 (2) In addition to the requirements of s. 465.025, a
 38 pharmacist or her or his authorized employee must inform a
 39 customer of a less expensive, generically equivalent drug
 40 product for her or his prescription and as to whether the
 41 customer's cost-sharing obligation exceeds the retail price of
 42 the prescription in the absence of prescription drug coverage.
 43 Section 2. Section 465.1862, Florida Statutes, is repealed.
 44 Section 3. Section 624.490, Florida Statutes, is created to
 45 read:
 46 624.490 Registration of pharmacy benefit managers.-
 47 (1) As used in this section, the term "pharmacy benefit
 48 manager" means a person or entity doing business in this state
 49 which contracts to administer prescription drug benefits on
 50 behalf of a health insurer or a health maintenance organization
 51 to residents of this state.
 52 (2) To conduct business in this state, a pharmacy benefit
 53 manager must register with the office. To register, a pharmacy
 54 benefit manager shall submit:
 55 (a) A fee determined by the office.
 56 (b) A copy of the registrant's corporate charter, articles
 57 of incorporation, or other charter document.
 58 (c) A form established by the office containing the

Page 2 of 7

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

588-02927-18 20181494c1

59 identity, address, and taxpayer identification number, when
60 applicable, of:

- 61 1. The registrant.
62 2. The chief executive officer or a similarly titled person
63 responsible for the executive oversight of the registrant.
64 3. The chief financial officer or a similarly titled person
65 responsible for the financial oversight of the registrant.
66 4. Each person or entity responsible for the affairs of the
67 registrant, including, but not limited to, the day-to-day
68 operations of the registrant.

69 (3) The registrant shall report any change in information
70 required by subsection (2) to the office in writing within 60
71 days after the change occurs.

72 (4) Upon receipt of a completed registration form and the
73 registration fee, the office shall issue a registration
74 certificate. The certificate may be in paper or electronic form,
75 and shall clearly indicate the expiration date of the
76 registration. Registration certificates are nontransferable.

77 (5) A registration certificate is valid for 2 years from
78 its date of issue. The office shall set an initial registration
79 fee and a registration renewal fee, both of which shall be
80 nonrefundable. Total fees may not exceed the cost of
81 administering this section or \$500, whichever is less.

82 (6) The office shall adopt rules necessary to implement
83 this section.

84 Section 4. Section 627.64741, Florida Statutes, is created
85 to read:

86 627.64741 Pharmacy benefit manager contracts.-

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

588-02927-18 20181494c1

88 (a) "Maximum allowable cost" means the per-unit amount that
89 a pharmacy benefit manager reimburses a pharmacist for a
90 prescription drug, excluding dispensing fees, prior to the
91 application of copayments, coinsurance, and other cost-sharing
92 charges, if any.

93 (b) "Pharmacy benefit manager" means a person or entity
94 doing business in this state which contracts to administer or
95 manage prescription drug benefits on behalf of a health insurer
96 to residents of this state.

97 (2) A contract between a health insurer and a pharmacy
98 benefit manager must require that the pharmacy benefit manager:

99 (a) Update maximum allowable cost pricing information at
100 least every 7 calendar days.

101 (b) Maintain a process that will, in a timely manner,
102 eliminate drugs from maximum allowable cost lists or modify drug
103 prices to remain consistent with changes in pricing data used in
104 formulating maximum allowable cost prices and product
105 availability.

106 (3) A contract between a health insurer and a pharmacy
107 benefit manager must prohibit the pharmacy benefit manager from
108 limiting a pharmacist's ability to disclose whether the cost-
109 sharing obligation exceeds the retail price for a covered
110 prescription drug, and the availability of a more affordable
111 alternative drug, pursuant to s. 465.0244.

112 (4) A contract between a health insurer and a pharmacy
113 benefit manager must prohibit the pharmacy benefit manager from
114 requiring an insured to make a payment for a prescription drug
115 at the point of sale in an amount that exceeds the lesser of:

116 (a) The applicable cost-sharing amount; or

588-02927-18

20181494c1

117 (b) The retail price of the drug in the absence of
 118 prescription drug coverage.
 119 (5) This section applies to contracts entered into or
 120 renewed on or after July 1, 2018.
 121 Section 5. Section 627.6572, Florida Statutes, is created
 122 to read:
 123 627.6572 Pharmacy benefit manager contracts.—
 124 (1) As used in this section, the term:
 125 (a) "Maximum allowable cost" means the per-unit amount that
 126 a pharmacy benefit manager reimburses a pharmacist for a
 127 prescription drug, excluding dispensing fees, prior to the
 128 application of copayments, coinsurance, and any other cost-
 129 sharing charges.
 130 (b) "Pharmacy benefit manager" means a person or entity
 131 doing business in this state which contracts to administer or
 132 manage prescription drug benefits on behalf of a health insurer
 133 to residents of this state.
 134 (2) A contract between a health insurer and a pharmacy
 135 benefit manager must require that the pharmacy benefit manager:
 136 (a) Update maximum allowable cost pricing information at
 137 least every 7 calendar days.
 138 (b) Maintain a process that will, in a timely manner,
 139 eliminate drugs from maximum allowable cost lists or modify drug
 140 prices to remain consistent with changes in pricing data used in
 141 formulating maximum allowable cost prices and product
 142 availability.
 143 (3) A contract between a health insurer and a pharmacy
 144 benefit manager must prohibit the pharmacy benefit manager from
 145 limiting a pharmacist's ability to disclose whether the cost-

Page 5 of 7

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

588-02927-18

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146 sharing obligation exceeds the retail price for a covered
 147 prescription drug, and the availability of a more affordable
 148 alternative drug, pursuant to s. 465.0244.
 149 (4) A contract between a health insurer and a pharmacy
 150 benefit manager must prohibit the pharmacy benefit manager from
 151 requiring an insured to make a payment for a prescription drug
 152 at the point of sale in an amount that exceeds the lesser of:
 153 (a) The applicable cost-sharing amount; or
 154 (b) The retail price of the drug in the absence of
 155 prescription drug coverage.
 156 (5) This section applies to contracts entered into or
 157 renewed on or after July 1, 2018.
 158 Section 6. Section 641.314, Florida Statutes, is created to
 159 read:
 160 641.314 Pharmacy benefit manager contracts.—
 161 (1) As used in this section, the term:
 162 (a) "Maximum allowable cost" means the per-unit amount that
 163 a pharmacy benefit manager reimburses a pharmacist for a
 164 prescription drug, excluding dispensing fees, prior to the
 165 application of copayments, coinsurance, and any other cost-
 166 sharing charges.
 167 (b) "Pharmacy benefit manager" means a person or entity
 168 doing business in this state which contracts to administer or
 169 manage prescription drug benefits on behalf of a health
 170 maintenance organization to residents of this state.
 171 (2) A contract between a health maintenance organization
 172 and a pharmacy benefit manager must require that the pharmacy
 173 benefit manager:
 174 (a) Update maximum allowable cost pricing information at

Page 6 of 7

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

588-02927-18

20181494c1

175 least every 7 calendar days.

176 (b) Maintain a process that will, in a timely manner,
177 eliminate drugs from maximum allowable cost lists or modify drug
178 prices to remain consistent with changes in pricing data used in
179 formulating maximum allowable cost prices and product
180 availability.

181 (3) A contract between a health maintenance organization
182 and a pharmacy benefit manager must prohibit the pharmacy
183 benefit manager from limiting a pharmacist's ability to disclose
184 whether the cost-sharing obligation exceeds the retail price for
185 a covered prescription drug, and the availability of a more
186 affordable alternative drug, pursuant to s. 465.0244.

187 (4) A contract between a health maintenance organization
188 and a pharmacy benefit manager must prohibit the pharmacy
189 benefit manager from requiring a subscriber to make a payment
190 for a prescription drug at the point of sale in an amount that
191 exceeds the lesser of:

192 (a) The applicable cost-sharing amount; or

193 (b) The retail price of the drug in the absence of
194 prescription drug coverage.

195 (5) This section applies to contracts entered into or
196 renewed on or after July 1, 2018.

197 Section 7. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Senate Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that SB 1494 on Prescription Drug Pricing Transparency be placed on the:

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

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

Senator Bill Montford
Florida Senate, District 3

APPEARANCE RECORD

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

2/20/18

Meeting Date

1494

Bill Number (if applicable)

Topic Prescription Drug Pricing Transparency

Amendment Barcode (if applicable)

Name Scott Tomerly

Job Title Pharmacist

Address 3233 Hawthorne Ave

Street

Phone _____

Rockledge FL 32955

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Pharmacists 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)

2/20/18
Meeting Date

1494
Bill Number (if applicable)

Topic C

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #240
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 Physicians

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb. 20, 18

Meeting Date

1494

Bill Number (if applicable)

Topic PBMs

Amendment Barcode (if applicable)

Name Toni Large

Job Title

Address 519 E. Park Ave

Phone (850) 556-1461

Tallahassee FL 32308

Email toni@sulaw.net

City State Zip

Speaking: For Against Information

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

Representing Florida Society of Rheumatology

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

1105
1:30

2-20-2018

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

SB 1494

Meeting Date

Bill Number (if applicable)

Topic PRESCRIPTION DRUG PRICING TRANSPARENCY

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BARSTONE PINES DRIVE

Phone 878-9364

Street

TALLAHASSEE

FL

32301

Email _____

City

State

Zip

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)

February 20, 2018

Meeting Date

1494

Bill Number (if applicable)

Topic Prescription Drug Price Transparency

Amendment Barcode (if applicable)

Name Michael Jackson

Job Title Executive Vice President and CEO

Address 610 North Adams Street

Street

Phone 850 222-2400

Tallahassee

Florida

32301

Email mjackson@pharmview.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Pharmacy 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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APPROVAL **APPEARANCE RECORD**

2-20-2018

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

CS/SB 1494

Meeting Date

Bill Number (if applicable)

Topic PRESCRIPTION DRUG PRICING TRANSPARENCY

Amendment Barcode (if applicable)

Name BILL MINCY

Job Title VP PPSC

Address 3375 CAPITOL CIRCLE NE SUITE I Phone 850-553-3595

Street

TALLAHASSEE

FL

32308

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing SMALL BUSINESS PHARMACIES

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)

2/20/18
Meeting Date

SB 1494
Bill Number (if applicable)

Topic Drug Price Transparency

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Gadsden St.

Phone 850-570-6307

Tallahassee, FL 32301
City State Zip

Email laugenz2@earthlink.net

Speaking: For Against Information

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

Representing Florida Society of Health-System Pharmacists

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)

2/20/18

Meeting Date

1494

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St. Suite E

Phone ⁽⁸⁵⁰⁾ 559-0855

Street

Tallahassee FL 32307

City

State

Zip

Email cynthenderson@me.com

Speaking: For Against Information

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

Representing EPIC RX

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 1568

INTRODUCER: Banking and Insurance Committee and Senator Farmer

SUBJECT: Prohibited Activities under the Workers' Compensation Law

DATE: February 20, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			CM	
3.			RC	

I. Summary:

CS/SB 1568 revises provisions relating to workers' compensation prohibited acts and insurance fraud. Chapter 440, F.S., governs the administration of the workers' compensation system in Florida. The bill:

- Provides that any statement or documentation containing incomplete or inaccurate information or documentation of an employee's citizenship, residency, or other employment status may not constitute a basis for denying compensation or benefits.
- Revises prohibited acts that constitute insurance fraud by eliminating the provision that it is unlawful to knowingly present, or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

Under current law, an employee is not entitled to compensation or benefits under ch. 440, F.S., if a judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the prohibited acts described in s. 440.105, F.S., or any criminal act for the purpose of securing workers' compensation benefits. Section 440.105(4)(b)9., F.S., provides that it is unlawful for any person to knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

II. Present Situation:

Florida Workers' Compensation System

Chapter 440, F.S., governs the administration of the workers' compensation system in Florida. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Workers' compensation is the injured employee's

remedy for “compensable” workplace injuries.¹ Employees generally cannot sue a covered employer for workplace injuries.² The Office of Judges of Compensation Claims is responsible for resolving workers’ compensation benefit disputes.³

Due to growing concerns regarding the availability and affordability of workers’ compensation insurance in Florida, legislation was enacted in 2003 that substantially revised many aspects of the workers’ compensation law.⁴

2003 Legislative Reforms

Generally, an accident is deemed compensable under ch. 440, F.S., if it occurred during the course and scope of the injured employee’s employment. One major exception to this compensability is the fraud defense. An employee is not entitled to compensation or benefits under ch. 440, F.S., if a judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the prohibited acts described in s. 440.105, F.S., or any criminal act for the purpose of securing workers’ compensation benefits.⁵ A person violating any provision of s. 440.105(4), F.S., commits insurance fraud. The 2003 legislation creates a criminal penalty that potentially affect the issue of whether unauthorized aliens are entitled to receive workers’ compensation benefits if injured on the job. The provision⁶ states that it is unlawful for any person:

To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers’ compensation benefits.

With the passage of this act, it is a felony and insurance fraud for a person to knowingly present any false or misleading oral or written statement as evidence of identity for obtaining employment. Therefore, if a worker obtains his or her employment by misrepresenting his identity in order to get a job, then that worker could be found to have committed insurance fraud⁷ and thus denied benefits if injured on the job.⁸

According to representatives with the Division of Insurance Fraud⁹ within the Department of Financial Services, the purpose of this 2003 amendment was to facilitate the arrest and

¹ “Compensable” means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

² Section 440.11(1), F.S. Employers who fail to obtain required workers’ compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers’ compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

³ Section 440.192, F.S.

⁴ ch. 2003-312, Laws of Fla., Senate Bill 50-A.

⁵ Section 440.09(4)(a), F.S.

⁶ Section 440.105(4)(b)9., F.S.

⁷ The penalties for committing insurance fraud range from a third to a first-degree felony, depending on the monetary value of the violation.

⁸ Section 440.09(4)(a), F.S.

⁹ Now known as the Division of Investigative and Forensic Sciences.

prosecution of unauthorized aliens who have lied about their identity in order to obtain employment and then falsified their on-the-job injury.¹⁰ The division staff stated that it is often easier to prove that the unauthorized alien lied about his identity in order to obtain work than it is to prove the job-related injury was fabricated.¹¹ Many times unauthorized aliens are in league with unethical doctors and lawyers who bilk the workers' compensation system, these officials claim.¹² The Senate report notes that some persons who are critical of this provision contend this provision could provide an incentive for employers to seek out unauthorized aliens as employees (and deny they knew their unauthorized work status at the time of hire), in order to avoid paying benefits if such workers were injured, and thus obtain a competitive advantage.¹³

The 2003 law also makes it a first-degree misdemeanor¹⁴ for an employer to commit the following act:

It shall be unlawful for any employer to knowingly participate in the creation of the employment relationship in which the employee has used any false, fraudulent, or misleading oral or written statement as evidence of identity.

This provision penalizes employers if they have knowledge of the employee's use of a false or misleading statement as evidence of identity relating to an employment relationship.

Benefits for Unauthorized Aliens

Unauthorized aliens are not precluded from receiving benefits for compensable, work-related injuries under Florida's workers' compensation law. The definition of the term, "employee," includes "any person who receives remuneration from any employer...whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors."¹⁵

Florida Cases

In *Gene's Harvesting v. Rodriguez*, the First District Court of Appeal found that the workers' compensation law did not exclude from coverage workers not lawfully immigrated so that an alien was entitled to workers' compensation benefits for a work-related injury even though he or she was not authorized to be in the country.¹⁶ Later, the Florida Supreme Court struck down a provision in the law that had limited death benefits for nonresident alien beneficiaries of deceased workers who were not residents of Canada to \$1,000, rather than the \$100,000 otherwise available, as violative of both Federal and state equal protection provisions.¹⁷

¹⁰ See Senate Banking and Insurance Committee, *Review of the 2003 Workers' Compensation Act, Interim Project Report 2004-110*, (Dec. 2003) (on file with Senate Committee on Banking and Insurance).

¹¹ *Id.* at p. 6.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 440.105(3)(b), F.S.

¹⁵ Section 440.02(15)(a), F.S.

¹⁶ See *Gene's Harvesting v. Rodriguez*, 421 So.2d 701 (Fla. 1st DCA 1982). See also, *Cenvill Development Corp. v. Candelo*, 478 So.2d 1168 (Fla. 1st DCA 1985).

¹⁷ *De Ayala v. Florida Farm Bureau Casualty Insurance Co.*, 543 So.2d 204 (Fla. 1989).

In *Matrix Employee Leasing v. Hernandez*,¹⁸ the court concluded it was “clear that claimant violated section 440.105(4)(b)(9), by procuring work with a false social security card.” However, the First District Court concluded that this violation did not preclude entitlement to workers' compensation benefits by Hernandez. The record contains no evidence that the claimant violated s. 440.105(4)(b)9, F.S., for the purpose of securing workers' compensation benefits.

In *State of Florida v. Brock*,¹⁹ the defendant applied for a job but used a social security number that was not issued to him. He did not file a workers' compensation claim, but was charged with one count of fraud under s. 440.104(4)(b)(9), F.S. The circuit court dismissed the charges against the defendant on the grounds that ch. 440, F.S., is an insurance coverage and regulation statute. In April 2014, the Fourth District Court of Appeals reversed the trial court's dismissal, and opined that s. 440.105(4)(b)9, F.S., makes it a crime to “present . . . any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment . . .” Further, the fact that this clause is followed by the word “or” is important as it indicates the statute may be violated in more than one way: by presenting false or fraudulent documents for the purpose of obtaining employment or providing the false or fraudulent documents to file or support a workers' compensation claim.²⁰

In 2011, the District Court of Appeals heard a case involving an injured worker who was an unauthorized alien. The Judge of Compensation Claims (JCC) found that the employer knew or should have known that a claimant, an unauthorized immigrant from Mexico, was without the legal right to work in the United States. The JCC further found that, notwithstanding this knowledge, the employer hired and continued to unlawfully employ claimant, until he was injured in a significant workplace accident. After claimant suffered injury, the employer and its workers' compensation carrier attempted to assert, as a defensive matter, claimant's unauthorized status to defeat a claim for permanent total disability (PTD) benefits. The Court noted the employer could have avoided the entirety of the loss by refraining from knowingly hiring illegal labor.²¹

Florida Labor Regulations

Under current Florida law, it is a violation for any person to knowingly employ, hire, or recruit, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.²² The first violation of this provision is a noncriminal violation as defined in s. 775.08(3), F.S., and, upon conviction, is punishable as provided in s. 775.082(5), F.S., by a civil fine of not more than \$500, regardless of the number of aliens with respect to whom the violation occurred. Any person who has been previously convicted for a violation and who thereafter violates this provision is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien.

¹⁸ *Matrix Employee Leasing v. Hernandez* 975 So. 2d 612 (Fla. 2008).

¹⁹ *State of Florida v. Brock*, 39 Fla. L. Weekly D907 (4th DCA April 30, 2014). On December 30, 2014, the Florida Supreme court declined to accept jurisdiction and ordered that the petition for review denied.

²⁰ *Id.*

²¹ *HDV Const. Systems, Inc. v. Aragon*, 66 So.3d 331 (1st Dist. 2011).

²² Section 448.09, F.S.

Federal Labor and Immigration Regulations

Immigration and Nationality Act

The immigration policy of the United States is governed largely by the Immigration and Nationality Act²³ (INA), which was first codified in 1952 and has been amended significantly several times. This act is a comprehensive set of laws governing legal immigration, naturalization, work authorization, and the entry and removal of aliens. Implementation of the INA policies is administered by multiple executive branch agencies. The Department of Homeland Security has primary responsibility for immigration functions through several agencies: U.S. Citizenship and Immigration Services, Customs and Border Protection, and Immigration and Customs Enforcement. The Department of State issues visas to foreign nationals overseas, and the Department of Justice operates immigration courts through its Executive Office of Immigration Review.

The Immigration Reform and Control Act of 1986 (IRCA),²⁴ which amended INA, establishes an extensive employment verification system to deny employment to aliens who are not lawfully present in the U.S., or are not lawfully authorized to work in the U.S. Under the IRCA, employers must verify the identity and eligibility of all new hires by examining specified documents before they begin work.

Title 8, U.S.C. s. 1324a defines unlawful employment of aliens and provides civil and criminal sanctions. For example, subsection 1324(a)(1)(i)-(v) prohibits alien smuggling, domestic transportation of unauthorized aliens, concealing or harboring unauthorized aliens, encouraging or inducing unauthorized aliens to enter the United States, and engaging in a conspiracy or aiding and abetting any of the preceding acts. Title 8 U.S.C. s. 1324b relates to unfair immigration-related employment practices, such as discrimination based on national origin or citizenship status. Title 8 s. 1324c delineates prohibited activities relating to document fraud and provides penalties.

Immigration Fraud

Document fraud and benefit fraud are two general types of immigration fraud. Some view immigration fraud as a continuum of events, because people may commit document fraud to engage in benefit fraud. The INA addresses immigration fraud in several ways. It makes “misrepresentation” (e.g., obtaining a visa by falsely representing a material fact or entering the United States by falsely claiming U.S. citizenship) a ground for inadmissibility.²⁵ The INA also has civil enforcement provisions, distinct from removal or inadmissibility proceedings, to prosecute individuals and entities that engage in immigration document fraud.²⁶ Apart from the INA, the U.S. Criminal Code classifies knowingly producing or using fraudulent immigration documents (e.g., visas, border-crossing cards) as criminal offenses.²⁷

²³Pub. Law 82-414 at 8 U.S.C. s. 1101 *et seq.*

²⁴ 8 U.S.C. ss. 1324a-1324b.

²⁵ 8 U.S.C. s. 1182.

²⁶ 8 U.S.C. s. 1324c.

²⁷ 18 U.S.C. s. 1546.

Employment Practices

It is unlawful for employers to knowingly hire workers who lack authorization and for employees to use fraudulent documents to establish employment eligibility. Its provisions, sometimes referred to as employer sanctions, make it unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed.²⁸ The INA prohibits unfair immigration-related employment practices and provides penalties for noncompliance.²⁹ Employers who violate prohibitions on unauthorized employment may be subject to civil monetary penalties or criminal penalties.³⁰

Related Federal Litigation

The Supremacy Clause of the Constitution establishes that federal law, treaties, and the Constitution itself are “the supreme Law of the Land.”³¹ Accordingly, one essential aspect of the federal structure of government is that states can be precluded from taking actions that are otherwise within their authority if federal law is thereby thwarted. States and local governments have generally been preempted or otherwise barred from adopting measures that would deter unauthorized aliens from remaining in their jurisdictions by paralleling federal immigration laws. The U.S. Department of Justice (DOJ) has challenged measures enacted by several states, which are intended to deter the presence of unlawfully present aliens within their jurisdiction.

Arizona v. United States³²

In June 2012, the Supreme Court issued its decision in *Arizona v. United States*, ruling that some aspects of an Arizona statute intended to deter unlawfully present aliens from remaining in the state were preempted by federal law, but also holding that Arizona police were not facially preempted from running immigration status checks on persons stopped for state or local offenses.³³ In reaching these conclusions, the Supreme Court made clear that opportunities for states to take independent action in the field of immigration enforcement are more limited than some had previously believed. In recent years, several states and localities have adopted measures intended to deter the presence of unauthorized aliens within their jurisdiction. In particular, the Court’s decision would suggest that mirroring federal law when imposing criminal penalties upon conduct that could facilitate the presence of unauthorized aliens within a jurisdiction does not suffice to avoid preemption. While the majority opinion acknowledged the importance of immigration policy to the states, and in particular, those like Arizona, which bear many of the consequences of unlawful immigration,³⁴ it nonetheless viewed state and local laws to be permissible only to the extent that they are not in conflict or at cross-purposes with the immigration framework created by the national government.

²⁸ 8 U.S.C. s. 1324a.

²⁹ 8 U.S.C. s. 1324b.

³⁰ The IRCA requires all employers to verify identity and work authorization by examining documents presented by new hires and to complete and retain employment eligibility verification (I-9) forms.

³¹ U.S. CONST., art. VI, cl. 2.

³² *Arizona v. United States*, 132 S. Ct. 2492 (2012).

³³ *Id.*

³⁴ *Id.* at 2500.

Recent Florida Workers' Compensation Report Relating to Unauthorized Workers³⁵

According to a 2017 report, almost 800 unauthorized aliens in Florida were charged with workers' compensation fraud for using illicit Social Security numbers to obtain employment, file for workers' compensation benefits, or both.³⁶ The report noted that more than 560 unauthorized aliens did not file workers' compensation claims, but were charged with fraud. Further, the report notes that an additional 130 unauthorized aliens incurred workplace injuries but were denied benefits and prosecuted.³⁷ According to the report, at least 163 of these injured, unauthorized aliens in Florida were charged since 2004 with a felony of providing false identification after they were injured. In at least 159 cases, their employer or carrier reported them.³⁸ Further, about 80 percent of these injured workers reported between 2013 and 2016 worked for employee leasing companies.

Workers' Compensation Fraud Data

The Division of Investigative and Forensic Sciences is responsible for all law enforcement and forensic components residing within the Department of Financial Services (DFS), which includes insurance fraud investigations of employees, employers, providers, and others.³⁹ The DFS provided data concerning claimant fraud relating to employment status and identity theft of Social Security number or name.

Employment Status

Claimant fraud can include various types of insurance fraud. This may include employees who claim they are injured and unable to return to work but are able to work. Another type of workers' compensation fraud that the DFS investigates includes a person claiming a compensable injury and an inability to work in order to collect workers' compensation benefits while working for another employer without disclosing it to the carrier.

The DFS provided a recent case of an employee who claimed an inability to work and received benefits while employed elsewhere, which resulted in a successful conviction.⁴⁰ An investigation by DFS revealed that the individual knowingly failed to report that he was receiving earned income from an employer as requested on the DWC-19 forms in sections (2) and (4). At the bottom of each DWC-19 form, the fraud claim warning reads: *Any person who, knowingly and*

³⁵ ProPublica and National Public Radio reviewed 14 years of state insurance fraud data and associated court records as part of this study. See National Public Radio, *They Got Hurt At Work — Then They Got Deported*, (Aug. 16, 2017) available at <https://www.npr.org/2017/08/16/543650270/they-got-hurt-at-work-then-they-got-deported> (last viewed Feb. 18, 2018).

³⁶ National Public Radio, *Florida Lawmakers to Review Law Targeting Injured Undocumented Workers* (Aug. 9, 2017), available at <https://www.npr.org/sections/thetwo-way/2017/08/24/545688331/florida-lawmakers-to-review-law-targeting-injured-undocumented-workers> (last viewed Feb. 18, 2018).

³⁷ *Id.*

³⁸ Naples News, *Florida's disposable workers: Companies profit from undocumented laborers, dump them after injuries*, (Dec. 14, 2017) available at <https://www.naplesnews.com/story/news/special-reports/2017/12/14/floridas-disposable-workers-companies-profit-immigrants-reported-after-work-injuries-workers-comp/863286001/> (last viewed Feb. 18, 2018).

³⁹ See Division of Investigative and Forensic Sciences website available at <https://www.myfloridacfo.com/Division/DIFS/> (visited Feb. 20, 2018).

⁴⁰ DFS Case Number 15-1829. Restitution on this case was \$13,738.78 (on file with Senate Banking and Insurance Committee).

with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits insurance fraud, punishable as provided in s. 817.234, Section 440.105(7) F.S. The employer acknowledged that he completed, signed and submitted to the forms to the carrier for submission of payment. Furthermore, copies of cancelled checks obtained from the employer and the bank records of the employer clearly indicated that he was receiving income while collecting workers' compensation indemnity benefits from the carrier from June 2014, through January 2015.

The DFS provided the following statistics on workers' compensation fraud related to employment status.⁴¹

Year	2016	2017
Arrests	47	31
Presentations for Prosecutions	71	53

Employee/Claimant Restitution Totals for Calendar Years 2016 and 2017

Calendar Year	2016	2017
Restitution Requested	\$ 4,025,455.83	\$ 2,848,289.01
Restitution Ordered	\$ 375,450.62	\$ 156,437.41
Inv. ⁴² Cost Requested	\$ 81,826.55	\$ 51,556.75
Inv. Cost Ordered	\$ 35,075.86	\$ 22,360.26

Prosecution of Identity Theft of Social Security Number or Name

The DFS⁴³ provided the following data relating to prosecutions of identity theft of Social Security number or name for FYs 2013/2014, through FY 2017/2018, year to date:

⁴¹ DFS information (Feb. 21, 2018) (on file with the Senate Banking and Insurance Committee).

⁴² Inv. is investigation cost requested.

⁴³ The Division of Investigative and Forensic Sciences is responsible for all law enforcement and forensic components residing within the Department of Financial Services, which includes insurance fraud investigations. See <https://www.myfloridacfo.com/Division/DIFS/> (last viewed Feb. 18, 2018) (on file with the Senate Banking and Insurance Committee).

SUB TYPE	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18 YTD
AGENT PREMIUM	2	0	0	0	0
BY ATTORNEY	0	0	0	0	0
BY EMPLOYEE CLAIMANT	53	46	43	31	14
BY EMPLOYER	20	12	14	8	7
BY PROVIDER	0	0	1	1	1
EMPLOYEE PAYROLL DEDUCTION	0	0	0	0	0
EMPLOYER PREMIUM	12	28	13	19	13
FICTITIOUS CERTIFICATE OF EXEMPTION	1	0	3	2	1
FICTITIOUS CERTIFICATE OF INSURANCE	11	10	14	9	6
ID THEFT OF NUMBER OR NAME	128	142	33	22	7
LEASING COMPANY	0	0	0	1	0
MONEY SERVICE BUSINESS	1	12	2	1	0
VIOLATION OF STOP WORK ORDER	40	43	27	26	16
WORKING WITHOUT COVERAGE	92	158	236	239	116
TOTAL	360	451	386	360	181

III. Effect of Proposed Changes:

Section 1 amends s. 440.09, F.S., relating to entitlement to compensation or benefits under ch. 440, F.S. The bill provides that any written or oral statements of an employee provided to an employer/carrier or others containing incomplete or inaccurate information or documentation of an employee's citizenship, residency, or other employment status may not constitute a basis for denying compensation or benefits under ch. 440, F.S.

Section 440.09(4)(a), F.S., currently provides that an employee is not entitled to compensation or benefits under ch. 440, F.S., if a judge of compensation claims, administrative law judge, court, or jury convened in this state determines that the employee has knowingly or intentionally engaged in any of the prohibited acts described in s. 440.105, F.S., or any criminal act for the purpose of securing workers' compensation benefits.

Section 2 amends s. 440.105, by repealing the prohibited act found in s. 440.105(4)(b)9., F.S., that provides that it is unlawful to present misstatements to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits. Under current law, any person who violates subsection (4)(b) commits insurance fraud.

Section 3 provides the act will take effect October 1, 2018.

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:

Indeterminate. The provisions in the bill may result in fewer employees being denied workers' compensation benefits and being prosecuted and convicted of insurance fraud.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DFS, the bill limits the ability of DFS to investigate many criminal offenses relating to residency and employment status that constitute insurance fraud. These include an employee working for another employer while collecting benefits (double dipping), or an employee claiming to be unable to work but not being injured or being able to return to work.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.09 and 440.105.

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

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

Banking and Insurance on February 20, 2018:

The CS provides the following changes:

- Revises conditions for compensability by providing an exception to current denial of coverage. The CS provides that any statement or documentation of an employee containing incomplete or inaccurate information or documentation of an employee's citizenship, residency, or other employment status may not constitute a basis for denying compensation or benefits.
- Eliminates provision of the bill that would require employers to comply with specified federal laws relating to immigration and employment.
- Reinstates current law providing that it is unlawful for an employer to knowingly participate in the creation of an employment relationship in which the employee has used any false, fraudulent, or misleading statement as evidence of identity.
- Eliminates current law providing that it is unlawful to knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

B. Amendments:

None.



951928

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (4) of section
440.09, Florida Statutes, is amended to read:

440.09 Coverage.—

(4) (a) An employee is ~~shall~~ not ~~be~~ entitled to compensation
or benefits under this chapter if any judge of compensation
claims, administrative law judge, court, or jury convened in



951928

11 this state determines that the employee has knowingly or
12 intentionally engaged in any of the acts described in s. 440.105
13 or any criminal act for the purpose of securing workers'
14 compensation benefits. However, in the context of a
15 communication with an employer, an insurance company and its
16 agents, a self-insured program and its agents, a medical
17 provider, or the Division of Administrative Hearings, any
18 written or oral statement containing incomplete or inaccurate
19 information or documentation of an employee's citizenship,
20 residency, or other employment status may not constitute a basis
21 for denying compensation or benefits under this chapter. For
22 purposes of this section, the term "intentional" includes ~~shall~~
23 ~~include~~, but is not limited to, pleas of guilty or nolo
24 contendere in criminal matters. This section applies ~~shall apply~~
25 to accidents, regardless of the date of the accident. For
26 injuries occurring prior to January 1, 1994, this section shall
27 pertain to the acts of the employee described in s. 440.105 or
28 criminal activities occurring subsequent to January 1, 1994.

29 Section 2. Paragraph (b) of subsection (4) of section
30 440.105, Florida Statutes, is amended to read:

31 440.105 Prohibited activities; reports; penalties;
32 limitations.-

33 (4) Whoever violates any provision of this subsection
34 commits insurance fraud, punishable as provided in paragraph
35 (f).

36 (b) It shall be unlawful for any person:

37 1. To knowingly make, or cause to be made, any false,
38 fraudulent, or misleading oral or written statement for the
39 purpose of obtaining or denying any benefit or payment under



951928

40 this chapter.

41 2. To present or cause to be presented any written or oral
42 statement as part of, or in support of, a claim for payment or
43 other benefit pursuant to any provision of this chapter, knowing
44 that such statement contains any false, incomplete, or
45 misleading information concerning any fact or thing material to
46 such claim.

47 3. To prepare or cause to be prepared any written or oral
48 statement that is intended to be presented to any employer,
49 insurance company, or self-insured program in connection with,
50 or in support of, any claim for payment or other benefit
51 pursuant to any provision of this chapter, knowing that such
52 statement contains any false, incomplete, or misleading
53 information concerning any fact or thing material to such claim.

54 4. To knowingly assist, conspire with, or urge any person
55 to engage in activity prohibited by this section.

56 5. To knowingly make any false, fraudulent, or misleading
57 oral or written statement, or to knowingly omit or conceal
58 material information, required by s. 440.185 or s. 440.381, for
59 the purpose of obtaining workers' compensation coverage or for
60 the purpose of avoiding, delaying, or diminishing the amount of
61 payment of any workers' compensation premiums.

62 6. To knowingly misrepresent or conceal payroll,
63 classification of workers, or information regarding an
64 employer's loss history which would be material to the
65 computation and application of an experience rating modification
66 factor for the purpose of avoiding or diminishing the amount of
67 payment of any workers' compensation premiums.

68 7. To knowingly present or cause to be presented any false,



951928

69 fraudulent, or misleading oral or written statement to any
70 person as evidence of compliance with s. 440.38, as evidence of
71 eligibility for a certificate of exemption under s. 440.05.

72 8. To knowingly violate a stop-work order issued by the
73 department pursuant to s. 440.107.

74 ~~9. To knowingly present or cause to be presented any false,~~
75 ~~fraudulent, or misleading oral or written statement to any~~
76 ~~person as evidence of identity for the purpose of obtaining~~
77 ~~employment or filing or supporting a claim for workers'~~
78 ~~compensation benefits.~~

79 Section 3. This act shall take effect October 1, 2018.

80

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

82 And the title is amended as follows:

83 Delete everything before the enacting clause
84 and insert:

85 A bill to be entitled
86 An act relating to prohibited activities under the
87 Workers' Compensation Law; amending s. 440.09, F.S.;
88 specifying that certain statements containing
89 incomplete or inaccurate information and relating to
90 an employee's citizenship, residency, or other
91 employment status may not constitute a basis for
92 denying workers' compensation benefits; amending s.
93 440.105, F.S.; deleting a prohibition against
94 knowingly presenting, or causing to be presented,
95 certain statements as evidence of identity for certain
96 purposes; providing an effective date.

By Senator Farmer

34-01290-18

20181568__

A bill to be entitled

An act relating to prohibited activities under the Workers' Compensation Law; amending s. 440.105, F.S.; requiring employers to comply with specified provisions relating to the unlawful employment of aliens, unfair immigration-related employment practices, and penalties for document fraud; providing a criminal penalty for violating such provisions; exempting certain entities from reporting such violations to the Division of Investigative and Forensic Services, Bureau of Workers' Compensation Fraud; deleting a prohibition against an employer's knowing participation in creating certain employment relationships; requiring that certain false, fraudulent, misleading, or incomplete statements or information be relevant to a person's eligibility for workers' compensation benefits or payments to violate certain insurance fraud provisions; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), paragraph (b) of subsection (3), paragraph (b) of subsection (4), and subsection (7) of section 440.105, Florida Statutes, are amended, and paragraph (f) of subsection (4) of that section is republished, to read:

440.105 Prohibited activities; reports; penalties;

Page 1 of 6

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34-01290-18

20181568__

limitations.-

(1) (a) Any insurance carrier, any individual self-insured, any commercial or group self-insurance fund, any professional practitioner licensed or regulated by the Department of Health, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the insurance code, or any employee thereof, having knowledge or who believes that a fraudulent act, other than an act described in paragraph (3) (b), or that any other act or practice ~~that which~~, upon conviction, constitutes a felony or misdemeanor under this chapter is being or has been committed shall send to the Division of Investigative and Forensic Services, Bureau of Workers' Compensation Fraud, a report or information pertinent to such knowledge or belief and such additional information relative thereto as the bureau may require. The bureau shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent act or any other act or practice that which, upon conviction, constitutes a felony or a misdemeanor under this chapter is being committed. The bureau shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violations of this chapter. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to

Page 2 of 6

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34-01290-18

20181568__

59 such violation is not begun within 60 days of the bureau's
60 report, the state attorney or other prosecuting agency having
61 jurisdiction with respect to such violation shall inform the
62 bureau of the reasons for the lack of prosecution.

63 (3) Whoever violates any provision of this subsection
64 commits a misdemeanor of the first degree, punishable as
65 provided in s. 775.082 or s. 775.083.

66 (b) An employer in this state shall comply with 8 U.S.C.
67 ss. 1324a, 1324b, and 1324c, relating to the unlawful employment
68 of aliens, unfair immigration-related employment practices, and
69 penalties for document fraud, respectively ~~It shall be unlawful~~
70 ~~for any employer to knowingly participate in the creation of the~~
71 ~~employment relationship in which the employee has used any~~
72 ~~false, fraudulent, or misleading oral or written statement as~~
73 ~~evidence of identity.~~

74 (4) Whoever violates any provision of this subsection
75 commits insurance fraud, punishable as provided in paragraph
76 (f).

77 (b) It shall be unlawful for any person:

78 1. To knowingly make, or cause to be made, any false,
79 fraudulent, or misleading oral or written statement relevant to
80 his or her eligibility ~~for the purpose of obtaining or denying~~
81 any benefit or payment under this chapter.

82 2. To present or cause to be presented any written or oral
83 statement relevant to his or her eligibility for ~~as part of, or~~
84 ~~in support of,~~ a claim for payment or other benefit pursuant to
85 any provision of this chapter, knowing that such statement
86 contains any false, incomplete, or misleading information
87 concerning any fact or thing material to such claim.

Page 3 of 6

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

34-01290-18

20181568__

88 3. To prepare or cause to be prepared any written or oral
89 statement that is intended to be presented to any employer,
90 insurance company, or self-insured program in connection with,
91 or in support of, any claim for payment or other benefit
92 pursuant to any provision of this chapter, knowing that such
93 statement contains any false, incomplete, or misleading
94 information concerning any fact or thing relevant to his or her
95 eligibility for workers' compensation benefits ~~material to such~~
96 ~~claim.~~

97 4. To knowingly assist, conspire with, or urge any person
98 to engage in activity prohibited by this section.

99 5. To knowingly make any false, fraudulent, or misleading
100 oral or written statement, or to knowingly omit or conceal
101 material information, relevant to his or her eligibility for
102 workers' compensation benefits and required by s. 440.185 or s.
103 440.381, for the purpose of obtaining workers' compensation
104 coverage or for the purpose of avoiding, delaying, or
105 diminishing the amount of payment of any workers' compensation
106 premiums.

107 6. To knowingly misrepresent or conceal payroll,
108 classification of workers, or information regarding an
109 employer's loss history which would be material to the
110 computation and application of an experience rating modification
111 factor for the purpose of avoiding or diminishing the amount of
112 payment of any workers' compensation premiums.

113 7. To knowingly present or cause to be presented any false,
114 fraudulent, or misleading oral or written statement to any
115 person as evidence of compliance with s. 440.38, as evidence of
116 eligibility for a certificate of exemption under s. 440.05.

Page 4 of 6

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34-01290-18 20181568__

117 8. To knowingly violate a stop-work order issued by the
 118 department pursuant to s. 440.107.
 119 9. To knowingly present or cause to be presented any false,
 120 fraudulent, or misleading oral or written statement relevant to
 121 his or her eligibility to any person as evidence of identity for
 122 the purpose of obtaining employment or filing or supporting a
 123 claim for workers' compensation benefits.
 124 (f) If the monetary value of any violation of this
 125 subsection:
 126 1. Is less than \$20,000, the offender commits a felony of
 127 the third degree, punishable as provided in s. 775.082, s.
 128 775.083, or s. 775.084.
 129 2. Is \$20,000 or more, but less than \$100,000, the offender
 130 commits a felony of the second degree, punishable as provided in
 131 s. 775.082, s. 775.083, or s. 775.084.
 132 3. Is \$100,000 or more, the offender commits a felony of
 133 the first degree, punishable as provided in s. 775.082, s.
 134 775.083, or s. 775.084.
 135 (7) An injured employee or any other party making a claim
 136 under this chapter shall provide his or her personal signature
 137 attesting that he or she has reviewed, understands, and
 138 acknowledges the following statement: "Any person who, knowingly
 139 and with intent to injure, defraud, or deceive any employer or
 140 employee, insurance company, or self-insured program, files a
 141 statement of claim containing any false or misleading
 142 information relevant to his or her eligibility for workers'
 143 compensation benefits commits insurance fraud, punishable as
 144 provided in s. 817.234." If the injured employee or other party
 145 refuses to sign the document attesting that he or she has

Page 5 of 6

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34-01290-18 20181568__

146 reviewed, understands, and acknowledges the statement, benefits,
 147 or payments under this chapter must ~~shall~~ be suspended until
 148 such signature is obtained.
 149 Section 2. This act shall take effect October 1, 2018.

Page 6 of 6

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.

34th District

January 19th, 2018

Chair Anitere Flores
Banking and Insurance Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Flores.anitrere.web@flsenate.gov

Chair Flores,

I respectfully request that you place SB 1568 relating to Prohibited Activities under the Workers' Compensation Law on the agenda of the Banking and Insurance Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Gary M. Farmer, Jr.", written in a cursive style.

Senator Gary Farmer
District 34

CC:

James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant
Nicholas Alvarez, Legislative Assistant to Senator Flores
Demi Busatta, Legislative Assistant to Senator Flores
Lissette Vasquez, Legislative Assistant to Senator Flores

REPLY TO:

- Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18

Meeting Date

1568

Bill Number (if applicable)

951928

Amendment Barcode (if applicable)

Topic ACTIVITIES Under Workers Camp

Name CHARO VALERO

Job Title STATE Policy Director

Address 8235 NE 1st Ave

Phone 786 442 8199

City MIAMI State FL Zip 33137

Email charo@LATINA INSTITUTE

Speaking: [] For [] Against [] Information

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

Representing FL LATINA Advocacy Network

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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02/20/2018

Meeting Date

1568

Bill Number (if applicable)

951928

Amendment Barcode (if applicable)

Topic Prohibited Activities under the Workers Comp

Name Julio Calderon

Job Title We are the Florida Organizers

Address 2800 Biscayne Blvd Suite 800

Street

Miami

City

FL

State

33137

Zip

Phone 305-743-1630

Email

Speaking: [] For [] Against [] Information

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

Representing Florida Immigrant Coalition

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/20/18

Meeting Date

SB 1568

Bill Number (if applicable)

951 928

Amendment Barcode (if applicable)

Topic Activities under Workman's Comp

Name Margarita Romo

Job Title Ex Director

Address 37240 Lock St.

Street

Dade City FL

City

State

33523

Zip

Phone 352-206-7263

Email ROMOR36@GMAIL.COM

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

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

Representing Farmworker's Self-Help

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/20/18

Meeting Date

1568

Bill Number (if applicable)

951928

Amendment Barcode (if applicable)

Topic Prohibited Activities under WC

Name Scott McCoy

Job Title Policy Director

Address 106 E. College Ave

Street

Phone 334-224-4309

Tallahassee FL 32301

City

State

Zip

Email Scott.McCoy@sp/center.org

Speaking: [] For [] Against [] Information

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

Representing Southern Poverty Law Center

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

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2/20/18
Meeting Date

SB 1568
Bill Number (if applicable)

H951928
Amendment Barcode (if applicable)

Topic Workers Comp

Name Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-6926

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 AFL-CIO

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)

02/20/2018

Meeting Date

1568

Bill Number (if applicable)

Topic Prohibited Activities under the workers Comp

Amendment Barcode (if applicable)

Name Julio Calderon

Job Title We Are Florida Organizer

Address 2800 Biscayne Blvd. Suite 800

Phone 305-763-1630

Street

Miami

City

FL

State

33137

Zip

Email

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

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

Representing Florida Immigrant Coalition

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

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

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

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)

2/20/18 Meeting Date

5B1568 Bill Number (if applicable)

Topic Activities Under WORKMAN'S Comp.

Amendment Barcode (if applicable)

Name MARGARITA ROMO

Job Title EX Director

Address 37240 LOCK ST

Phone 352-206-7763

Dade City State Zip

Email Romo1936@gmail.com

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

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

Representing FARMWORKERS SELF-HELP INC.

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18
Meeting Date

1568
Bill Number (if applicable)

Topic Activities Under Workers Comp

Amendment Barcode (if applicable)

Name CHARO VALENCIA

Job Title STATE POLICY DIRECTOR

Address 8235 NE 1st Ave
Street

Phone 786 442 8199

Miami FL 33137
City State Zip

Email CHARO @ LATINA INSTITUTE

Speaking: For Against Information

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

Representing FL LATINA ADVOCACY NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/20/18

Meeting Date

1568

Bill Number (if applicable)

Topic Prohibited Activities under WC

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee, FL

State

32301

Zip

Email fcfep@yahoo.com

Speaking: For Against Information

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

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-20-18

Meeting Date

SB 1568

Bill Number (if applicable)

Topic PROHIBITED ACTIVITIES UNDER WORKERS COMPENSATION LAW

Amendment Barcode (if applicable)

Name DANIEL MARTIN

Job Title CHIEF STEWARD UAW LOCAL 1821

Address 5726 S.E. 116TH ST

Street

Phone (352) 512-2546

BELLEVIEW

City

FL

State

34420

Zip

Email GJEMARTIN35@GMAIL.COM

Speaking: [] For [] Against [] Information

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

Representing SELF

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

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

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APPEARANCE RECORD

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

2-19-18

Meeting Date

SB 1568

Bill Number (if applicable)

Topic Senate Banking + Insurance

Amendment Barcode (if applicable)

Name Amy Datz

Job Title _____

Address 1130 Crestview Ave
Street

Phone (850) 322-7599

Tallahassee, FL 32303
City State Zip

Email amalielidatz@Mac.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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18

Meeting Date

SB 1568

Bill Number (if applicable)

Topic Senate Banking and Insurance

Amendment Barcode (if applicable)

Name Jerome Bess

Job Title

Address 926 E. Johnson Ave

Phone 850 501 2903

Street

Pensacola FL 32514

City

State

Zip

Email jeromebess1@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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18

Meeting Date

SB 1568

Bill Number (if applicable)

Topic Senate Banking and Insurance

Amendment Barcode (if applicable)

Name Cindy Bass

Job Title

Address 9216 E. Johnson Ave

Phone 950 291-2366

Street

Pensacola

City

FL

State

32514

Zip

Email cbass85557@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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/20/18 Meeting Date

SB 1568 Bill Number (if applicable)

Topic Senate Banking and Insurance

Amendment Barcode (if applicable)

Name Maureen Gibson

Job Title

Address 10596 Senegal DR. Street

Phone 850-791-8014

Pensacola FL 32534 City State Zip

Email Maureengibson66@yahoo.com

Speaking: For Against Information

Waive Speaking: X In Support O 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

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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)

2/20/18

Meeting Date

1568

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av

Phone _____

Street

Tallahassee

FL

State

32301

Zip

Email _____

City

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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)

2/20/18

Meeting Date

1568

Bill Number (if applicable)

Topic Prohibited Activities under 6X

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address 106 E. College Ave

Phone 334-224-4309

Tallahassee FL

Email Scott.McCoy@spplcenter.org

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

2/20/18
Meeting Date

1568
Bill Number (if applicable)

Topic W/C LAW

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR, COUNCIL of FLORIDA

Address PO BOX 1766

Phone 954 850 4055

POMPANO BEACH FLA 33061
Street City State Zip

Email WORKINGFOLK@HOTMAIL.COM

Speaking: For Against Information

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

Representing COMMUNICATIONS WORKERS of AMERICA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/20/18

Meeting Date

SB 1568

Bill Number (if applicable)

Topic Workers' Comp

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing Florida AFL-CIO

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)

2/20/19

Meeting Date

1568

Bill Number (if applicable)

951928

Amendment Barcode (if applicable)

Topic Prohibited Activities - WC

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Street

Phone 850-321-9386

Tallahassee, FL 32301

City

State

Zip

Email kcfep@yahoo.com

Speaking: [] For [] Against [] Information

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

Representing FL Center for Fiscal & Economic Policy

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

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

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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 1866

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Loss-sensitive Workers' Compensation Insurance Programs

DATE: February 21, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1866 amends the workers' compensation rating law to authorize the issuance of a "qualified shared underwriting result participation program" between "qualified insured" and "qualified reinsurer" in connection with a "base workers' compensation insurance policy" issued by a "qualified insurer."

In this workers' compensation insurance transaction, the employer, if a qualified insured, purchases a base workers' compensation insurance policy from a qualified insurer. The qualified insured (i.e., the employer) also enters into a "qualified shared underwriting result participation program" with a qualified reinsurer wherein the employer participates in the underwriting profit or risk associated with the base workers' compensation insurance policy. A qualified shared underwriting result participation program must be issued to the same insured in connection with a base workers' compensation insurance policy and is effected through a separate reinsurance arrangement with a qualified reinsurer. The participation program is maintained in a segregated cell account.

The bill requires the participation program to address specified topics, but does not otherwise impose requirements on the terms of the program covering these topics. The program must:

- Contain a minimum and maximum loss participation limit.
- Disclose the duration of the program; an application or proposal for a qualified shared underwriting participation program with a term longer than 1 year must clearly disclose the term duration in at least 14-point type.

- Disclose penalties, if any, for early termination of the program;
- Provide an estimated schedule of payments;
- Disclose the methodology for calculating charges, deposits, or other payments due, including the frequency of adjustments; and
- Disclose how any disputes between the parties will be resolved.

The bill requires that the qualified shared underwriting program must be filed with the OIR for informational purposes only and the program form is not subject to OIR review or approval under s. 627.410, F.S. The bill specifies that the Rating Law does not apply to charges, deposits, or other payments agreed to pursuant to a qualified shared underwriting result participation program. Thus, the underwriting result participation program allows certain employers to purchase a workers' compensation insurance product wherein the amount ultimately paid by the employer is unregulated and is, instead, subject to the terms of the qualified shared underwriting result participation program.

The bill defines a "qualified insured" as an insured that has its principal place of business in this state and an estimated annual countrywide workers' compensation premium of at least \$500,000. The base workers' compensation insurance policy is a workers' compensation insurance policy subject to the Rating Law in part I of ch. 627, F.S. A "qualified insurer" is an insurer authorized in this state that has a combined loss ratio of less than 100 on January 1 of each of the 2 preceding years, has assets in excess of \$500 million on January 1 of the year the base workers' compensation policy is issued, and an A+ rating from A.M. Best or an AA rating from Fitch Ratings. A "qualified reinsurer" must offer reinsurance that is credited under s. 624.610(3), F.S., and be an affiliate of, controlled by, or under common control of a qualified insurer.

II. Present Situation:

Administration of the Workers Compensation System in Florida

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. These functions include the enforcement of coverage requirements,¹ administration of workers' compensation health care delivery system,² data collection,³ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.⁴ Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.⁵ Employees generally cannot sue a covered employer for workplace injuries.⁶

¹ Section 440.107(3), F.S.

² Section 440.13, F.S.

³ Sections 440.185 and 440.593, F.S.

⁴ Section 440.191, F.S.

⁵ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

⁶ Section 440.11(1), F.S. Employers who fail to obtain required workers' compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.⁷ Medical services must be provided by a health care provider authorized by the carrier prior to being provided (except for emergency care).⁸ When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation provider.

Authorized medical services and treatments are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached "maximum medical improvement."⁹ Injured employees are entitled to one change of physician during the course of treatment for any one accident.¹⁰ After the initial examination and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.¹¹

Indemnity Benefits

Indemnity benefits¹² only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.¹³ The first 7 days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.¹⁴ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),¹⁵ up to the maximum weekly benefit established by law.¹⁶ For 2016, this amount is \$863, which is the statewide average weekly wage (SAWW).¹⁷ Payments are due every 2 weeks.¹⁸ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

⁷ Section 440.13(2)(a), F.S.

⁸ Section 440.13(3)(a), F.S.

⁹ The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

¹⁰ Section 440.13(2)(f), F.S.

¹¹ Section 440.13(2)(e), F.S.

¹² Workers' compensation benefits received for an "occupational sickness or injury are fully exempt from [federal income] tax if they are paid under a workers' compensation act or a statute in the nature of a workers' compensation act." Internal Revenue Service, *Publication 525 (2016), Taxable and NonTaxable Income*, available at <https://www.irs.gov/pub/irs-pdf/p525.pdf> (last visited April 17, 2017).

¹³ Section 440.12(1), F.S.

¹⁴ *Id.*

¹⁵ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

¹⁶ Section 440.15(1)-(4), F.S.

¹⁷ "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at <http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk> (last viewed Apr. 4, 2017).

¹⁸ Section 440.20(2)(a), F.S.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.¹⁹
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.²⁰
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for 5 years.²¹

Workers' Compensation Coverage

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.²² Employers that are not self-insured and are unable to secure coverage from a carrier may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).²³ The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

Florida Workers Compensation Rating System

The OIR regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. Seven states use an administered pricing or full rate system.

The insurance rate is the "unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or coverage thereunder is multiplied to determine the premium."²⁴ A manual rate per \$100 of payroll is developed for each of the 600 classification codes that reflects the potential for loss associated with a group of employers engaged in the same type of business or industry. This rate is multiplied by the employer's payroll to determine the unadjusted premium. Then, the unadjusted premium is multiplied by the employer's experience modification factor to determine the adjusted premium. An experience rating compares an employer's actual losses and the losses that would be expected to occur for an average employer with a similar business.

The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.²⁵ In determining whether to approve or disapprove a workers' compensation rate filing, the OIR

¹⁹ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

²⁰ Section 440.15(3), F.S.

²¹ Section 440.15(1), F.S.

²² Section 440.38, F.S.

²³ Section 627.311(5)(a), F.S.

²⁴ Section 627.091, F.S.

²⁵ Section 627.101, F.S.

considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.²⁶ The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.²⁷ However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.²⁸ All workers' compensation insurers in Florida have chosen to become members of the NCCI.

The law and the rating plans approved by OIR allow for mechanisms for insurers to vary premiums. Insurers may use the following pricing tools to compete on price, as described below:

- Consent to Rate – The insurer and employer agree to a rate in excess of the approved rate. The insurer must limit this option to no more than 10 percent of policies written or renewed in each calendar year.
- Deviations – An insurer is allowed to file a uniform percentage increase or decrease applicable to all rates an insurer charges or to rates for a particular class or group of classes of insurance.
- Intermediate Deductibles – For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount. Intermediate deductibles range from \$5,000 to \$75,000. Similar to small deductible policies the insurer is responsible from first dollar of loss (i.e. losses below the deductible).
- Large Deductibles – Large deductible policies operate similarly to the small and intermediate deductible, but have a deductible amount of \$100,000 and above. In order to qualify for the large deductible program, an employer must have a standard premium of at least \$500,000.
- Large Risk Alternative Rating Option (LRARO) – In most states, LRARO is defined as a flexible retrospective rating plan mutually agreed to by the employer and carrier. In Florida, LRARO is a provision within the currently approved retrospective rating plan that allows for negotiation of a premium between the employer and the insurer.
- Policyholder Dividends – Insurers reward their policyholders by returning some of their profit at the expiration of the policy by issuing policyholder dividends, which may be based on the policyholder's, the carrier's experience, and other factors.

Reinsurance

Reinsurance transfers to reinsurer the potential financial consequences of certain loss exposures for the purpose of protecting the financial solvency of the ceding insurer and enabling it to meet its obligations to policyholders and claimants.²⁹ Reinsurance contracts are exempt from rate and form regulation under Florida law, but all reinsurance must comply with the provisions of s. 624.610, F.S., which provides criteria for when credit for reinsurance must be allowed. Sections 624.81 and 624.83, F.S., require reinsurance to be for the benefit of the ceding insurer.

²⁶ Section 627.151, F.S.

²⁷ Section 627.211, F.S.

²⁸ Section 627.091, F.S.

²⁹ Ann E. Myhr and James J. Markham, *Insurance Operations, Regulation, and Statutory Accounting*, at pg 1.28 (2007).

According to the Office of Insurance Regulation, the only employers that may purchase reinsurance are qualified self-insured employers because s. 440.38, F.S., states that only self-insureds are an employer for purposes of ch. 440, F.S.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 627.072, F.S., to authorize the issuance of a “qualified shared underwriting result participation program” between “qualified insured” and “qualified reinsurer” in connection with a “base workers’ compensation insurance policy” issued by a “qualified insurer.”

In this workers’ compensation insurance transaction, the employer, if a qualified insured, purchases a base workers’ compensation insurance policy from a qualified insurer. The bill defines a “qualified insured” as an insured that has its principal place of business in this state and an estimated annual countrywide workers’ compensation premium of at least \$500,000. Under current law, a retrospective rating plan is allowed if the employer has an estimated standard premium in Florida of at least \$100,000 and an estimated countrywide standard premium of at least \$750,000 for workers’ compensation. The base workers’ compensation insurance policy is a workers’ compensation insurance policy subject to the Rating Law in part I of ch. 627, F.S. A qualified insurer is an insurer authorized in this state that has a combined loss ratio of less than 100 on January 1 of each of the 2 preceding years, has assets in excess of \$500 million on January 1 of the year the base workers’ compensation policy is issued, and an A+ rating from A.M. Best or an AA rating from Fitch Ratings. The bill requires that the qualified insurer must comply with ss. 440.41 and 440.42, F.S., regarding substitution of the insurance carrier for an employer that is not a self-insurer, regarding various obligations of the employer under the Workers’ Compensation Law.

The qualified insured (i.e., the employer) also enters into a “qualified shared underwriting result participation program” with a qualified reinsurer wherein the employer participates in the underwriting profit or risk associated with the base workers’ compensation insurance policy. A qualified shared underwriting result participation program must be issued to the same insured in connection with a base workers’ compensation insurance policy and is effected through a separate reinsurance arrangement with a qualified reinsurer, which is a reinsurer where credit for reinsurance is allowed under s. 624.610(3), F.S., and is an affiliate of, is controlled by, or is under common control of a qualified insurer. The participation program is maintained in a segregated cell account.

The bill requires the participation program to address specified topics, but does not otherwise impose requirements on the terms of the program covering these topics. The program must:

- Contain a minimum and maximum loss participation limit;
- Disclose the duration of the program; an application or proposal for a qualified shared underwriting participation program with a term longer than 1 year must clearly disclose the term duration in at least 14-point type;
- Disclose penalties, if any, for early termination of the program;
- Provide an estimated schedule of payments;

³⁰ Office of Insurance Regulation, *Agency Legislative Bill Analysis SB 1866*, pg. 2. (Jan. 12, 2018).

- Disclose the methodology for calculating charges, deposits, or other payments due, including the frequency of adjustments; and
- Disclose how any disputes between the parties will be resolved.

The bill requires that the qualified shared underwriting program must be filed with the OIR for informational purposes only and the program form is not subject to OIR review or approval under s. 627.410, F.S. The bill specifies that the Rating Law does not apply to charges, deposits, or other payments agreed to pursuant to a qualified shared underwriting result participation program. Thus, the underwriting result participation program allows certain employers to purchase a workers' compensation insurance product wherein the amount ultimately paid by the employer is unregulated and is, instead, subject to the terms of the qualified shared underwriting result participation program.

Section 2 provides an effective date of July 1, 2018.

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:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Insurance Regulation recommends that if the insurance product created by this bill is sold in this state, policyholders should be provided extensive disclosures regarding their potential liabilities under the qualified loss-sensitive program of insurance.³¹ The California Department of Insurance recently entered into a settlement agreement with a workers' compensation insurer regarding such a product that requires disclosures to potential insureds.³²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.072 and 627.4102.

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 20, 2018:

The CS is a substantial rewriting of the filed bill that revises the definitions created by the bill and imposes requirements regarding the terms and disclosures contained within a qualified shared underwriting result participation program.

- B. **Amendments:**

None.

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

³¹ See *OIR Agency Legislative Bill Analysis SB 1866* at pg. 6.

³² California Department of Insurance, *Berkshire Hathaway Subsidiary Applied Underwriters Settlement Information*, <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/BerkshireHathawayInfo.cfm> (last accessed Feb. 19, 2018).



647458

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) is added to section 627.072,
Florida Statutes, to read:

627.072 Making and use of rates; qualified shared
underwriting result participation programs.—

(6) (a) As used in this subsection, the term:

1. "Base workers' compensation insurance policy" means a



647458

11 workers' compensation insurance policy that is subject to this
12 part.

13 2. "Qualified insured" means an insured that has its
14 principal place of business in this state and has an estimated
15 annual countrywide workers' compensation standard premium of at
16 least \$500,000.

17 3. "Qualified insurer" means an insurance company that:

18 a. Is authorized to transact insurance in this state;

19 b. Had a combined ratio of less than 100 percent on January
20 1 of each of the 2 preceding years for its nationwide book of
21 workers' compensation insurance business;

22 c. Has a surplus in excess of \$500 million on January 1 of
23 the year in which the base workers' compensation insurance
24 policy is issued; and

25 d. Has a rating of A+ from A.M. Best Company or an AA
26 rating from Fitch Ratings.

27 4. "Qualified reinsurer" means a reinsurer that:

28 a. Is an affiliate of, is controlled by, or is under common
29 control of a qualified insurer; and

30 b. Is a reinsurer where credit for its reinsurance is
31 allowed under s. 624.610(3).

32 5. "Qualified shared underwriting result participation
33 program" means an offering that:

34 a. Is issued to the same insured in connection with a base
35 workers' compensation insurance policy;

36 b. Is effected through a separate agreement with a
37 qualified reinsurer;

38 c. Provides that the insured may participate in the
39 underwriting profit or risk that is associated with the base



647458

40 workers' compensation insurance policy issued to that insured
41 and that is maintained in a segregated cell account;
42 d. Contains a minimum and maximum loss participation limit;
43 e. Discloses the duration of the program;
44 f. Discloses penalties, if any, for the early termination
45 of the program;
46 g. Provides an estimated schedule of payments;
47 h. Discloses the methodology for calculating charges,
48 deposits, or other payments due, including the frequency of
49 adjustments; and
50 i. Discloses how any disputes between the parties will be
51 resolved.
52 (b) An application or proposal for a qualified shared
53 underwriting result participation program with a term longer
54 than 1 year must clearly disclose the term duration in at least
55 14-point type.
56 (c) If a qualified insurer in this state issues a base
57 workers' compensation insurance policy on an approved form and
58 with approved rates to a qualified insured, a qualified shared
59 underwriting result participation program form must be filed
60 with the office for informational purposes only. The qualified
61 shared underwriting result participation program form does not
62 require approval under s. 627.410.
63 (d) A qualified shared underwriting result participation
64 program may be issued to a qualified insured in connection with
65 a base workers' compensation policy issued by a qualified
66 insurer.
67 (e) Charges, deposits, or other payments agreed to by a
68 qualified insured and a qualified reinsurer pursuant to a



647458

69 qualified shared underwriting result participation program are
70 not subject to this part.

71 (f) A qualified insurer must comply with ss. 440.41 and
72 440.42 in connection with a base workers' compensation insurance
73 policy.

74 Section 2. This act shall take effect July 1, 2018.

75

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

77 And the title is amended as follows:

78 Delete everything before the enacting clause
79 and insert:

80 A bill to be entitled
81 An act relating to workers' compensation shared
82 underwriting result participation programs; amending
83 s. 627.072, F.S.; defining terms; specifying
84 disclosure requirements for applications or proposals
85 for certain qualified shared underwriting result
86 participation programs; requiring, under certain
87 circumstances, a qualified shared underwriting result
88 participation program form to be filed with the Office
89 of Insurance Regulation, for informational purposes
90 only, and providing that such form is not subject to
91 certain approval; providing that a qualified shared
92 underwriting result participation program may be
93 issued to a qualified insured in connection with a
94 base workers' compensation policy issued by a
95 qualified insurer; providing that the Rating Law does
96 not apply to certain charges, deposits, or other
97 payments in a qualified shared underwriting result



647458

98 participation program; requiring qualified insurers to
99 comply with specified provisions of the Workers'
100 Compensation Law; providing an effective date.

By Senator Broxson

1-01585A-18

20181866__

1 A bill to be entitled
 2 An act relating to loss-sensitive workers'
 3 compensation insurance programs; amending s. 627.072,
 4 F.S.; defining terms; providing that a qualified
 5 insurer's form for offering a qualified loss-sensitive
 6 program of reinsurance, which accompanies the issuance
 7 of a certain guaranteed cost workers' compensation
 8 insurance policy to a qualified insured, must be filed
 9 with the Office of Insurance Regulation but does not
 10 require approval; amending s. 627.4102, F.S.;

11 providing an exemption for certain qualified loss-
 12 sensitive programs of reinsurance; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (6) is added to section 627.072,
 18 Florida Statutes, to read:

19 627.072 Making and use of rates.-

20 (6) (a) As used in this subsection, the term:

21 1. "Guaranteed cost workers' compensation insurance policy"
 22 means a workers' compensation policy that is based on approved
 23 rates multiplied by applicable class codes and is not changed by
 24 losses in the period for which it is issued.

25 2. "Qualified insured" means an insured that has its
 26 principal place of business in this state and has an annual
 27 workers' compensation premium of at least \$500,000.

28 3. "Qualified insurer" means an insurance company that:

29 a. Is authorized to transact insurance in this state.

Page 1 of 3

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

1-01585A-18

20181866__

30 b. Has a combined loss ratio of less than 100 on January 1
 31 of the 2 preceding years.

32 c. Has assets in excess of \$500 million on January 1 of the
 33 year in which the guaranteed cost workers' compensation
 34 insurance policy is issued.

35 d. Has a rating of A+ from A.M. Best.

36 4. "Qualified loss-sensitive program of reinsurance" means
 37 an offering that:

38 a. Is issued to the same insured in connection with a
 39 guaranteed cost workers' compensation insurance policy.

40 b. Is effected through a separate reinsurance arrangement
 41 with a reinsurer admitted in a state accredited by the National
 42 Association of Insurance Commissioners (NAIC).

43 c. Provides that the insured may participate in the
 44 underwriting profit or risk that is associated with the
 45 guaranteed cost workers' compensation insurance policy issued to
 46 that insured and is maintained in a segregated cell account.

47 d. Contains a minimum and maximum loss participation limit.

48 (b) If a qualified insurer in this state issues a
 49 guaranteed cost workers' compensation insurance policy on an
 50 approved form and with approved rates to a qualified insured, an
 51 accompanying form governing a qualified loss-sensitive program
 52 of reinsurance must be filed with the office for informational
 53 purposes but does not require approval from the commissioner of
 54 the office.

55 Section 2. Subsection (1) of section 627.4102, Florida
 56 Statutes, is amended to read:

57 627.4102 Informational filing of forms.-

58 (1) Property and casualty forms, except workers'

Page 2 of 3

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1-01585A-18

20181866__

59 compensation and personal lines forms, and forms governing a
60 qualified loss-sensitive program of reinsurance, as defined in
61 s. 627.072(6), are exempt from the approval process required
62 under s. 627.410 if:

63 (a) The form has been electronically submitted to the
64 office in an informational filing made through I-File 30 days
65 before the delivery or issuance for delivery of the form within
66 this state; and

67 (b) At the time the informational filing is made, a
68 notarized certification is attached to the filing that certifies
69 that each form within the filing is in compliance with all
70 applicable state laws and rules. The certification must be on
71 the insurer's letterhead and signed and dated by the insurer's
72 president, chief executive officer, general counsel, or an
73 employee of the insurer responsible for the filing on behalf of
74 the insurer. The certification must contain the following
75 statement, and no other language: "I, ...(name)..., as
76 ...(title)... of ...(insurer name)..., do hereby certify that
77 this form filing has been thoroughly and diligently reviewed by
78 me and by all appropriate company personnel, as well as company
79 consultants, if applicable, and certify that each form contained
80 within the filing is in compliance with all applicable Florida
81 laws and rules. Should a form be found not to be in compliance
82 with Florida laws and rules, I acknowledge that the Office of
83 Insurance Regulation shall disapprove the form."

84 Section 3. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 13, 2018

I respectfully request that **1866**, relating to Loss-sensitive Workers' Compensation Insurance Programs, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

THE FLORIDA SENATE

APPEARANCE RECORD

2-20-18

Meeting Date

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

1866

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Logan McFadden

Job Title Government Affairs Director

Address Street

Phone

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing PCI

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

February 20, 2018
Meeting Date

1866
Bill Number (if applicable)

647458
Amendment Barcode (if applicable)

Topic Workers' Comp / Loss Sensitive WC Insurance Programs

Name Josh Aubuchon

Job Title Attorney

Address 315 South Calhoun St.
Street

Phone 224-7000

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 Applied Underwriters

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.