Tab 1	**SB 1166** by **Albritton**; (Compare to H 00969) Broadband Internet Service

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Tab 2	**SB 1186** by **Baxley**; (Compare to H 01297) Drug-free Workplaces

Tab 3	**SB 1356** by **Bean**; (Similar to H 01253) Employer Contributions for Reemployment Assistance

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Tab 4	**SB 1492** by **Wright**; (Similar to CS/H 01137) Consumer Protection

Tab 5	**SB 1140** by **Gruters**; (Identical to H 00867) Public Accountancy

Tab 6	**SB 1240** by **Gruters**; Corporate Income Tax Credit

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 Commerce and Tourism

BILL:	CS/SB 1166
INTRODUCER:	Commerce and Tourism Committee and Senator Albritton
SUBJECT:	Broadband Internet Service
DATE:	January 28, 2020 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1166 makes several updates to Florida's broadband initiatives and transfers the locus of broadband policy implementation from the Department of Management Services to the Department of Economic Opportunity. Specifically, the bill:

- Designates the Department of Economic Opportunity to replace the Department of Management Services as the agency responsible for the expansion of broadband in Florida;
- Creates the Florida Office of Broadband within the Department Of Economic Opportunity's Division of Community Development, to which it transfers specific duties regarding the development, marketing, and promotion of broadband;
- Permits the Department of Transportation to use up to $5 million annually from the State Transportation Trust Fund's allocation to the Multi-use Corridors of Regional Economic Significance Program, for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor; and
- Repeals a provision of law that never took effect.

II. Present Situation:

Florida Agency Broadband Initiatives

Fixed and mobile broadband services provide Americans, especially those in rural and remote areas of the country, access to numerous employment, education, entertainment, and health care

opportunities.[1] Additionally, communities that lack broadband access can have difficulty attracting new capital investment because broadband access is so critical to businesses. "Corporate site selectors expect broadband. It is not a perk or special benefit."[2] Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, but only 75.2 percent of its rural areas have coverage.[3] This disparity between urban and rural broadband access is caused by the high construction costs required to build the broadband infrastructure across the larger swaths of rural geographic areas, and lower overall demand.[4] A 2016 study determined that 16 Florida counties are underserved by fixed broadband services.[5]

Department of Management Services

In 2009, the Legislature authorized the Department of Management Services (DMS) to apply for grants and lead broadband planning and deployment throughout Florida, especially in rural, unserved, and underserved areas of Florida.[6] Pursuant to s. 364.0135, F.S., DMS was directed to collaborate with Enterprise Florida, Inc., other state agencies, local governments, private businesses, and community organizations to:

- Monitor broadband adoption across Florida;
- Create a strategic plan to increase the use of broadband internet service in Florida;
- Map Florida's broadband transmission speeds and availability;
- Build and facilitate local technology planning teams, especially with community members from the areas of education, healthcare, business, tourism, agriculture, economic development organization, and local government; and
- Encourage public use of internet service through broadband grant programs.

The DMS could also accept federal and private funds to further these goals.[7] These activities were funded by an $8,887,028 grant from the U.S. Department of Commerce National Telecommunications Information Administration's (NTIA) State Broadband Initiative.[8] However, Florida does not currently have a state broadband office, program, or funding source.[9]

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[1] U.S. Federal Communications Commission, *2018 Broadband Deployment Report* at 1, Feb. 2, 2018, available at https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report (last visited Jan. 28, 2020).

[2] M. McQuade, *The Importance of Broadband to Economic Development* (Sept. 2011), Site Selection Magazine, *available at* https://siteselection.com/issues/2011/sep/sas-optical-infrastructure.cfm (last visited Jan. 28, 2020).

[3] U.S. Federal Communications Commission, *supra* note 1, at 58-59. For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.

[4] American Broadband Initiative, *Milestones Report*, 11 (Feb. 13, 2019), *available at* https://broadbandusa.ntia.doc.gov/sites/default/files/resource-files/american_broadband_initiative_milestones_report_feb_2019_0.pdf (last visited Jan. 28, 2020).

[5] Dr. Ed H. Moore, *Expanding Local Access to the Internet Infrastructure & Customized Distance Learning to Advance Educational Attainment, Economic Development & County Growth*, Independent Colleges & Universities of Florida, https://www.floridahighereducation.org/_doc_meetings/20171030/Moore-10_30_17-Access-to-Internet-Distance-Learning-for-Educational-Attainment-Economic-Development-County-Growth.pdf (last visited Jan. 28, 2020).

[6] Chapter 2009-226, s. 2, Laws of Fla. (creating s. 364.0135, F.S., effective July 1, 2009).

[7] Section 364.0135(3), F.S.

[8] U.S. Department of Commerce, National Telecommunications and Information Administration, *State Broadband Initiative*, https://www2.ntia.doc.gov/SBDD (last visited Jan. 28, 2020).

[9] U.S. Department of Commerce, National Telecommunications and Information Administration, BroadbandUSA, *State Broadband Programs, Florida* (Summer 2018), https://broadbandusa.ntia.doc.gov/ (last visited Jan. 28, 2020). The NTIA's State Broadband Initiative's grant funds continued through November, 2014. Julie Gowen, Florida Department of

Department of Economic Opportunity

The Department of Economic Opportunity's (DEO) Rural Infrastructure Fund (RIF) facilitates the planning, preparation, and financing of infrastructure projects, including broadband facilities, in rural communities that will encourage job creation, capital investment, and other economic benefits.[10] The RIF program attracts local and federal government, and private funding by matching up to 40 percent of a project's cost with state grant funds.[11]

Department of Transportation—Multi-use Corridors of Regional Economic Significance

The Florida Department of Transportation's (FDOT) Multi-use Corridors of Regional Economic Significance Program (M-CORES) is designed to advance construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure, including those that promote broadband connectivity.[12] The M-CORES program has a designated appropriation of $35 million each year, beginning with the 2022-2023 fiscal year.[13] The FDOT must give preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity when using these funds.

Senate Bill 1242 (2012)

In the 2012 Legislative Session, the Legislature passed a bill that would have transferred the state broadband programs from the DMS to the DEO. Although the enrolled bill was signed into law[14] by the Governor on April 20, 2012, it never took effect and the transfer did not occur. The bill made the agency transfer contingent on the approval by the U.S. Department of Commerce of the transfer of the federal broadband grant to the DEO; the transfer of funds was never approved.[15]

Federal Broadband Initiatives

Federal funding for broadband comes from a range of sources,[16] for example:

- The Federal Communication Commission's (FCC) Universal Service Fund subsidizes telephone service (including broadband internet access) to low-income households, high-cost areas, rural healthcare providers, and eligible schools and libraries;

Management Services, Division of Telecommunications, *Broadband Mapping in Florida: Analyzing Coverage, Speed and Demographics* (Jan. 28, 2014) (on file with the Committee on Commerce and Tourism).

[10] Section 288.0655(2)(b), F.S.

[11] *See* s. 288.0655, F.S. *See also*, Florida Department of Economic Opportunity, *Rural Infrastructure Fund*, http://floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited Jan. 28, 2020); Florida Department of Economic Opportunity, *2019 Incentives Report* at 17-18, available at http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-2019-annual-incentives-report---final.pdf?sfvrsn=c2a340b0_2 (last visited Jan. 28, 2020).

[12] Section 338.2278(1)(d), F.S. See also Florida Department of Transportation, *M-CORES*, https://floridamcores.com/ (last visited Jan. 28, 2020).

[13] Section 339.0801(2)(b), F.S.

[14] Chapter 2012-131, Laws of Fla.

[15] *See* note 1, s. 364.0135, F.S.

[16] American Broadband Initiative, *supra* note 4, at 25-26.

- The U.S. Department of Housing and Urban Development[17] and Department of Education[18] offer block grants to support broadband infrastructure; and
- The U.S. Department of Agriculture (USDA) offers loans and grants to facilitate broadband deployment in rural areas that don't have sufficient access[19] to broadband through the ReConnect Program.[20]

The ReConnect Program is currently the most significant federal grant program that supports broadband infrastructure, but of the $300,687,772 awarded in its first round of grants and loans, no Florida recipient was included.[21] Applicants that apply for a grant or loan/grant combination under the ReConnect Program are required to submit a scoring sheet by which the USDA may analyze nine separate evaluation criteria to score the applicant. One of the criteria is whether the proposed project is in a state with a broadband plan that has been updated within the previous 5 years.[22]

Since 2000, the FCC has collected data regarding the deployment of advanced telecommunications capability to Americans by requiring telecommunications services, especially broadband internet, providers to report the availability of their services at a census block level.[23] The FCC uses this data to annually report on broadband availability, update service policies and monitor whether the goal of nationwide service is achieved, and maintain coverage maps[24] to inform the industry and the public of the availability of broadband internet in their areas.[25] In 2019, the FCC adapted its reporting requirements to collect geospatial broadband coverage information to allow the agency to better identify gaps in broadband coverage.[26]

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[17] U.S. Department of Housing and Urban Development, *State CDBG Program Broadband Infrastructure FAQs* (Jan. 7, 2016), https://files.hudexchange.info/resources/documents/State-CDBG-Program-Broadband-Infrastructure-FAQs.pdf (last visited Jan. 28, 2020).
[18] U.S. Department of Education, Rural and Low-Income School Program, https://www2.ed.gov/programs/reaprlisp/index.html (last visited Jan. 28, 2020). See also, Broadband USA, *Funding Guide- Department of Education- Rural and Low-Income School Program*, https://broadbandusa.ntia.doc.gov/funding-program-details-funding-guide/department-education-rural-low-income-school-program-0 (last visited Jan. 28, 2020).
[19] Sufficient access is defined as 10 megabits per second downstream and 1 megabit per second upstream. Pub. Law No. 115-334, 115th Cong. (Dec. 20, 2018) Agriculture Improvement Act of 2018. *See also*, Congressional Research Service, *The ReConnect Broadband Pilot Program* (Jul. 3, 2019), *available at* https://www.usda.gov/reconnect/awardees (last visited Jan. 28, 2020).
[20] U.S. Department of Agriculture, *ReConnect Loan and Grant Program: About*, https://www.usda.gov/reconnect/program-overview (last visited Jan. 28, 2020).
[21] U.S. Department of Agriculture, *ReConnect Program Awardees*, https://www.usda.gov/reconnect/awardees (last visited Jan. 28, 2020).
[22] U.S. Department of Agriculture, ReConnect Program Evaluation Criteria, https://www.usda.gov/reconnect/evaluation-criteria (last visited Jan. 28, 2020).
[23] *See* 47 U.S.C. §1302(b) (Section 706 of the Telecommunications Act of 1996 requires the FCC to determine and report annually on "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.") Federal Communications Commission, *Report and Order and Second Further Notice of Proposed Rulemaking*, WC Docket Nos. 19-195, 11-10, at 3-4 (filed Aug. 6, 2019), *available at* https://www.fcc.gov/document/fcc-improves-broadband-mapping-0 (last visited Jan. 28, 2020).
[24] *See* FCC, *Fixed Broadband Deployment*, https://broadbandmap.fcc.gov/#/ (last visited Jan. 28, 2020).
[25] *Id*. at 4.
[26] FCC, *FCC Establishes New Digital Opportunity Data Collection* (Aug 1, 2019), available at https://www.fcc.gov/document/fcc-improves-broadband-mapping (last visited Jan. 28, 2020).

III. Effect of Proposed Changes:

The bill consolidates broadband policy and state action within the DEO by transferring the duties of developing, marketing, and promoting broadband to the newly created Florida Office of Broadband (Office) within the DEO's Division of Community Development.

Section 1 permits the FDOT to use up to $5 million per year of the $35 million annual allocation made to the Florida Turnpike Enterprise for the administration of the M-CORES Program from the State Transportation Trust Fund by s. 339.0801(2), F.S., to develop broadband infrastructure within or adjacent to a multiuse corridor. This section also requires the FDOT to prioritize broadband infrastructure projects that are located in a rural area of opportunity (RAO)[27] that is adjacent to a multiuse corridor. The currently designated RAOs are:[28]

- The Northwest RAO, comprised of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the part of Walton County north of the Intracoastal Waterway, including the cities of DeFuniak Springs, Freeport, and Paxton;
- The South Central RAO, comprised of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County, and the city of Immokalee in Collier County; and
- The North Central RAO, comprised of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

Section 2 transfers state broadband policy from the DMS to the DEO and creates the Florida Office of Broadband (Office) within the DEO's Division of Community Development. The Office must develop, market, and promote broadband Internet services to Florida, and is directed to:

- Create a strategic plan that has goals and strategies for increasing broadband use in Florida;
- Build and facilitate community-level, local technology planning teams, the membership of which may include education, health care, private business, agriculture, economic development organizations, local government, and tourism representatives;
- Encourage broadband use through state grant programs that facilitate broadband deployment, especially in Florida's rural, unserved, or underserved communities; and
- Monitor, participate in, and provide input on FCC proceedings that are related to the geographic availability and deployment of broadband internet in Florida.

The bill defines "underserved" as a geographic area of Florida in which there is no broadband internet service with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream. This conforms the definition to that of "sufficient access" as provided in the Agriculture Improvement Act of 2018.

[27] Section 288.0656, F.S., defines a rural area of opportunity (RAO) as a rural community or region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. RAO's are eligible for assistance and other support through the Rural Economic Development Initiative, administered by the DEO.
[28] Florida Department of Economic Opportunity, *Rural Areas of Opportunity*, http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Jan. 28, 2020).

This section also transfers the authority to apply for and accept federal funds, to enter into contracts, and to establish committees or workgroups for the purposes of broadband expansion and implementation to the DEO. Unlike the DMS' funding authority, however, this bill does not permit the DEO to accept private funds to coordinate and implement broadband in Florida.

Section 3 repeals ch. 2012-131, Laws of Florida, language that was enrolled by the House and Senate in the 2012 Legislative Session and approved by the Governor on April 20, 2012, but that never took effect as a result of the terms of the conditional effective date that were never met.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The incentives to build broadband infrastructure in rural areas may drive a greater level of broadband development to those areas. This may result in a positive impact to both individuals and businesses in impacted areas.

C. Government Sector Impact:

The DEO may incur costs associated with the creation, staffing, and operation of the Office.

The American Broadband Initiative cites coordination between state and federal broadband programs as a challenge to further broadband development, and states that "[f]ederal program officers would benefit from local insights provided by State leaders."[29] The re-institution of a Florida Broadband Office may facilitate better coordination, and create additional opportunities to receive federal funding for broadband development.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 339.0801 and 364.0135 of the Florida Statutes, and repeals ch. 2012-131, Laws of Florida.

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 Commerce and Tourism on January 27, 2020:

- Defines the term "underserved," to mean a geographic area in which there is no broadband internet service at a consistent speed of at least 10 megabits per second downstream and at least 1 megabits per second upstream; and
- Extends the Office's duties to include monitoring, participating in, and providing input on FCC proceedings regarding geographic availability and deployment of broadband internet service.

B. Amendments:

None.

[29] American Broadband Initiative, *supra* note 4 at 27-28.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Albritton) recommended the following:

Senate Amendment

Delete lines 64 - 123
and insert:
(d) "Underserved" means a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.
(3)~~(2)~~ STATE ENTITY.—The department is designated as the

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lead state entity to facilitate the expansion of broadband Internet service in this state. The department shall ~~of Management Services is authorized to~~ work collaboratively with private businesses~~,~~ and ~~to~~ receive staffing support and other resources from~~,~~ Enterprise Florida, Inc., state agencies, local governments, ~~private businesses,~~ and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development within the department for the purpose of developing, marketing, and promoting broadband Internet services to this state. The office, in the performance of its duties, shall do all of the following ~~to~~:

(a) ~~Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps at the census tract level that will:~~

~~1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;~~

~~2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for broadband service used by the Federal Communications Commission to reflect different speed tiers; and~~

~~3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.~~

~~(b)~~ Create a strategic plan that has goals and strategies

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for increasing the use of broadband Internet service in this ~~the~~ state.

(b) ~~(c)~~ Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) ~~(d)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or ~~and~~ underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily unserved and underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved and underserved areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and

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demand for, broadband Internet service in this ~~the~~ state.

(d) Monitor, participate in, and provide input on proceedings of the Federal Communications Commission and other federal agencies which are related to the geographic availability and deployment of broadband Internet service in this state as necessary to ensure that the information is accurately presented and that rural, unserved, and underserved areas of this state are best positioned to benefit from federal and state broadband deployment programs.

By Senator Albritton

26-00629D-20 20201166__

A bill to be entitled

An act relating to broadband Internet service; amending s. 339.0801, F.S.; authorizing certain funds within the State Transportation Trust Fund to be used for certain broadband infrastructure projects within or adjacent to multiuse corridors; requiring the Department of Transportation to give priority to certain projects; amending s. 364.0135, F.S.; defining terms; designating the Department of Economic Opportunity, and not the Department of Management Services, as the lead state entity to facilitate the expansion of broadband Internet service in this state; requiring the department to work collaboratively with certain entities; creating the Florida Office of Broadband within the Division of Community Development within the Department of Economic Opportunity; providing the purpose and duties of the office; making technical changes; repealing chapter 2012-131, Laws of Florida, relating to broadband Internet service; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 339.0801, Florida Statutes, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by this act

26-00629D-20 20201166__

must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(5), notwithstanding any other provision of law:

(2)

(b) Beginning with the 2022-2023 fiscal year and annually thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with s. 338.2278, with preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity. Of those funds, and to the maximum extent feasible, up to $5 million annually may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The department shall give priority consideration to broadband infrastructure projects located in an area designated as a rural area of opportunity under s. 288.0656 and adjacent to a multiuse corridor.

Section 2. Section 364.0135, Florida Statutes, is amended to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical to the economic and business development of this ~~the~~ state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Office" means the Florida Office of Broadband.

(c) "Sustainable adoption" means the ability for communications service providers to offer broadband services in all areas of this ~~the~~ state by encouraging adoption and use ~~utilization~~ levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(3) ~~(2)~~ STATE ENTITY.—The department is designated as the lead state entity to facilitate the expansion of broadband Internet service in this state. The department shall ~~of Management Services is authorized to~~ work collaboratively with private businesses~~,~~ and ~~to~~ receive staffing support and other resources from~~,~~ Enterprise Florida, Inc., state agencies, local governments, ~~private businesses,~~ and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development within the department for the purpose of developing, marketing, and promoting broadband Internet services to this state. The office, in the performance of its duties, shall do all of the following ~~to~~:

(a) ~~Monitor the adoption of broadband Internet service in collaboration with communications service providers, including, but not limited to, wireless and wireline Internet service providers, to develop geographical information system maps at the census tract level that will:~~

~~1. Identify geographic gaps in broadband services, including areas unserved by any broadband provider and areas served by a single broadband provider;~~

~~2. Identify the download and upload transmission speeds made available to businesses and individuals in the state, at the census tract level of detail, using data rate benchmarks for~~

~~broadband service used by the Federal Communications Commission to reflect different speed tiers; and~~

~~3. Provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.~~

~~(b)~~ Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in this ~~the~~ state.

(b) ~~(c)~~ Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) ~~(d)~~ Encourage the use of broadband Internet service, especially in the rural, unserved, or ~~and~~ underserved communities of this ~~the~~ state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily underserved ~~unserved~~ areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in underserved ~~unserved~~ areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(5)~~(3)~~ ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section~~, as well as gifts and donations from individuals, foundations, and private organizations~~.

(b)~~(4) The department may~~ Enter into contracts necessary or useful to carry out the purposes of this section.

(c)~~(5) The department may~~ Establish any committee or workgroup to administer and carry out the purposes of this section.

Section 3. Chapter 2012-131, Laws of Florida, is repealed.

Section 4. This act shall take effect July 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Joseph Gruters, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 2, 2020

I respectfully request that **Senate Bill #1166**, relating to Broadband Internet Service, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

1166
Bill Number (if applicable)

Topic Broadband Internet Service

Amendment Barcode (if applicable)

Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison St. Caldwell Building
Street

Phone 850-245-7370

Tallahassee FL 32399
City *State* *Zip*

Email Nicholas.Alvarez@deo.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20
Meeting Date

1166
Bill Number (if applicable)

Topic Broadband Internet Services

Amendment Barcode (if applicable)

Name Chris Doolin

Job Title Consultant

Address 1118 B Thomasville Rd. Phone 850-508-5492
Street

~~Tallahassee~~, Tallahassee FL. 32303 Email cdoolin@nettally.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Small County Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

1166
Bill Number (if applicable)

573474
Amendment Barcode (if applicable)

Topic Broadband Internet Service

Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison St. Caldwell Building
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	SB 1186
INTRODUCER:	Senator Baxley
SUBJECT:	Drug-free Workplaces
DATE:	January 27, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Favorable**
2.			GO	
3.			RC	

I. Summary:

SB 1186 makes changes to the drug-free workplace programs in Chapters 112 and 440, F.S.

The bill amends s. 112.0455, F.S., which applies to any agency within state government, to:

- Require that prescreening and drug-screening tests meet specified standards;
- Prohibit sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Require the Agency for Health Care Administration to adopt rules.

Currently, an employer subject to the Workers' Compensation Law who implements a drug-free workforce program pursuant to s. 440.102, F.S., is eligible for a workers' compensation insurance discount of up to 5 percent. If an employee in such a program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits. This bill:

- Amends the definition of "drug" to include substances named in state and federal law;
- Adds additional certification requirements for drug tests and specimens;
- Removes a requirement that an employee be provided a form on which to note medications, which must be taken into account in interpreting drug tests;
- Replaces a list of professions qualified to collect specimens with a requirement that such persons meet qualification standards set by specified federal agencies;
- Requires specimens from positive tests to be preserved for one year after the confirmation test was conducted, instead of 210 days after result was mailed;
- Shortens from 180 to 60 days after notification of a positive result the period during which an employee may have a specimen retested;
- Requires that prescreening and drug-screening tests meet specified standards;
- Prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and

- Requires the Agency for Health Care Administration to adopt rules.

The bill takes effect July 1, 2020.

II. Present Situation:

Drug-Free Workplace Act for State Agency Employers

The Drug-Free Workplace Act in s. 112.0455, F.S., exists to promote the goal of drug-free workplaces within government through drug-testing, and to provide opportunities for assistance to employees with alcohol or drug problems. The Act, which applies to agencies within state government,[1] specifies requirements for testing standards and procedures, notice, employee and employer protections, and remedies.

Drug-Free Workplace Program for Workers' Compensation Employers

The Workers' Compensation Law in Chapter 440, F.S., provides legislative intent to promote drug-free workplaces, and sets out the notice, educational, and procedural requirements that an employer must follow to implement the employee and applicant drug testing that is a component of such workplaces.[2] An "employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law.[3]

If an employer implements a drug-free workplace program that conforms to applicable law and rules, the employer is eligible for workers' compensation and employer's liability insurance discounts[4] of up to five percent,[5] and the employer may require an employee to submit to a test for the presence of drugs or alcohol. If an employee in a drug-free workplace program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.[6]

Definitions

The following definitions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration (AHCA):

- "Drug" means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph.
- "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the U.S. Department of Health and Human

[1] Section 112.0455(5)(h), F.S.
[2] *See* ss. 440.101 and 440.102, F.S.
[3] Section 440.102(1)(h), F.S.
[4] Section 440.102(2), F.S. See s. 627.0915, F.S., providing that the Office of Insurance Regulation must approve rating plans for workers' compensation and employers' liability insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to s. 440.102 F.S., and attendant rules.
[5] Fla. Admin Code R. 69L-5.220 (2019).
[6] Section 440.101(2), F.S.

Services or licensed by the AHCA, for the purpose of determining the presence or absence of a drug or its metabolites.
- "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the U.S. Food and Drug Administration or the AHCA.[7]

Notice

One time only, prior to testing, an employer must give all employees and applicants for employment a written policy statement that contains:
- A general statement of the employer's policy on employee drug use identifying the types of drug testing an employee or applicant may be required to submit to, and the actions the employer may take against an employee or applicant on the basis of a positive confirmed drug test result;
- A statement advising the employee or job applicant of the existence of s. 440.102, F.S.;
- A general statement concerning confidentiality;
- Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications both before and after being tested;
- A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test;
- The consequences of refusing to submit to a drug test;
- A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs;
- A statement that an employee or applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer must report a positive test result back to the employer; and that a person may contest the drug test result;
- A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to the drug-free workplace law;
- A list of all drugs for which the employer will test, described by brand name or common name, as well as by chemical name;
- A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court; and
- A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.[8]

An employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required.[9]

[7] Section 440.102(1), F.S.
[8] Section 440.102(3)(a), F.S.
[9] Section 440.102(3)(c), F.S.

Types of Testing

An employer is required to conduct job applicant, reasonable-suspicion, and routine fitness-for-duty drug testing. If an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. If follow-up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program.[10]

Procedures

All specimen collection and testing for drugs pursuant to s. 440.102, F.S., must be performed in accordance with the following procedures:

- Samples must be collected with due regard to privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.
- Specimen collection must be documented, and the documentation procedures must include:
  - Labeling of specimen containers, and
  - A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information must not preclude the administration of the drug test, but must be taken into account in interpreting any positive confirmed test result;
- Specimen collection, storage, and transportation to the testing site must be performed in a manner that reasonably precludes contamination or adulteration of specimens;
- Each confirmation test conducted must be conducted by a licensed or certified laboratory:
- A specimen for a drug test may be taken or collected by any of the following persons:
  - A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment; or
  - A qualified person employed by a licensed or certified laboratory;
- A person who collects or takes a specimen for a drug test must collect an amount sufficient for two drug tests as determined by the AHCA.
- Every specimen that produces a positive, confirmed test result must be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the medical review officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant must notify the laboratory and the sample must be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen must be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the AHCA, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory;

[10] Section 440.102(4), F.S.

- Within 5 working days after receipt of a positive confirmed test result from the medical review officer, an employer must inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The employer must provide to the employee or job applicant, upon request, a copy of the test results;
- Within 5 working days after receiving notice of a positive confirmed test result, an employee or job applicant may submit information to the employer explaining or contesting the test result, and explaining why the result does not constitute a violation of the employer's policy;
- The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, must be provided by the employer to the employee or job applicant; and all such documentation must be kept confidential by the employer pursuant to subsection (8) and must be retained by the employer for at least 1 year;
- An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer;
- An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the AHCA;
- An employer must pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. An employee or job applicant must pay the costs of any additional drug tests not required by the employer;
- An employer must not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program;
- If drug testing is conducted based on reasonable suspicion, the employer must promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing; and
- All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under s. 440.102, F.S., must be paid for by the carrier or self-insurer.

Confirmation Testing

If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, which may be conducted only by licensed or certified laboratories. All positive initial tests must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the AHCA or the U.S. Food and Drug Administration as such technology becomes available in a cost-effective form. If an initial drug test of an employee or job applicant is confirmed as positive, the employer's medical review officer must provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

Employer Protection

An employee or job applicant whose drug test result is confirmed as positive in accordance with s. 440.102, F.S., must not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause.

III. Effect of Proposed Changes:

Drug-Free Workplace Program for Agencies within State Government

Section 1 makes changes to the Drug-Free Workplace Act in s. 112.0455, F.S., by requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

Drug-Free Workplace Program for Workers' Compensation Employers

Section 2 makes numerous changes to the procedures relating to drug-free workplaces for Workers' Compensation Law employers in s. 440.102, F.S.

Definitions

The bill amends the definition of "drug" by specifying that alcohol means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol. A controlled substance includes those identified under Schedules I, II, III, IV, or Schedule V of s. 893.03, F.S.;[11] and any controlled substance identified under Schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. s. 812(c).

A "drug test," when testing for alcohol, must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.[12]

The U. S. Department of Health and Human Services (HHS) and U. S. Department of Transportation (USDOT) are added to the list of governmental agencies that can approve what "specimen" means.

[11] Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the "potential for abuse" of the substance and whether there is a currently accepted medical use for the substance in the United States.

[12] This rule describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry. *See* https://www.transportation.gov/odapc/part40 (last visited January 27, 2020).

Notice

The bill changes the written policy statement that employers are required to give to all employees and applicants prior to testing by removing from the procedures the requirement that employees and job applicants could confidentially report to a medical review officer their use of medications *both before and after being tested*. The bill also removes the requirement that the policy contain the brand name of drugs being tested for.

Procedures

The bill deletes a labeling requirement for specimen containers for saliva or breath testing when not being transported to a laboratory for analysis.

The bill deletes a requirement that a form must be provided upon which an employee may provide information considered by the employee to be relevant to the test, including the use of medication, and deletes the requirement that such information be taken into account in interpreting positive confirmed test results.

The bill replaces a requirement that a drug test specimen may be collected by a physician, physician assistant, registered professional nurse, licensed practical nurse, nurse practitioner, certified paramedic at scene of accident, or qualified lab employee with a requirement that a specimen may be collected by a person who meets the qualification standards for urine or oral fluid specimen collection as specified by the HHS or the USDOT. For alcohol testing, a person must meet the USDOT for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available.

The bill clarifies that a specimen amount should be sufficient for two independent drug tests - one to screen the specimen and one to confirm the screening results.

The bill extends from 210 days to one year the amount of time a specimen that produces a positive, confirmed test must be preserved.

The bill shortens from 180 days to 60 days the period after a positive test during which an employee or applicant may have the sample retested.

The bill provides that a second lab must test the specimen at the limit of detection for the drug or analyte confirmed by the original, and if the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive.

The bill deletes a requirement that an applicant or employee’s explanation or challenge of a positive test must be provided to the applicant or employee.

Current law provides that an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. The bill removes the confirmation test as a condition, and creates an exception when a confirmed positive breath alcohol test was conducted in accordance with U.S. Department of Transportation alcohol testing procedures.

An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the Agency for Health Care Administration, or, added by the bill, procedures established by *the HHS, or the USDOT*.

Confirmation Testing

The bill removes a provision specifying that, if an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, and removes a provision that only licensed or certified laboratories may conduct confirmation drug tests.

The bill provides that all laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the HHS or the USDOT, and removes a provision that the tests can be confirmed by methods approved by the AHCA or the U.S. Food and Drug Administration.

The bill provides that for a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with USDOT alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

Employer Protection

The bill provides that an employee or job applicant whose drug test result is confirmed *or verified* as positive must not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

Drug-Testing Standards

The bill creates a new subsection (9) in s. 440.102, F.S., requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants, and detection of adulterants. The bill prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

Drug-Testing Standards for Laboratories

The bill removes a requirement that lab reports of drug tests must include any correlation between medication reported by the employee or applicant and the test result, consistent with

lines 277-286 of the bill, which delete the requirement than an employee or applicant be provided a form to list currently or recently used medication.

Cross Reference

Section 3 updates a cross reference in s. 443.101, F.S.

Effective date

Section 4 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. If the amended testing standards in the bill reduce the number of drug-testing facilities that can comply, those drug-testing facilities that can comply should see an increase in the number of tests they perform.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 112.0455, 440.102, and 443.101 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00779A-20 20201186__

A bill to be entitled

An act relating to drug-free workplaces; amending s. 112.0455, F.S.; requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the Agency for Health Care Administration to adopt rules; conforming cross-references; amending s. 440.102, F.S.; revising definitions; revising information required in a written policy statement provided to employees and job applicants before drug testing; revising procedures for specimen collection, testing, and preservation; revising qualifications for persons who may take or collect specimens for a drug test; revising requirements and procedures for retesting specimens; deleting and revising confidentiality requirements for employers relating to certain information; revising circumstances under which an employer may take certain actions as to an employee or a job applicant on the sole basis of certain positive test results; revising standards for chain-of-custody procedures; revising requirements and authorized actions relating to confirmation testing; requiring licensed drug-testing facilities to perform prescreening tests on urine

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specimens to determine the specimens' validity; specifying requirements for such tests; authorizing such facilities to rely on such tests to determine if confirmation testing is required; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; authorizing the agency to adopt rules; conforming provisions to changes made by the act; amending s. 443.101, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the State of Florida has a profound interest in the health and welfare of its citizens, and

WHEREAS, new and emerging drug-testing subversion technologies represent a significant threat to the ability to properly identify those suffering from addiction and drug abuse, and

WHEREAS, the Legislature, therefore, seeks to require urine sample validity testing, such that those persons being tested can be properly and promptly identified for referral to drug treatment programs and other health care services, NOW, THEREFORE,

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

Section 1. Present subsections (13) through (17) of section 112.0455, Florida Statutes, are redesignated as subsections (14) through (18), respectively, a new subsection (13) is added to that section, and paragraph (b) of subsection (6) and paragraph

(a) of present subsection (15) are amended, to read:

112.0455 Drug-Free Workplace Act.—

(6) NOTICE TO EMPLOYEES.—

(b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains:

1. A general statement of the employer's policy on employee drug use, which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the Agency for Health Care Administration.

5. The consequences of refusing to submit to a drug test.

6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result as provided by subsections (15) ~~(14)~~ and (16) ~~(15)~~.

8. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil actions brought pursuant to this section.

9. A list of all drugs for which the employer will test, described by brand names or common names, as applicable, as well as by chemical names.

10. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission.

11. A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication.

(13) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—Before a drug-testing facility licensed under part II of chapter 408 may perform any drug-screening test on a urine specimen collected in this state, prescreening tests must be performed to determine the validity of the specimen. The prescreening tests must be capable of detecting, or detecting and defeating, novel or emerging urine drug-testing subversion technologies as described in this subsection.

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's

conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

(16) ~~(15)~~ NONDISCIPLINE REMEDIES.—

(a) Any person alleging a violation of ~~the provisions of~~ this section, that is not remediable by the commission or an arbitrator pursuant to subsection (15) ~~(14)~~, must institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within 180 days of the alleged violation, or be barred from obtaining the following relief. Relief is limited to:

1. An order restraining the continued violation of this section.

2. An award of the costs of litigation, expert witness fees, reasonable attorney ~~attorney's~~ fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this section.

Section 2. Present subsections (9) through (15) of section 440.102, Florida Statutes, are redesignated as subsections (10)

through (16), respectively, a new subsection (9) is added to that section, and paragraphs (c), (e), and (q) of subsection (1), paragraph (a) of subsection (3), paragraphs (b) through (h), (j), (k), and (l) of subsection (5), subsection (6), paragraph (a) of subsection (7), and paragraphs (b) and (c) of present subsection (9) of that section are amended, to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Drug" means any form of alcohol, as defined in s. 322.01(2), including a distilled spirit, wine, a malt beverage, or an intoxicating preparation; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c) ~~liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug~~; or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all ~~of~~ such drugs.

(e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered~~,~~ by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care

Administration~~,~~ for the purpose of determining the presence or absence of a drug or its metabolites. In the case of testing for the presence of alcohol, the test must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration, ~~or~~ the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, before ~~prior to~~ testing, an employer shall give all employees and job applicants for employment a written policy statement that ~~which~~ contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of

prescription or nonprescription medications ~~to a medical review officer both before and after being tested~~.

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department.

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by ~~brand name or~~ common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the

Public Employees Relations Commission or applicable court.

12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(b) Specimen collection must be documented, and the documentation procedures shall include the~~:~~

~~1.~~ labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. For saliva or breath alcohol testing, a specimen container is not required if the specimen is not being transported to a laboratory for analysis

~~2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result~~.

(c) Specimen collection, storage, and transportation to a laboratory ~~the testing site~~ shall be performed in a manner that reasonably precludes contamination or adulteration of specimens.

(d) Each confirmation test conducted under this section,

not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed or certified laboratory as described in subsection (10) ~~(9)~~.

(e) A specimen for a drug test may be taken or collected by any person who meets the qualification standards for urine or oral fluid specimen collection as specified by the United States Department of Health and Human Services or the United States Department of Transportation. For alcohol testing, a person must meet the United States Department of Transportation standards for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug-testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available ~~of the following persons:~~

~~1. A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.~~

~~2. A qualified person employed by a licensed or certified laboratory as described in subsection (9)~~.

(f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two independent drug tests, one to screen the specimen and one for confirmation of the screening test results, at a laboratory as determined by the Agency for Health Care Administration.

(g) Every specimen that produces a positive, confirmed test

result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 1 year after the confirmation test was conducted ~~210 days after the result of the test was mailed or otherwise delivered to the medical review officer~~. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 60-day ~~180-day~~ period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test the specimen at the limit of detection for the drug or analyte confirmed by the original ~~at equal or greater sensitivity for the drug in question as the first~~ laboratory. If the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive verified ~~confirmed~~ test result from the medical review officer, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such result ~~results~~, and the options available to the employee or job

applicant. The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(j) ~~The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and~~ All ~~such~~ documentation of a positive test shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.

(k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been reviewed and verified by ~~a confirmation test and by~~ a medical review officer, except when a confirmed positive breath alcohol test was conducted in accordance with United States Department of Transportation alcohol testing procedures.

(l) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation to ensure proper recordkeeping, handling, labeling, and identification of all specimens tested.

(6) CONFIRMATION TESTING.—

(a) ~~If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test.~~

~~(b) Only licensed or certified laboratories as described in~~

~~subsection (9) may conduct confirmation drug tests.~~

~~(c)~~ All laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the United States Department of Health and Human Services or the United States Department of Transportation ~~Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form~~.

(b) ~~(d)~~ If a ~~an initial~~ drug test of an employee or job applicant is confirmed by the laboratory as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(c) For a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is confirmed or verified as positive in accordance with this section shall not, by virtue of the result alone, be deemed to

have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

(9) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—Before a drug-testing facility licensed under part II of chapter 408 may perform any drug screening test on a urine specimen collected in this state, prescreening tests must be performed to determine the validity of the specimen. The prescreening tests must be capable of detecting, or detecting and defeating, novel or emerging urine drug-testing subversion technologies as described in this subsection.

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug-screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug-screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

(10)~~(9)~~ DRUG-TESTING STANDARDS FOR LABORATORIES.—

(b) A laboratory may analyze initial or confirmation test specimens only if:

1. The laboratory obtains a license under part II of chapter 408 and s. 112.0455(18) ~~s. 112.0455(17)~~. Each applicant for licensure and each licensee must comply with all requirements of this section, part II of chapter 408, and

applicable rules.

2. The laboratory has written procedures to ensure the chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls, including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(c) A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests.

~~5. Any correlation between medication reported by the~~

~~employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.~~

A report must not disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

Section 3. Paragraph (b) of subsection (11) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in reemployment assistance hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(b) Only laboratories licensed and approved as provided in s. 440.102(10) ~~s. 440.102(9),~~ or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

1186
Bill Number (if applicable)

Topic DRUG FREE WORKPLACES

Amendment Barcode (if applicable)

Name RJ MYERS

Job Title LOBBYIST

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing SAVE OUR SOCIETY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	CS/SB 1356
INTRODUCER:	Commerce and Tourism Committee and Senator Bean
SUBJECT:	Employer Contributions for Reemployment Assistance
DATE:	January 29, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Fav/CS**
2.			FT	
3.			AP	

I. Summary:

CS/SB 1356 reduces the initial reemployment tax rate of new employers from 2.7 percent to 1 percent for tax rates effective on or after January 1, 2021. However, the initial tax rate may not be adjusted for any year that the balance of the Unemployment Compensation Trust Fund (UC Trust Fund) becomes unstable and requires the computation of a positive adjustment factor.

The bill takes effect July 1, 2020.

II. Present Situation:

Reemployment Assistance Overview

The Federal Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own and who meet the requirements of state law.[1] The program is administered as a partnership between the federal government and the states.[2] The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits. Subject to the approval of the United States Department of Labor (USDOL), each state also sets tax rates, benefit levels, and trust fund balances based on the state's needs.[3]

[1] USDOL, Employment and Training Administration (ETA), *State Unemployment Insurance Benefits*, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited Jan. 28, 2020).
[2] There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.
3 USDOL, Employment and Training Administration (ETA), *State Unemployment Insurance Benefits*, available at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited Jan. 28, 2020).

The Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA),[4] which is used to provide grants to the states to fund costs associated with program administration and job service programs.[5]

Florida's unemployment insurance program was created by the Legislature in 1937.[6] The program was rebranded as the "reemployment assistance program" in 2012.[7] The Department of Economic Opportunity (DEO) is responsible for administering the program, and the DEO contracts with the Florida Department of Revenue (DOR), as the tax collection service provider, for the collection of unemployment taxes.[8]

Florida Reemployment Assistance Benefits

A qualified claimant may receive reemployment assistance (RA) benefits equal to 25 percent of wages, not to exceed $6,325 in a benefit year.[9] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount of $275 for up to 23 weeks, depending on the claimant's length of prior employment, wages earned, and the unemployment rate.[10]

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.[11]

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment.[12] For example, each week an individual is required to contact at least five prospective employers (three prospective employers if the individual resides in a small county) or report to a One-Stop Career Center for reemployment services.[13]

Financing Reemployment Assistance

In Florida, RA benefits are financed solely through contributions by employers – employers pay taxes on the first $7,000 of each employee's wages.[14] Employers are required to pay state taxes into

[4] 26 U.S.C. 3301-3311.
[5] FUTA also pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits. *See* USDOL, Employment and Training Administration, *Unemployment Insurance Tax Topic,* available at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited Jan. 28, 2020).
[6] Chapter 18402, Laws of Fla.
[7] Chapter 2012-30, Laws of Fla.
[8] Section 443.1316, F.S.
[9] Section 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.
[10] Section 443.111(3), F.S. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent.
[11] *See* s. 443.091, F.S.
[12] *Id*.
[13] *Id.* For the entire list of requirements and exceptions. A "small county" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.
[14] Section 443.1217, F.S.

Florida's RA program as a cost of doing business.[15] Employers must file quarterly reports and pay taxes within one month of the close of each quarter. New businesses are required to report initial employment information in the month following the calendar quarter in which employment begins.[16] The DOR reviews the reports and any additional required applications to make a determination of whether the business is liable to pay RA taxes.[17]

Businesses are liable for state reemployment tax if they meet any of the following conditions:[18]

- Paid more than $1,500 in quarterly wages in a calendar year;
- Had at least one employee for any portion of a day during any 20 weeks in a calendar year; or
- Is liable under the FUTA.[19]

Florida law also specifies separate liability requirements for agricultural and domestic employers, nonprofit organizations, governmental agencies, and Indian tribes.[20] Businesses that are otherwise not subject to RA taxation may decide to voluntarily pay into the UC Trust Fund for coverage for their employees.[21]

Reemployment Assistance Tax Rates

An employer's contributions are equal to a percentage of its wages paid for employment.[22] The standard rate of contributions payable is 5.4 percent,[23] which is also the maximum allowable tax rate under current law.[24] New employers are liable to pay an initial contribution of 2.7 percent, which remains in effect until the employer has made contributions for at least eight consecutive quarters.[25] One exception to the initial rate is when employers who would be liable by succession, choose to accept the tax rate of the previous employer and the responsibility of paying any outstanding amounts due.[26]

An employer with record of at least eight quarters of contributions may be eligible to receive a variable tax rate.[27] Variable tax rates are adjusted annually and are based on the employer's benefit experience,[28] the balance of the UC Trust Fund,[29] and other adjustment factors.[30] The variable rates

[15] DOR, *Employer Guide to Reemployment Tax*, available at http://floridarevenue.com/Forms_library/current/rt800002.pdf (last visited Jan. 28, 2020).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *See generally* ch. 443, F.S.
[21] If an employer voluntarily provides coverage, the employer must report wages and pay RA taxes for a minimum of one calendar year. Section 443.121(3), F.S.
[22] Employers are required to pay taxes on the first $7,000 of each employee's wages. Section 443.1217(2), F.S.
[23] Section 443.131(2)(c), F.S.
[24] *See* s. 443.131(2)(e), F.S
[25] Section 443.131(2)(a), F.S.
[26] *See* s. 443.131(2)(b), F.S.
[27] *See* s. 443.131(3)(d), F.S.
[28] The purpose of using the experience rating to determine RA tax rates is to stabilize the UC Trust Fund at a percentage of the taxable payrolls reported by all employers and to ensure employers are required to pay a fair share.
[29] The UC Trust Fund is an account used to pay unemployment compensation benefits.
[30] *See* s. 443.131(3)(e), F.S.

range from 5.4 percent to the minimum allowable tax rate, which varies annually but can never be less than 0.1 percent.[31]

Employee Leasing Companies

Employee leasing is an arrangement where a leasing company assigns its employees to a client and allocates the direction and control of the leased employees between the leasing company and client.[32] When a client contracts with an employee leasing company (ELC)[33] to provide it with workers, those workers are considered employees of the ELC.[34] Employees of an ELC must be reported under the ELC's tax identification number and contribution rate for work performed for the ELC.[35] However, ELCs may choose to make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the ELC.[36] A newly licensed ELC[37] has 30 days from the date of licensure to make an election with the DOR to report and pay reemployment tax using the tax rate for each client.[38] This method is referred to as the "client method," and the tax rate used will be based upon the wage and benefit history the client has earned under the ELC.[39] If the client does not have a wage and benefit history under the ELC, then the client will have the initial rate of 2.7 percent.[40]

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers.[41] Conversely, when

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[31] The final adjustment factor spreads costs not included in the variable adjustment factor to all employers whose rates are not at the initial or maximum rate. The final adjustment factor determines the minimum tax rate for the year. *See* s. 443.131(3)(e), F.S.
[32] *See* s. 468.520(4), F.S. The term "client" means a party who has contracted with an employee leasing company to provide a worker, or workers, to perform services for the client. *See* s. 443.036(18).
[33] Employee leasing companies (ELCs) are also referred to as professional employer organizations (PEOs). *See* s. 468.520(4), F.S. Leased employees include employees subsequently placed on the payroll of the employee leasing company on behalf of the client. *See* s. 443.036(18).
[34] *See* s. 443.1216(1)(a), F.S.
[35] *Id*.
[36] *Id*.
[37] An Employee leasing company is responsible for providing quarterly reports concerning the clients of the employee leasing company and the internal staff of the employee leasing company. *See* s. 443.036(18).
[38] DOR, *Reemployment Tax for Professional Employer Organizations*, available at https://floridarevenue.com/taxes/taxesfees/Pages/rt_elc.aspx (last visited Jan. 28, 2020).
[39] *Id*.
[40] If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the ELC, the client company must pay contributions at the initial rate. *See* s. 443.1216(1)(a), F.S.
[41] If the balance of the UC Trust Fund is below 4 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a positive adjustment factor is computed. The positive adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund equals or exceeds 4 percent of the taxable payrolls. However, if the balance of the UC Trust Fund is above 5 percent of the taxable payrolls for the year immediately preceding the calendar year for which the contribution rate is being computed, then a negative adjustment factor must be computed. The negative adjustment factor remains in effect for subsequent years until the balance of the UC Trust Fund exceeds 4 percent but is less than 5 percent of the taxable payrolls of that year. *See* s. 443.131(3)(e).

unemployment and benefit charges are low, the negative fund balance adjustment factor is triggered, and tax rates for employers are reduced accordingly.[42]

III. Effect of Proposed Changes:

The bill amends ss. 443.1216 and 443.131 of the Florida Statutes to reduce the initial reemployment tax rate for new employers from 2.7 percent to 1 percent.

For tax rates effective on or after January 1, 2021, if an ELC chooses to report and pay the reemployment tax using the tax rate for each client, and a client company's record is chargeable with benefits for less than 8 quarters, the client company's initial tax rate is 1 percent. However, the bill provides that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor.

For tax rates effective on or after January 1, 2021, the initial reemployment tax rate for new employers whose record is chargeable with benefits for less than 8 quarters is 1 percent. However, the bill provides that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor.[43]

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[42] During the years of 2010-2014, the Legislature made efforts to temporarily increase the tax wage base from $7,000 to $8,500, increased the trigger for the positive adjustment factor from 3.7 percent to 4 percent, and reduced the trigger for the negative adjustment factor from 4.7 percent to 5 percent. The Legislature also reduced the tax wage base and the adjustment factor triggers as the economy stabilized. *See* Ch. 2009-99, Laws of Fla., Ch. 2010-1, Laws of Fla., Ch. 2011-235, Laws of Fla., and Ch. 2012-30, Laws of Fla.

[43] *See* s. 443.131(3)(e).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

Unless the UC Trust Fund is unstable, new contributory employers will pay a reduced tax rate from 2.7 percent down to 1 percent until their tax rate is adjusted based on their employment record.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 443.1216 and 443.131.

IX. Additional Information:

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

CS by Commerce and Tourism on January 28, 2020:

- Clarifies that the initial tax rate may not be adjusted for any year that the balance of the UC Trust Fund requires the computation of a positive adjustment factor, which applies to ELCs and new employers whose record is chargeable with benefits for less than 8 quarters; and
- Clarifies that the initial tax rate of 1 percent will apply "for tax rates effective on or after January 1, 2021."

B. Amendments:

None.

234232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/28/2020	.	
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	.	
	.	

The Committee on Commerce and Tourism (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 73 - 216

and insert:

contributions at the initial rate of 2.7 percent. For tax rates effective on or after January 1, 2021, if the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 1.0 percent. However, the tax collection service

provider may not adjust the initial rate for any year in which the balance in the Unemployment Compensation Trust Fund requires the computation of a positive adjustment factor under s. 443.131(3)(e)2.a.(III); and

(D) The wage data and benefit charges for the prior 3 state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an

employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The applicable client company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The employee leasing company or its applicable client company is not liable for any violation of s. 443.071 engaged in by the other party or by the other party's officers or agents.

(VIII) If an employee leasing company fails to select the client method of reporting not later than July 1, 2012, the entity is required to report under the employee leasing company's tax identification number and contribution rate.

(IX) After an employee leasing company is licensed pursuant to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

(X) Irrespective of the election, each transfer of trade or business, including workforce, or a portion thereof, between employee leasing companies is subject to the provisions of s. 443.131(3)(g) if, at the time of the transfer, there is common ownership, management, or control between the entities.

b. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Department of Economic

Opportunity which includes each client establishment and each establishment of the leasing company, or as otherwise directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance account number, if available;

(III) The former federal employer's identification number, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor

Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

d. The department shall adopt rules as necessary to administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

e. For the purposes of this subparagraph, the term "establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from

wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

Section 2. Paragraph (a) of subsection (2) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(2) CONTRIBUTION RATES.—Each employer must pay contributions equal to the following percentages of wages paid by him or her for employment:

(a) *Initial rate.*—Each employer whose employment record is chargeable with benefits for less than 8 calendar quarters shall pay contributions at the initial rate of 2.7 percent. For tax rates effective on or after

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

234232

And the title is amended as follows:

Delete line 4

and insert:

revising the initial rate that certain client

By Senator Bean

4-00632C-20 20201356__

A bill to be entitled

An act relating to employer contributions for reemployment assistance; amending s. 443.1216, F.S.; reducing the initial rate that certain client companies of employee leasing companies must pay under specified circumstances to tax collection service providers; amending s. 443.131, F.S.; requiring the tax collection service provider to adjust the initial employer contribution rate under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 443.1216, Florida Statutes, is amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee. However, whenever a client, as defined in s. 443.036(18), which would otherwise be designated as an employing unit has contracted with an employee leasing company to supply it with workers, those workers are considered employees of the employee leasing company. An employee leasing company may lease corporate officers of the client to the client and other workers

4-00632C-20 20201356__

to the client, except as prohibited by regulations of the Internal Revenue Service. Employees of an employee leasing company must be reported under the employee leasing company's tax identification number and contribution rate for work performed for the employee leasing company.

a. However, except for the internal employees of an employee leasing company, each employee leasing company may make a separate one-time election to report and pay contributions under the tax identification number and contribution rate for each client of the employee leasing company. Under the client method, an employee leasing company choosing this option must assign leased employees to the client company that is leasing the employees. The client method is solely a method to report and pay unemployment contributions, and, whichever method is chosen, such election may not impact any other aspect of state law. An employee leasing company that elects the client method must pay contributions at the rates assigned to each client company.

(I) The election applies to all of the employee leasing company's current and future clients.

(II) The employee leasing company must notify the Department of Revenue of its election by July 1, 2012, and such election applies to reports and contributions for the first quarter of the following calendar year. The notification must include:

(A) A list of each client company and the unemployment account number or, if one has not yet been issued, the federal employment identification number, as established by the employee leasing company upon the election to file by client method;

(B) A list of each client company's current and previous employees and their respective social security numbers for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied;

(C) The wage data and benefit charges associated with each client company for the prior 3 state fiscal years or, if the client company has not been a client for the prior 3 state fiscal years, such portion of the prior 3 state fiscal years that the client company has been a client must be supplied. If the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 2.7 percent. Beginning January 1, 2021, if the client company's employment record is chargeable with benefits for less than 8 calendar quarters while being a client of the employee leasing company, the client company must pay contributions at the initial rate of 1.0 percent; and

(D) The wage data and benefit charges for the prior 3 state fiscal years that cannot be associated with a client company must be reported and charged to the employee leasing company.

(III) Subsequent to choosing the client method, the employee leasing company may not change its reporting method.

(IV) The employee leasing company shall file a Florida Department of Revenue Employer's Quarterly Report for each client company by approved electronic means, and pay all contributions by approved electronic means.

(V) For the purposes of calculating experience rates when the client method is chosen, each client's own benefit charges and wage data experience while with the employee leasing company determines each client's tax rate where the client has been a client of the employee leasing company for at least 8 calendar quarters before the election. The client company shall continue to report the nonleased employees under its tax rate.

(VI) The election is binding on each client of the employee leasing company for as long as a written agreement is in effect between the client and the employee leasing company pursuant to s. 468.525(3)(a). If the relationship between the employee leasing company and the client terminates, the client retains the wage and benefit history experienced under the employee leasing company.

(VII) Notwithstanding which election method the employee leasing company chooses, the applicable client company is an employing unit for purposes of s. 443.071. The employee leasing company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The applicable client company or any of its officers or agents are liable for any violation of s. 443.071 engaged in by such persons or entities. The employee leasing company or its applicable client company is not liable for any violation of s. 443.071 engaged in by the other party or by the other party's officers or agents.

(VIII) If an employee leasing company fails to select the client method of reporting not later than July 1, 2012, the entity is required to report under the employee leasing company's tax identification number and contribution rate.

(IX) After an employee leasing company is licensed pursuant to part XI of chapter 468, each newly licensed entity has 30 days after the date the license is granted to notify the tax collection service provider in writing of their selection of the client method. A newly licensed employee leasing company that fails to timely select reporting pursuant to the client method of reporting must report under the employee leasing company's tax identification number and contribution rate.

(X) Irrespective of the election, each transfer of trade or business, including workforce, or a portion thereof, between employee leasing companies is subject to the provisions of s. 443.131(3)(g) if, at the time of the transfer, there is common ownership, management, or control between the entities.

b. In addition to any other report required to be filed by law, an employee leasing company shall submit a report to the Labor Market Statistics Center within the Department of Economic Opportunity which includes each client establishment and each establishment of the leasing company, or as otherwise directed by the department. The report must include the following information for each establishment:

(I) The trade or establishment name;

(II) The former reemployment assistance account number, if available;

(III) The former federal employer's identification number, if available;

(IV) The industry code recognized and published by the United States Office of Management and Budget, if available;

(V) A description of the client's primary business activity in order to verify or assign an industry code;

(VI) The address of the physical location;

(VII) The number of full-time and part-time employees who worked during, or received pay that was subject to reemployment assistance taxes for, the pay period including the 12th of the month for each month of the quarter;

(VIII) The total wages subject to reemployment assistance taxes paid during the calendar quarter;

(IX) An internal identification code to uniquely identify each establishment of each client;

(X) The month and year that the client entered into the contract for services; and

(XI) The month and year that the client terminated the contract for services.

c. The report must be submitted electronically or in a manner otherwise prescribed by the Department of Economic Opportunity in the format specified by the Bureau of Labor Statistics of the United States Department of Labor for its Multiple Worksite Report for Professional Employer Organizations. The report must be provided quarterly to the Labor Market Statistics Center within the department, or as otherwise directed by the department, and must be filed by the last day of the month immediately after the end of the calendar quarter. The information required in sub-sub-subparagraphs b.(X) and (XI) need be provided only in the quarter in which the contract to which it relates was entered into or terminated. The sum of the employment data and the sum of the wage data in this report must match the employment and wages reported in the reemployment assistance quarterly tax and wage report.

d. The department shall adopt rules as necessary to

administer this subparagraph, and may administer, collect, enforce, and waive the penalty imposed by s. 443.141(1)(b) for the report required by this subparagraph.

e. For the purposes of this subparagraph, the term "establishment" means any location where business is conducted or where services or industrial operations are performed.

3. An individual other than an individual who is an employee under subparagraph 1. or subparagraph 2., who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or drycleaning services for his or her principal.

b. As a traveling or city salesperson engaged on a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations. This sub-subparagraph does not apply to an agent-driver or a commission-driver and does not apply to sideline sales activities performed on behalf of a person other than the salesperson's principal.

4. The services described in subparagraph 3. are employment subject to this chapter only if:

a. The contract of service contemplates that substantially all of the services are to be performed personally by the individual;

b. The individual does not have a substantial investment in facilities used in connection with the services, other than

facilities used for transportation; and

c. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

Section 2. Paragraph (a) of subsection (2) of section 443.131, Florida Statutes, is amended to read:

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(2) CONTRIBUTION RATES.—Each employer must pay contributions equal to the following percentages of wages paid by him or her for employment:

(a) *Initial rate.*—Each employer whose employment record is chargeable with benefits for less than 8 calendar quarters shall pay contributions at the initial rate of 2.7 percent. Beginning January 1, 2021, the tax collection service provider shall adjust the initial rate for each employer whose employment record is chargeable with benefits for less than 8 calendar quarters to 1.0 percent. However, the tax collection service provider may not adjust the initial rate for any year in which the balance in the Unemployment Compensation Trust Fund requires the computation of a positive adjustment factor under sub-sub-subparagraph (3)(e)2.a.(III).

Section 3. This act shall take effect July 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Joseph Gruters, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 13, 2020

I respectfully request that **Senate Bill # 1356**, relating to Employer Contributions for Reemployment Assistance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

1356
Bill Number (if applicable)

234232
Amendment Barcode (if applicable)

Topic Employer Contributions for Reemployment Assistance

Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison St. Caldwell Building
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Tallahassee FL 32399
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Phone 850-245-7370

Email Nicholas.Alvarez@deo.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Economic Opportunity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20
Meeting Date

1356
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Topic Employer Contributions for Reemployment Assistance

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Name Nicholas Alvarez

Job Title Legislative Affairs Director

Address 107 E. Madison St. Caldwell Building
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(The Chair will read this information into the record.)

Representing Department of Economic Opportunity

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

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S-001 (10/14/14)

The Florida Senate

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 Commerce and Tourism

BILL:	SB 1492
INTRODUCER:	Senator Wright
SUBJECT:	Consumer Protection
DATE:	January 27, 2020
REVISED:	1/31/2020

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Favorable**
2.			BI	
3.			RC	

I. Summary:

SB 1492 modifies provisions in several areas that are regulated by the Department of Financial Services (DFS), including:

- Removing a fee for the replacement of PINs for credit freezes implemented under the Keeping I.D. Safe Act;
- Strengthening authority for the DFS to request documents from licensed entities;
- Establishing a required licensure scheme for adjusting firms;
- Classifying the aiding and abetting of unlicensed activity by certain licensees as a third-degree felony;
- Prohibiting the use of "Medicaid" or "Medicare" in new insurance agency names;
- Requiring licensees regulated under ch. 626, F.S., to maintain the privacy of consumers' personal financial or medical information;
- Extending telemarketing solicitation protections to Florida's insurance consumers by prohibiting phone solicitation by an insurance licensee after 9 p.m., or before 8 a.m.;
- Ending the sale of industrial life insurance products;
- Increasing the possible suspension period for title insurance agent licensees from a 1-year period to a 2-year suspension period, thereby conforming to the permissible suspension period applicable to other insurance licensees;
- Extending the cooling-off period during which a consumer who entered into a contract with a property adjuster may cancel the contract without cause;
- Requiring that a specific disclosure is signed by any consumer whose policy will be exported into the surplus lines market;
- Expanding the definition of an unfair or deceptive trade practice to include the acts of initiating an insurance policy without a consumer's consent and effectuating an insurance policy by sending an invoice to a mortgagee or escrow agent without a consumer's consent;

- Amending the disclosure required by insurers who will use a consumer's credit score to calculate a premium to include references to the DFS resources for financial literacy and consumer assistance;
- Creating a hurricane season notice, which requires insurance companies to deliver a copy of the Homeowner Claims Bill of Rights and a summary of the consumer's hurricane coverages and deductibles to their consumers in advance of each hurricane season;
- Requiring insurers to provide additional information to their consumers during the claims handling process, e.g., the contact information of any adjuster assigned to the claim and the adjuster's report;
- Instituting a requirement that information communicated to the insurance consumer during the claims handling process also be sent to the consumer's agent of record;
- Updating the Homeowner Claims Bill of Rights to reflect additional duties imposed on insurers during the claims handling process;
- Prohibiting insurance policies sold in Florida after July 1, 2020, from including a forum selection clause that requires the consumer to pursue litigation, arbitration, or mediation outside of Florida;
- Removing the statutory requirement that an insured pay a $100 deductible to receive payment on their claim through the Florida Insurance Guaranty Association;
- Consolidating the forms used by the DFS' Division of Unclaimed Property; and
- Conforming cross-references.

II. Present Situation:

The Department of Financial Services (DFS or Department) has broad duties, including licensure and regulation of those who transact insurance; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[1]

The present situation for each relevant provision of the bill is discussed in the Effect of Proposed Changes section of this bill analysis, below.

III. Effect of Proposed Changes:

Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information, date of birth, and court judgments.[2] Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in

[1] *See, e.g.*, Department of Financial Services, *What DFS Can Do For You*, https://www.myfloridacfo.com/division/CFO/DFS.htm (last visited Jan. 27, 2020).
[2] 15 U.S. Code §1681 defines a "credit report" as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, … general reputation, [or] personal characteristics… which is used…for the purpose of…establishing the consumer's eligibility for credit or employment purposes…. The Florida KIDS Act adopts this definition of a "credit report" in s. 501.0051(1)(a), F.S.

determining, e.g., whether to extend credit, set insurance rates, or employ the consumer.[3] A consumer may also review his or her credit report at no charge once every 12 months from each of the credit bureaus.

Security Freezes and the Keeping I.D. Safe (KIDS) Act

The Keeping I.D. Safe (KIDS) Act[4] allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from charging any fee to place or remove a security freeze, they may charge up to $10 to reissue a PIN.[5]

Section 1 amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a PIN or provide a new unique PIN to a consumer.

Insurer's Use of Credit Score

Section 626.9741, F.S., regulates and limits insurer's use of credit reports and scores for underwriting and rating personal lines motor vehicle insurance and personal lines residential insurance policies for Florida consumers. Specifically, an insurer must inform a consumer that it will access his or her credit report when the consumer submits an application for coverage. If the insurer denies the consumer's application based on the consumer's credit report, it must also give the consumer a copy of the credit report it relied on with an explanation of the reasons it denied coverage.

The DFS currently offers financial literacy courses to help consumers make informed financial and insurance-related decisions.[6]

Section 13 amends s. 626.9741, F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

> The Department of Financial Services offers free financial literacy programs to assist you in understanding how credit scores are calculated, what factors are considered, and how credit works. The Department's toll-free Insurance Consumer Helpline is available to assist you with insurance-related questions and inquiries. To learn more about the free financial literacy programs or for help with insurance, call 1-877-693-5236 or visit www.MyFloridaCFO.com.

[3] Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, *available at* https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf (last visited Jan. 27, 2020).
[4] Section 501.0051, F.S.
[5] Section 501.0051(9), F.S.
[6] Florida Department of Financial Services, *Financial Literacy-Empowering You to Make Informed Financial Decisions*, https://www.myfloridacfo.com/Division/Consumers/FinancialLiteracy.htm (last visited Jan. 27, 2020).

Division of Consumer Services

The Division of Consumer Services (Division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.[7] The Division of Consumer Services' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.[8]

Section 624.307(10)(b), F.S., permits the Division to impose an administrative penalty on a person who holds a license or certificate of authority from the Department if he or she fails to respond to the Division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records that are required to be kept by law, but is not required to produce those not within the purview of statutes.[9] Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.[10]

Section 2 amends s. 624.307(10)(b), F.S., to remove the penalty on individuals for the failure to respond to a Department inquiry, and to create a duty for an entity that is licensed or issued a certificate of authority by the DFS to respond to its written requests for information. This section also updates the duty by requiring the entity to provide any requested documents to the DFS.

Communications between a Consumer and Insurer

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer who has notified the insurer of a possible claim. Generally, the residential property insurance company must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90 days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.[11]

Section 18 amends s. 627.70131, F.S., to expand residential property insurer's and surplus lines insurer's duties to a consumer after he or she notifies the insurer of a possible claim. This section clarifies that a consumer's initial communication with an insurance company representative, not

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[7] Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited Jan. 27, 2020). *See also*, Department of Financial Services, *Consumer Guides*, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm (last visited Jan. 27, 2020).

[8] Section 624.307(10)(a), F.S.

[9] *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).

[10] *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).

[11] See further discussion of the Homeowner Claims Bill of Rights, *infra*.

just an agent, regarding his or her claim initiates the duties outlined in this section of law. This section also expands the application of these duties to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937, F.S.

The additional duties implemented by the bill include the insurer's communication (via electronic communication or mailing) to a claimant of:

- An adjuster's name, license number, and contact information, if the insurer's claim investigation involves a physical inspection of the claimant's property;
- The name, license number, and contact information of any subsequent adjusters assigned to the consumer's claim, which must be provided within 7 days after the change;
- An unedited copy of any adjuster's report that the insurer received, which must be provided within 7 days after the insurer received the report; and
- Specific notices when an insurer provides a preliminary or partial estimate or payment on a claim that the estimate may be revised, or the payment may be supplemented, based on ongoing evaluations.

Additionally, an insurer must establish processes to provide a consumer's agent of record with access to the above information communicated to the consumer (specifically regarding the adjuster's report and adjuster's contact information).

Lastly, this section clarifies several timeframes applied to the insurer's communications by updating terms to either "calendar days" or "business days."

The Homeowner Claims Bill of Rights

The Homeowner Claims Bill of Rights (Bill of Rights) outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.[12] An insurance company must provide a consumer with a copy of the Bill of Rights within 14 days of receiving any communication about a claim.[13] Florida law provides form language that the insurer must include in the Bill of Rights, which gives notice of the consumer's right to:[14]

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;
- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;
- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the Department of Financial Services for assistance.

The Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

[12] Florida Department of Financial Services, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2018), *available at* https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf (last visited Jan. 27, 2020).
[13] Section 627.70131, F.S.
[14] Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in 627.70131, F.S.

Section 20 updates the Bill of Rights to better reflect the insurer's duties outlined in s. 627.70131, F.S. The Bill of Rights must now include notice that the consumer has the right to:

- Be notified of the name and contact information of any subsequent company adjuster assigned to his or her claim;[15] and
- Receive interest payments, which begin accruing when a consumer files a claim, at the time of payment of the full settlement amount or undisputed claim portion. A consumer is also due interest payments if the insurer fails to deny the claim within 90 calendar days after a claim is made.[16]

This section also clarifies that references to days are *calendar* days.

Section 15 amends s. 627.421, F.S., to require insurers to deliver a copy of the Bill of Rights to all of their homeowners' insurance policyholders by either mail or e-mail between March 3 and April 2 of each year. This notice must also include a statement of the policyholder's hurricane coverage, including the applicable hurricane deductible, the coverages, and any exclusions.

Insurance Adjusters

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims.[17]

Adjusting Firms

Current law authorizes, but does not require, licensure of adjusting firms.[18] According to a representative of the DFS, there are currently no licensed adjusting firms. An adjusting firm license must be renewed every three years and requires a $60 application fee.[19] An adjusting firm license application must include:[20]

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.[21]

Chapter 626 provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.[22]

Section 3 amends s. 626.112, F.S., to require all adjusting firms to obtain a license from the DFS to transact adjusting in the state. However, an individual who owns and operates an adjusting

[15] This duty is created by section 18 of this bill, which amends s. 627.70131, F.S. Section 18 of this bill also requires the initial adjuster to give the consumer his or her name, license number, and contact information.
[16] *See* s. 627.70131(5)(a), F.S.
[17] Section 626.854(1), F.S.
[18] Section 626.8696, F.S.
[19] Section 624.501(20), F.S.
[20] Section 626.8696, F.S.
[21] Section 626.8695, F.S.
[22] Section 626.8697, F.S.

firm, has a Florida adjuster license, and does not employ, appoint, or otherwise use the services of any other licensee, is not required to obtain an adjusting firm license. The adjusting firm licensure requirements instituted by this section are consistent with the requirements applicable to insurance agencies.

This section further specifies that a branch location is not required to be licensed provided that it:
- Operates under the same name and federal tax identification number of the licensed firm;
- Has a licensed primary adjuster who has been designated with the DFS; and
- Submits its address and telephone number to the DFS within 30 days after beginning to transact insurance.

This section also imposes a $10,000 administrative penalty on adjusting firms that fail to be licensed as required by this section.

Public Adjuster Contracts

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.[23, 24] As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policy holder to cancel the contract within 3 business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to 5 business days from the date the contract was executed, if it was entered into during a state of emergency or during the 1-year period after the date of loss.

The adjuster must disclose in all of his or her contracts the consumer's right to cancel the contract, and the methods by which the consumer may send a cancellation.

Section 10 amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with an adjuster. Generally, the bill increases the cooling-off period from 3 business days to 7 calendar days. However, for contracts signed during a state of emergency or during the 1-year period after the date of loss, the bill increases the cooling-off period to 30 calendar days.

Misleading Insurance Agency Names

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.[25]

[23] Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters.
[24] Rule 69B-220.201(4) and (5), F.A.C.
[25] Section 626.602(1)-(3), F.S.

The Social Security Act prohibits any person from using the terms "Medicare" or "Medicaid" in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.[26]

There are currently 85 insurance agencies licensed in Florida whose agency names contain the words "Medicare," or "Medicaid."[27]

Section 4 amends s. 626.602, F.S., to permit the DFS to disapprove an insurance agency's proposed use of a name that includes the words "Medicare" or "Medicaid." Insurance agencies that currently operate under such a name may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.[28]

Administrative Penalties and Grounds to Refuse a License

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) is a federal law that protects individual's health information from certain disclosures when it is held by health care providers and health insurance companies.[29] Additionally, s. 456.057, F.S., provides that patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative. Neither HIPPA nor the state provision apply to insurance licensees.

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.[30] Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.[31]

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.[32]

Section 5 amends s. 626.621, F.S., to add two bases for which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Making a consumer's or customer's personal financial or medical information available or accessible to the public; and

[26] 42 U.S. Code §1320b-10(a)(1). Upheld by *United Seniors Ass'n Inc. v. SSA*, 423 F. 3d 397, 399 (4th Cir. 2005).
[27] Department of Financial Services, *Licensee Search*, https://licenseesearch.fldfs.com/ (enter "Medicare" or "Medicaid" in "Agency/Firm Name field, then click "search") (last visited Jan. 27, 2020).
[28] Insurance agency licenses are indefinite. Section 626.382, F.S.
[29] U.S. Department of Health and Human Services, *Your Health Information Privacy Rights, available at* https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/consumer_rights.pdf (last visited Jan. 27, 2020).
[30] Section 501.604(7), F.S.
[31] Federal Trade Commission, *The Telemarketing Sales Rule*, https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule (last visited Jan. 27, 2020).
[32] Section 626.854(5), F.S.

- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

License Suspension for Title Agents and Title Agencies

Section 9 amends s. 626.8443, F.S., to increase a title agent or title agency's permitted suspension period from 1 year to 2 years. This conforms the suspension period to those applicable to insurance agents,[33] and bail bond agents.[34]

A suspended licensee may not engage in the transaction of business that requires a license. After the duration of the suspension, an individual or entity with a suspended license may request to have the license reinstated by the Department, rather than undergo the licensing process in the same manner as a first-time applicant, as is required after a license revocation.[35]

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act[36] prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,[37] including:
- Misrepresenting the benefits, advantages, or terms of any insurance policy;
- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional ("sliding").[38]

A person who commits acts prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $20,000 for nonwillful violations, and up to $200,000 total for willful violations.[39] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[40]

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than $75,000 per violation.[41]

Section 12 amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:
- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and

[33] Section 626.641, F.S. *See also*, Rule 69B-231, Laws of Fla.
[34] Section 648.45, F.S. *See also*, Rule 69B-241, Laws of Fla.
[35] Section 626.641(2), F.S.
[36] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[37] Section 626.9541, F.S.
[38] Section 626.9541(1)(z), F.S. *See also*, *Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1st DCA).
[39] Each count of a nonwillful violation is limited to a fine of no more than $5,000, and each count of a willful violation is limited to a fine of no more than $20,000. Section 626.9521(2), F.S.
[40] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.
[41] Section 626.9521(3)(b), F.S.

- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property that will be insured.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

Criminal Penalties for Aiding and Abetting Unlicensed Insurance Activity

Section 3 adds a criminal penalty, applicable to any person who helps an unlicensed person transact insurance or engage in insurance activities in Florida. These violations are punishable as third-degree felonies.[42]

Section 22 amends s. 648.30, F.S., to extend the third-degree felony penalty for unlicensed bail bond activity to those who are licensed under ch. 648, F.S., and who knowingly aid and abet an unlicensed person commit unlicensed bail bond activity,[43] in violation of s. 648.30, F.S.

Industrial Life Insurance

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than $5,000.[44] Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.[45]

Sections 6-8 and 17 end the sale of industrial life insurance in Florida by prohibiting life insurers from writing a new policy of industrial life insurance beginning July 1, 2020, and otherwise removing language that allows insurance companies to transact industrial life insurance policies. However, these sections do permit the continued collection of premiums on, and servicing of such policies that were written before July 1, 2020.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[46] There are three basic categories of surplus lines risks:

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[42] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[43] Unlicensed bail bond activity violative of s. 648.30, F.S., generally consists of representing oneself as a Florida bail bond agent or attempting to detain or arrest an individual on a bond, without proper licensure.
[44] Section 627.502, F.S. *See also*, Department of Financial Services, *Life Insurance Overview: Types of Policies*, https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (last visited Jan. 27, 2020).
[45] Florida Department of Financial Services, *SB 1492 Agency Analysis*, 3 (Jan. 15, 2020), (on file with the Senate Committee on Commerce and Tourism).
[46] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S. *See also*,

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[47] which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.[48] Rather, surplus lines insurers are "unauthorized" insurers,[49] but may transact surplus lines insurance if they are made eligible by the OIR.

An insurance agent[50] may "export," or place a policy with an unauthorized insurer under the Surplus Lines Law, with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[51] A "diligent effort" requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:[52]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks, [53] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

Certain types of insurance, deemed "commercial risks," including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, https://www.fslso.com/AboutGroup/about/surplus-lines-insurance (last visited Jan. 27, 2020).

[47] Section 626.914(2), F.S.

[48] Section 624.09(1), F.S.

[49] Section 624.09(2), F.S.

[50] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See* s. 626.914(1), F.S.

[51] Section 626.916(1)(a), F.S.

[52] Section 626.916(1), F.S.

[53] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

> You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[54]

Section 11 amends s. 626.916, F.S., to extend the disclosure requirement found in s. 626.916(3)(b)3., F.S., to all insurance policies that are exported into the surplus lines market, rather than just commercial risks.

Additionally, the bill clarifies that the insureds who seek to export the commercial risks listed in s. 626.916(3)(b), F.S., must have signed the disclosure *prior to* the policy's export.

Forum Selection Clauses Prohibition

A forum selection clause is a contractual provision in which the parties agree upon the venue for possible future litigation between them.[55] Generally, ch. 47, F.S., provides that civil actions must be brought in the Florida county where the defendant resides, where the cause accrued, or where the property in question is located.[56] If the defendant is an out-of-state (foreign) corporation, venue resides where the corporation has a representative, the action accrued, or where the property is located.[57] However, "a mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust."[58] In 2014, the Legislature codified case law on the matter, holding that a court could refuse to enforce a forum selection clause if it contravenes public policy, or is unjust and unreasonable.[59]

Several states, including Florida, have attempted to limit forum selection clauses in specific instances. Florida voids as contrary to public policy any contracts that require litigation against Florida contractors and related professions to be filed in non-Florida jurisdictions.[60]

Section 19 creates s. 627.7031, F.S., which prohibits property insurers from including any clause in their property insurance policies sold to Florida consumers after July 1, 2020, that requires an insured to pursue litigation, arbitration, or mediation outside of Florida. This prohibition also applies to surplus lines insurers and any policies exported to a surplus lines insurer pursuant to ss. 626.913-937, F.S.

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty

[54] Section 626.916(3)(b), F.S.
[55] Black's Law Dictionary (11th ed. 2019).
[56] Section 47.011, F.S.
[57] Section 47.051, F.S.
[58] *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.3d 820, 821 (Fla. 1st DCA 2014) (*citing Land O'Sun Mgmt. Corp. v. Commerce and Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla 1st DCA 2007). Internal citations omitted.
[59] Section 61.0401, F.S. *See also, Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986) and *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 571 U.S. 49, 134 S. Ct. 568 (2013).
[60] Section 47.025, F.S.

claims[61] that would otherwise be left unpaid.[62] FIGA does not offer a replacement policy, and coverage offered by FIGA is generally limited to a $300,000 payment. A consumer may receive additional FIGA coverage of up to $200,000 for damages to their home's structure or the contents thereof.[63] Condominium and homeowner's association claims have a coverage cap of $100,000 multiplied by the number of units in the association.[64] All claims filed with FIGA are subject to a $100 deductible in addition to any deductible identified in the consumer's policy.[65]

Section 21 amends s. 631.57, F.S., to remove the consumer's obligation to pay a $100 deductible to FIGA in order to receive payment on their claim through FIGA. The consumer will still be obligated to pay their original insurer's deductible, however.

Division of Unclaimed Property

The DFS administers the Florida Disposition of Unclaimed Property Act. Unclaimed property is a financial asset that is unclaimed or abandoned by its owner.[66] Unclaimed property may include savings and checking accounts, securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[67] The DFS Division of Unclaimed Property is responsible for receiving property, attempting to locate its rightful owners, returning the property or proceeds to them, and managing the Unclaimed Property Trust Fund.[68] There is no statute of limitations and individuals may claim their property at any time and at no cost.[69]

Florida law allows Florida-licensed private investigators, certified public accountants, and attorneys to serve as claimant's representatives who solicit unclaimed property owners or their heirs to help them recover their property for a fee.[70] There are currently over 350 claimant's representatives registered with the Department.[71] The claimant's representatives may not charge a fee in excess of 20 percent of the account's value, up to $1,000 maximum per account, unless the claimant's representative discloses that the property is held by the Division of Unclaimed

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[61] A "covered claim" is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy." Section 631.54, F.S.
[62] *See generally*, Part II, ch. 631, F.S., "Florida Insurance Guaranty Association Act." *See also*, Florida Insurance Guaranty Association, *Home*, https://figafacts.com/ (last visited Jan. 27, 2020).
[63] Section 631.57(2), F.S.
[64] Section 631.57(3), F.S.
[65] Section 631.57(2), F.S., *see also*, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, https://figafacts.com/frequently-asked-questions/ (last visited Jan. 27, 2020).
[66] Florida Department of Financial Services, *Florida Treasure Hunt: Why Should I Search for Unclaimed Property?*, https://www.fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited Jan. 27, 2020).
[67] Sections 717.104-717.116, F.S. See also, Department of Financial Services, *Florida Unclaimed Property*, https://www.myfloridacfo.com/Division/UnclaimedProperty/ (last visited Jan. 27, 2020).
[68] Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 14 (Sept. 30, 2019), available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited Jan. 27, 2020).
[69] Section 717.124, F.S., provides the methods by which a person may claim his or her interest from the Division of Unclaimed Property. *See also*, Florida Department of Financial Services, *Florida Treasure Hunt: Search for and Claim Unclaimed Property*, https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp (last visited Jan. 27, 2020).
[70] Florida Department of Financial Services, *Florida Treasure Hunt: Have You Been Contacted About Unclaimed Property?*, https://fltreasurehunt.gov/Contacted-by-Unclaimed-Property.jsp (last visited Jan. 27, 2020).
[71] Florida Department of Financial Services, SB 1492 Agency Analysis at 4 (Jan. 21, 2020) (on file with the Committee on Commerce and Tourism).

Property, and gives the Division's contact information, along with other pertinent information about the property.[72]

Alternatively, a Florida-licensed private investigator, certified public accountant, or attorney may offer to purchase the unclaimed property and pay the seller an agreed upon amount upfront.[73] In this case, the purchaser must pay the agreed upon percentage or amount within 30 days of the contract's execution by the seller, and must provide proof of that payment to the DFS with the claim.[74] The disclosure and contract requirements are substantially similar to the claimant's representative process, except that the seller's identity must be verified by submission of a copy of a valid driver's license, photo I.D., or notarized sworn statement which affirms the seller's identity, full name, and address. Submission of a social security number or taxpayer identification number are only required if that information is available.

Before a claimant's representative or unclaimed property purchaser may execute a power of attorney or purchase agreement, he or she must disclose the following in a separate document to the property owner, and obtain the owner's signed acknowledgement thereof:

- That the property is held by the Division of Unclaimed Property (and the mailing and internet address of the Division);
- Who remitted the property to the Division, and when that last point of contact occurred; and
- The category the property falls under (e.g., cash account, life insurance or annuity contract asset, utility deposit, wages, or contents of safe-deposit boxes).

The power of attorney or purchase agreement must include the:

- Value of the unclaimed property (or approximate value);
- Unclaimed property account number;
- Percentage value of the unclaimed property to be paid to the claimant, if applicable;
- Percentage value of the compensation to be made to the claimant's representative;
- Number of shares of stock, if applicable;
- Claimant's taxpayer identification number or social security number, address, and telephone number;
- Name and address to whom payment shall be made, if different than the claimant's name and address; and
- Claimant's representative's contact information, including his or her:
  - Professional license number,
  - Firm or employer's name, address, and telephone number; and
  - Name, address, and telephone number.

Additionally, the power of attorney or purchase agreement must be a separate document from the disclosure.

Section 27 substantially amends s. 717.315, F.S., to replace the power of attorney and acquisition of unclaimed property forms used by claimant's representatives with the "Florida Uniform Unclaimed Property Recovery Agreement" (uniform recovery agreement) and the

[72] Section 717.135(2), F.S.
[73] Section 717.1351, F.S.
[74] Section 717.1351(4), F.S.

"Florida Uniform Property Purchase Agreement" (uniform purchase agreement), respectively (uniform agreements, jointly). The bill prohibits a claimant's representative from engaging with a claimant or seller to file a claim with the DFS by any means other than the uniform agreement forms and declares any agreement not authorized by s. 717.135, F.S., null and void.

The uniform agreements require substantially the same information as the power of attorney and disclosure or purchase agreement and disclosure, but combines the forms, and otherwise add the following information requirements:

- A statement of the total dollar amount that will be paid to the claimant's representative, based on the fee or deduction percentage quoted;
- The total dollar amount the claimant will receive, after the above fees or deductions have been subtracted; and
- The claimant's representative's e-mail address.

The bill explicitly states that the uniform agreements may not contain language that either makes the contract irrevocable, or creates an assignment of unclaimed property held by the DFS. As an additional consumer protection, the bill clarifies that fees and costs may only be owed or paid pursuant to the uniform agreements and upon approval of the claim filed thereby (thus limiting the overall fees to 20 percent).

The bill allows the DFS to pay out the value of any account that was not claimed at the time that it approved another of the consumer's claim, if no subsequent claim was filed.

Lastly, the bill directs the DFS to adopt rules to amend its forms to reflect the uniform agreements required disclosures.

Section 28 repeals s. 717.1351, F.S., regarding acquisition of unclaimed property. This process is replaced by the newly created Florida Uniform Property Purchase Agreement, which is created by section 27 of this bill.

Sections 23-26 make conforming changes to ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S., respectively, to reflect the adoption of the uniform agreements.

Miscellaneous

Section 3 deletes unnecessary language from s. 626.112(7), F.S.

Sections 14 and 15 update cross-references in ss. 626.9957 and 627.062, F.S., respectively.

Section 29 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill requires adjusting firms to become licensed, which subjects them to a $60 application fee. To the extent the bill imposes a fee on adjusting firms while addressing other subjects, the bill may be unconstitutional as a violation the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under Article VII, section 19 of the Florida Constitution. Under that section, a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."[75]

E. Other Constitutional Issues:

Section 5 may benefit from further definition of its terms. Agencies generally have wide discretion in interpreting statutes they administer, but "this discretion is somewhat more limited where the statute being interpreted authorizes sanctions or penalties against a person's professional license."[76] Statutes that provide for the revocation or suspension of a license to practice are deemed penal in nature and must be strictly construed, with any ambiguity interpreted in favor of the licensee.[77] However, if it is found that the law fails to give a person of ordinary intelligence fair notice of what constitutes forbidden conduct, it may be determined to be void for vagueness.[78]

The DFS' restriction on engagement with a claimant or seller of unclaimed property may implicate an issue regarding restrictions of commercial speech. The Constitution accords a lesser protection to commercial speech than to other constitutionally protected expression.[79] In fact, the government may ban forms of commercial communication that are more likely to deceive the public than to inform it, but if commercial communication is not misleading or related to unlawful activity, the government's power to restrict such communication must be supported by a substantial interest, and the limit must be in proportion to that interest.[80] This is generally expressed as a two-part test asking: (1) does

[75] FLA. CONST. art. VII, s. 19(d)(1)
[76] *Beckett v. Department of Financial Services*, 982 So.2d 94, 100 (Fla. 1st DCA 2008) (quoting *Elmariah v. Department of Professional Regulation, Board of Medicine*, 574 So.2d 164, 165 (Fla. 1st DCA 1990).
[77] *Tuberville v. Department of Financial Services*, 248 So.3d 194, 196 (Fla 1st DCA 2018).
[78] *Accelerated Benefits Corp v. Department of Insurance*, 813 So.2d 117 (Fla 1st DCA 2002) (internal citations omitted).
[79] U.S. CONST., amends. I, XIV. *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 564 (1980).
[80] *Id*.

the restriction directly advance the state interest involved, and (2) could the governmental interest be served as well by a more limited restriction?

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit Bureaus will no longer be permitted to charge a fee to re-issue a PIN to consumers.

Consumers who seek to have their claims covered by FIGA will no longer be required to pay the $100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the DFS and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

The inclusion of all required information in one uniform agreement may equip an unclaimed property claimant with more information prior to entering into an agreement. This may protect the consumer from entering into predatory or unfair contracts to retrieve their unclaimed property.

C. Government Sector Impact:

The DFS will be required to update certain forms and brochures to reflect the amended version of the Homeowner Claims Bill of Rights.

The DFS will likely see an increase in adjusting firm applications as a result of this bill; this will result in an increased licensing workload.

Section 27 requires the DFS to promulgate rules that adopt the uniform agreements relating to unclaimed property.

VI. Technical Deficiencies:

Line 120 uses the term "consumer," however, this is not a defined term in s. 501.0051, F.S. The KIDS Act defines the terms "protected consumer" to mean a person younger than 16 years of age, and the term "representative" to mean the parent or legal guardian of a protected consumer. An amendment to s. 501.005(13)(b), F.S., would be required to effect a prohibition on fees charged by credit bureaus for the replacement of a consumer's PIN, which is required to remove a credit freeze.

Several cross-references may need to be updated to reflect the newly required adjusting agency license, e.g., ss. 626.015 and 626.022, F.S.

Section 3 of the bill, at line 154, requires entities to comply with s. 626.8696, F.S., to act as an adjusting firm. Section 626.8696, F.S., outlines the requirements for submitting an application for an adjusting firm license, but does not give licensing requirements. This may be interpreted as requiring adjusting firms only to submit an application (not wait for approval, or even meet approval from the DFS) to comply with s. 626.112, F.S., as amended by the bill. Similarly, line 174 within section 3 of the bill merely requires an adjusting firm to file an application for licensure to avoid a penalty assessed by the DFS.

As written, the bill appears to allow all consumers who have a contract with a public adjuster to cancel the contract during a state of emergency declared by the governor. See lines 264-271. Consideration of an amendment to paragraph proposed s. 626.8443(6), F.S., may be needed to clarify what contracts are voidable by the consumer.

Section 18 and section 20 both generally update references of "days" to "calendar days" or "business days;" however, both sections also leave at least one reference to only "days." This inconsistency may cause confusion about whether a "day" is a calendar or business day.

Lines 614-621 of the bill add a consumer notice within the Homeowner Claims Bill of Rights that the consumer may be eligible to receive interest payments if the insurance company does not timely remit his or her claim settlement. Generally, the consumer rights reflected in the Homeowner Claims Bill of Rights are the inverse of the duties imposed on insurers by s. 627.70131, F.S. However, lines 614-621 do not accurately reflect s. 627.70131(5)(a), F.S.

Line 959, within section 27 of the bill, requires a claimant's representative to report the "total percentage of all authorized fees and costs to be paid to the claimant's representative…" This language may be interpreted as permitting a claimant's representative to be paid only a portion of the total authorized fees and costs, rather than a percentage of the value of the unclaimed property in question.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 626.112, 626.602, 626.621, 626.782, 626.783, 626.8443, 626.854, 626.916, 626.9541, 626.9741, 626.9957, 627.062, 627.421, 627.502, 627.70131, 627.7142, 631.57, 648.30, 717.124, 717.12404, 717.1315, 717.1322, and 717.135.

This bill creates section 627.7031, F.S.

This bill repeals ss. 626.796 and 717.1351, F.S.

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.

By Senator Wright

14-00928B-20 20201492__

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for entities licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; revising administrative penalties the division may impose for failure to comply; amending s. 626.112, F.S.; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; deleting an obsolete provision; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance representatives; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-

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combination class insurer," respectively, to conform to changes made by the act; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; amending s. 626.854, F.S.; revising the timeframes in which an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; amending s. 626.916, F.S.; revising the classes of insurance subject to a disclosure requirement before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending ss. 626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.421, F.S.; requiring personal lines residential property insurers to annually deliver a certain notification to policyholders within a specified timeframe; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; amending s. 627.70131, F.S.; providing that communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by

the insurer; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring that certain adjuster reports be provided to policyholders within a certain timeframe; specifying requirements for insurers in notifying policyholders for certain changes in assigned adjusters; requiring an insurer to establish a process to provide the agent of record access to claim status information for a certain purpose; defining the term "agent of record"; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; specifying the timeframe in which an insurer must pay or deny property insurance claims under certain circumstances; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the Florida Insurance Guaranty Association, Incorporated's obligation as to certain covered claims; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; amending ss. 717.124, 717.12404, 717.1315, and 717.1322, F.S.; conforming provisions to changes made by the act;

amending s. 717.135, F.S.; replacing provisions relating to powers of attorney to recover unclaimed property with provisions relating to uniform forms for unclaimed property recovery agreements and purchase agreements; requiring the department to adopt the uniform forms by rule; specifying required information and disclosures in the forms; requiring that, for the purchase agreement form, proof the seller received payment be filed with the department along with the claim; requiring registered claimant's representatives to use the forms as the exclusive means of engaging with a claimant or seller to file claims and prohibiting them from using or distributing other agreements; specifying a limitation on fees and costs owed or paid; prohibiting certain language in the forms; authorizing the department to pay additional accounts owned by the claimant under certain circumstances; providing construction; repealing s. 717.1351, F.S., relating to the acquisition of unclaimed property; providing an effective date.

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

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge to ~~a reasonable fee, not to exceed $10, if the representative fails~~

~~to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any entity ~~person~~ licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office~~.

Section 3. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10), a new subsection (9) is added to that section, and paragraph (d) of subsection (7) and present subsection (9) of that section are amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting

firms.—

(7)

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

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed, but fails to file an application for licensure in accordance with

this section, the department shall impose on the firm an administrative penalty of up to $10,000.

(10) ~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Subsection (4) is added to section 626.602, Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2020, may continue to use that name as long as the agency's license is valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name.

Section 5. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster,

customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Allowing the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 6. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2020, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 7. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance under s. 626.782.

Section 8. Section 626.796, Florida Statutes, is repealed.

Section 9. Subsection (1) of section 626.8443, Florida

Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period shall not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 10. Subsection (6) of section 626.854, Florida Statutes, is amended to read:

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

(6) Except during a state of emergency declared by the Governor and except during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 7 calendar ~~3 business~~ days after the date on which the contract

is executed or within 7 calendar ~~3 business~~ days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. During a state of emergency declared by the Governor or during the 1-year period after the date of loss, an insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 30 calendar days after the date on which the contract is executed or within 30 calendar days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract~~; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

Section 11. Subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the

admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has signed ~~must sign~~ a disclosure as required under paragraph (1)(f) ~~that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 12. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or

deceptive acts or practices defined.—

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

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured.

Section 13. Subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the

same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you in understanding how credit scores are calculated, what factors are considered, and how credit works. The Department's toll-free Insurance Consumer Helpline is available to assist you with insurance-related questions and inquiries. To learn more about the free financial literacy programs or for help with insurance, call 1-877-693-5236 or visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge~~,~~ a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this

subsection. It shall not be deemed an adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 14. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 15. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 16. Subsection (6) is added to section 627.421, Florida Statutes, to read:

627.421 Delivery of policy.—

(6) For personal lines residential property insurance policies, the insurer shall, between March 3 and April 2 of each year, inclusive, deliver a notification to all policyholders via mail or e-mail which includes the Homeowner Claims Bill of Rights and outlines the hurricane coverage included in the

policy, including the hurricane deductible and the coverages and exclusions.

Section 17. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2020, a life insurer may not write a new policy of industrial life insurance.

Section 18. Section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the

insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection shall not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 10 business ~~working~~ days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with his or her name, license number,

and contact information.

(c) An unedited copy of any report received by the insurer, which was produced by the licensed adjuster based upon the physical inspection of the property, must be provided to the policyholder electronically or as a physical copy within 7 days after receipt by the insurer.

(d) If an insurer assigns the claim to a different licensed adjuster after receipt of a report from the adjuster who performed the physical inspection, the insurer must, within 7 days after changing the licensed insurance adjuster assigned to a claim, provide the name, license number, and contact information of the new adjuster to the policyholder. The notification may be sent electronically or via mail. If the notification is a physical letter, it must be postmarked within 7 days after the change in adjuster. Any subsequent change to the assigned adjuster must be handled in accordance with this paragraph.

(4) An insurer shall establish a process by which the agent of record for an insurance policy is provided access to information provided to the policyholder under subsection (3) in order to assist the agent of record in answering the policyholder's questions regarding claims. As used in this subsection, the term "agent of record" means the agent named on the declarations page of the insurance policy.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point

bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE LOSS TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a preliminary or partial payment on a claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)~~(5)~~(a) Within 90 calendar days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 calendar days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the

claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection shall not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 19. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—A property insurance policy sold in this state after July 1, 2020, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 20. Section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer

issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process

and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 calendar days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 7 calendar days, receive notification from your insurance company if there has been a change in the company adjuster who is assigned to your claim. The notification must include the assigned adjuster's contact information.

4. Within 90 calendar days, subject to any dual

interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

5. Receive payment of interest from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your claim or the undisputed portion of your claim or does not deny your claim within 90 calendar days after your claim is filed. The interest must be paid when your claim or undisputed portion of your claim is paid.

6.~~4.~~ Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

7.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

8.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 21. Paragraph (a) of subsection (1) and subsection

(6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has

no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines that either or both such actions are necessary to facilitate the bulk assumption of obligations.

Section 22. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 23. Paragraphs (b) and (c) of subsection (4) and subsections (1) and (10) of section 717.124, Florida Statutes, are amended to read:

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant’s representative. The claimant’s representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant’s representative must be registered with the department under this

chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or purchase agreement~~, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative

provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claimant or the claimant's representative shall be deemed to have withdrawn a claim if no response to the department's request for additional information is received by the department within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;

2. Was reported with an address outside of the United States;

3. Is being claimed by a person outside of the United States; or

4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(d) The department shall deny any claim under which the claimant's representative has refused to authorize the department to reduce the fees and costs to the maximum permitted under this chapter.

(4)

(b) If an owner authorizes an attorney licensed to practice law in this state, Florida-certified public accountant, or private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement under s. 717.135 ~~such power of attorney~~. The original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~ must be executed by the claimant or seller ~~owner~~ and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts shall be made to the owner after deducting any fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~. The contents of a safe-deposit box shall be delivered directly to the claimant ~~notwithstanding any power of attorney or agreement to the contrary~~.

2. Payments of fees and costs authorized pursuant to a Florida Uniform Unclaimed Property Recovery Agreement ~~written power of attorney~~ for approved claims must ~~shall~~ be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days.

Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, shall be to the attorney, certified public accountant, or private investigator.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents pursuant to this chapter, including a Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~a limited power of attorney or purchase agreement~~ that has been manually signed and dated by a claimant or seller pursuant to s. 717.135 ~~or s. 717.1351~~, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a registered claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

Section 24. Subsection (2) of section 717.12404, Florida Statutes, is amended to read:

717.12404 Claims on behalf of a business entity or trust.—

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person's identity and states the person's full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney~~, if applicable, is void.

Section 25. Subsection (1) of section 717.1315, Florida Statutes, is amended to read:

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Florida Uniform Unclaimed Property Recovery Agreement or Florida Uniform Property Purchase Agreement ~~power of attorney or agreement~~ between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial ~~power of attorney or~~ agreement.

Section 26. Paragraph (j) of subsection (1) of section 717.1322, Florida Statutes, is amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement ~~a power of attorney~~ to file a claim for unclaimed property owned by another, or a

contract or agreement to purchase unclaimed property, unless such person is registered with the department pursuant to this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This subsection does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

Section 27. Section 717.135, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 717.135, F.S., for present text.)

717.135 Recovery agreements and purchase agreements for claims filed by claimant's representative; fees and costs.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Florida Uniform Unclaimed Property Recovery Agreement" and a form entitled "Florida Uniform Property Purchase Agreement."

(2) The Florida Uniform Unclaimed Property Recovery Agreement form and the Florida Uniform Property Purchase Agreement form must include and disclose:

(a) The total dollar amount of unclaimed property accounts

claimed or sold.

(b) Either the total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing registered claimant's representative.

(c) Either the total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing registered claimant's representative.

(d) The net dollar amount to be received by the claimant or seller.

(e) For each account claimed, the unclaimed property account number and name of the apparent owner, as listed on the department's database.

(f) For the Florida Uniform Property Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the execution of the form by the seller.

(g) The name, address, e-mail address, phone number, and license number of the registered claimant's representative.

(h) The manual signature of the claimant or seller and the date signed.

(i) The social security number or taxpayer identification number of the claimant or seller, if available. A number is available if one has been issued to the claimant or seller.

(j) A limit of total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 20 percent of the claimed amount.

(3) For a Florida Uniform Property Purchase Agreement form, proof that the seller has received payment must be filed with

the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A registered claimant's representative shall use the Florida Uniform Unclaimed Property Recovery Agreement form or the Florida Uniform Property Purchase Agreement form as the exclusive means of engaging with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to a registered claimant's representative only pursuant to the forms authorized by this section and upon approval of the claim filed thereby.

(6) A claimant's representative may not use or distribute any other agreement of any type with respect to the claimant or seller which relates to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any agreement that is not authorized by this section is null and void.

(7) The forms under subsection (1):

(a) May not contain language that makes the agreement irrevocable; and

(b) May not contain language that creates an assignment of any unclaimed property held by the department.

(8) This section does not supersede the conflicting claims provisions of s. 717.1241.

(9) At the time a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that no subsequent claim has been filed and is pending for the claimant at the time of approval.

Section 28. Section 717.1351, Florida Statutes, is

repealed.

Section 29. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

January 14, 2020

The Honorable Joe Gruters
324, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1492 – Consumer Protection

Dear Chair Gruters:

Senate Bill 1492, relating to Consumer Protection has been referred to the Committee on Commerce and Tourism. I am requesting your consideration on placing SB 1492 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright

Tom A. Wright, District 14

cc: Todd McKay, Staff Director of the Committee on Commerce and Tourism
Brittany Argote, Administrative Assistant of the Committee on Commerce and Tourism

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

Department of Financial Services (DFS)
2020 Legislative Bill Analysis

BILL INFORMATION

Bill Number:	SB 1492
Bill Title:	Consumer Protection
Bill Sponsor:	Wright
Effective Date:	Upon becoming law

ANALYSIS INFORMATION

Agency Contact:	Meredith Stanfield, Legislative Affairs Director, (850) 413-2890
Division Director:	Greg Thomas, Walter Graham
Program Analyst:	Scott MacCallum, Philip Carlton, Austin Stowers
Analysis Date:	January 21, 2020

POLICY ANALYSIS

I. SUMMARY ANALYSIS

SB 1492 is the Department of Financial Services' (DFS or the Department) consumer protection package, championed by Chief Financial Officer (CFO) Jimmy Patronis, which addresses the current fraud epidemic in the State of Florida. The bill will remove punitive fees from statute, address communication between the insurance industry and consumers/policy holders, ensure consumer protections, and strengthen best practices in the industry. This legislation is a unified proposal from Florida's insurance regulators to improve claims handling practices on behalf of all Florida consumers.

The bill specifically addresses the licensing of insurance adjusting and public adjusting firms, the protection of personal financial and medical information by insurance agencies, increases the period during which a policyholder may cancel a public adjusting contract, and prohibits the practice of initiating property policies without the consent of the property owner. The bill also expands the content of the Homeowners Claims Bill of Rights and requires that it be sent to policyholders annually, requires that property insurance companies provide the contact information of the individual handling their claim, and prohibits the issuance of industrial life insurance policies.

While the bill predominantly focuses on consumer protection measures associated with insurance, it also addresses procedures associated with unclaimed property in the state by creating standard forms to streamline the collection, dispersal, purchase and sale of unclaimed property.

II. PRESENT SITUATION

In the wake of Hurricane Michael, the Division of Consumer Services (Consumer Services) received hundreds of complaints from policyholders regarding non-responsiveness from insurance company adjusters, multiple changes in the adjuster handling their claim, and claim settlement payment delays. Similarly, Consumer Services received a significant number of policyholder complaints indicating that the public adjuster or public adjusting firm they hired to assist them with the claim was unresponsive and took months to provide the insurance company with the documentation necessary to move the claim forward. Policyholders who were insured through surplus lines insurers encountered additional issues because many of the laws designed to provide a degree of protection to

the insurance consumer do not apply to non-admitted carriers. The issues and complaints Consumer Services receives are not solely from policyholders impacted by Hurricane Michael, but they have illuminated inefficiencies of current insurance industry practices.

Consumers have also reported incidences of their personal financial or health information being handled carelessly by their insurance agent's office staff, cases of agents providing policyholder information to insurance companies for the purpose of providing a quote, followed by that insurer then issuing an insurance policy that the policyholder never authorized nor requested. Finally, while individual adjusters and public adjusters are required to be licensed and appointed, adjusting and public adjusting firms are not. The absence of such licensure hampers the Division's ability to track potential issues and/or trends within certain firms. Currently, Consumer Services is unable to associate individual adjusters with specific firms, therefore similar concerning actions among the adjusters employed by a particular firm are not able to be attributed to that firm. As we have seen with certain insurance agencies, if the leadership of the agency is encouraging or condoning unlawful or unethical behavior, its employees typically follow suit.

Section 1:
CFO Jimmy Patronis championed 2019 legislation to remove the $10 fee charged by credit reporting agencies to place a security freeze on a consumer's credit report. The removal of the fee made it more accessible and simpler for consumers to protect their identities and reduce the risk of identity theft. However, there is still a loophole in the law that allows a credit reporting agency to charge up to $10 to reissue the unique Personal Identification Number (PIN). Credit reports are free for consumers, but they can be charged the $10 fee if they misplace or forget their PIN.

Section 2:
Current law does not allow the specificity as to what a regulated entity must provide to Consumer Services in response to its written request. There are current fines for individuals who fail to comply with requests from Consumer Services that are not enforced.

Sections 3, 14 and 22:
Within the Florida Insurance Code, it is a felony for an unlicensed person to transact insurance, but it does not address those licensees who aid and abet such unlicensed behavior. There are administrative penalties for such actively, but not criminal.

Section 4:
The Florida Insurance Code does not specifically prohibit the use of the names "Medicare" or "Medicaid" in the names of insurance agencies. Insurance agencies routinely attempt to create business names which could confuse vulnerable consumers as to the true nature of the entity.

Section 5:
The Florida Insurance Code does not clearly require licensed agents, adjusters, agencies, etc., to maintain the privacy of a consumer's financial and medical information. Often when agencies close they toss their old files into a dumpster for anyone to find.

Current Florida law also does not provide for administrative action when a person violates Federal Trade Communication laws regarding solicitation. Initiating telephone solicitations after 9:00 p.m. or before 8:00 a.m. is a violation of the Federal Trade Communication laws, but this does not exist in Florida Statute, and is therefore not enforceable under the Florida Insurance Code.

Section 6, 7, 8, and 17:
No new industrial life insurance has been written in the past year and only 38 of the 398 active life insurers maintain existing policies of this type.

Section 9:
Most insurance agent license types allow for an up to 2-year suspension for violations of the Florida Insurance Code, but the title insurance agent license only allows for a 1-year suspension. Protecting consumers from bad actors is an important reason that the 2-year suspension is in place for other license types. This also puts the licensee in a difficult situation, disallowing sufficient time to renew the suspended license.

Section 10:
Following disasters like Hurricane Michael, electrical power, cellular communication, and access to the internet can be affected for days, in some cases longer, exacerbating homeowners' feelings of helplessness. After these disasters, Pubic Adjusters (PA) will often solicit the affected area, promising homeowners expedited, and larger claim settlements. In addition, PA's will attempt to place as many policyholders as possible under contract, as quickly as possible, before competing PA's can do so. This practice often results in a PA, or PA firm contracting with more policyholders than he/she/it has the capacity to service. This results in delayed resolutions for claims, which also occur when the PA's damage repair estimate is exaggerated, or includes damage not related to the actual claim. Similarly, homeowners' insurance claims may be delayed when the PA unilaterally engages the services of an attorney and litigation is initiated. While the attorney and PA's priorities may involve the maximization of a settlement, regardless of the length of time required, the homeowner remains displaced, and may be unable to return to his/her home for months, or perhaps years.

Currently, once a homeowner enters into a contract with a PA, they have 5 days to cancel a public adjuster's contract without penalty. This time is insufficient and has resulted in numerous consumer complaints to Consumer Services. During the period June 1, 2017 to July 19, 2019, Consumer Services received 526 consumer complaints involving Public Adjusters. Of those complaints, 216 justified the initiation of regulatory inquiries, resulting in the referral of 80 Notice of Issues (NOI) to the Division of Insurance Agent & Agency Investigations. Those NOIs represented cases where an alleged violation of statute or administrative code occurred. Many of the remaining complaints involved issues related to the subjects of this legislation, however in the absence of applicable statute, this Division was unable to provide definitive assistance to the consumer.

Section 11:
Current Florida law requires a notice to consumers that their insurance policy is being offered by a surplus lines insurer on commercial risks, but the notice is not required for personal risks. Currently, the first time a personal lines insured might learn their insurance has been exported is after the export has already occurred.

Section 12:
Some property insurance companies have engaged in a practice where they effectuate policies without the knowledge, or authorization of the insured. Assuming the policyholder becomes aware of the replacement policy in a timely manner, he/she must invest a significant amount of time and effort to terminate the unwanted policy, and renew the policy provided by their current insurer. If the policyholder does not discover that a replacement policy has been effectuated, they may be unable to reinstate the policy with their former, preferred insurer.

Section 13:
DFS currently offers free financial literacy programs and maintains a toll-free Insurance Consumer Helpline telephone number and website to assist consumers with insurance questions, concerns, and complaints.

Section 15 and 18:
There is current confusion existing with the terms "agent" to "representative" in the terminology.

Currently, insurers are not required to grant the agent-of-record access to claims information, harming the agents ability to answer basic status questions from their customers about claims.

Section 16:
Currently, a policy holder purchases a policy to protect their home and renews the policy every year by paying the established premium. Typically, a policy holder will not review or make changes to the policy and there is nothing that triggers the policy holder to question the coverage purchased. After Hurricane Irma, while assisting Florida residents, it was discovered that many policy holders did not have knowledge of their coverage or the steps to take if a Hurricane damaged their home.

Section 19:
Currently, surplus lines insurers based outside this state can require policy holders of property insurance to travel outside of the State of Florida to settle litigation, arbitration, or mediation.

Section 20:
There is currently no requirement for insurance companies to notify policyholders if/when there is a change in company adjusters. Policyholders are oftentimes subjected to delays in the claim handling process due to the change, which is beyond their control. Policyholders who are involved in the insurance claims process are oftentimes assigned several company adjusters without notice from the insurance company. The change in adjusters typically causes a delay in the claims process, resulting in the consumer having to restart the process with the new adjuster, and potentially resubmit documentation, etc.

Section 21:
Within the Florida Insurance Guaranty Association statute, there is a punitive deductible requirement of $100 that homeowners are required to pay upon receivership of their insurer.

Section 23-28:
More than 350 licensed claimant's representatives are registered with the Department to gain access to the Department's unclaimed property database, and to seek authorizations from claimants to file claims on their behalf for unclaimed property held by the Department. Each registrant who files claims utilizes a unique, different "limited power of attorney" (LPOA) through which claimants provide authorization to the registrant. No two LPOA's are identical. While all are different, the majority contain language similar to the following:
"I hereby authorize ZYZ Associates to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize." Many also include logos and credential references. The Department's claims analysts are required to accurately read, understand and process all documents for each claim, including all LPOA.

In addition to the example above, some registrants present to claimant's a LPOA that utilizes a high volume of words and legal-type phrases, and subtitles such as "representation agreement, assignment, assignment of interest, recovery agreement." "Contract" is prominently used. These documents include irrevocable clauses and stipulations such as "assignment of interest and rights; irrevocable assignments; exclusivity provisions; requirements for the claimant to act upon all requests of the registrant; venue and attorney fee provisions; and some that provide that if the claimant fails to act, the registrant can claim their 'assigned property' separate from the claimant." In some cases, electronic contracts have been sent to claimants for electronic signatures, followed by a document to be physically signed by the claimant and returned to the registrant, which is then filed with the claim. In either case, if a claimant subsequently chooses to utilize another registrant's services, for a lower fee for example, they may be threatened with legal action.

All fees are capped at 20%, up to $1,000 per account, unless the "Full Disclosure Statement" is provided to the claimant. The full disclosure states that the property is held by the Department and includes the Department's

website address and physical address. If the Full Disclosure Statement is provided, fees are unlimited.

III. EFFECT OF PROPOSED CHANGES

Section 1:
This section would remove a credit reporting agency's current ability to charge a fee, not to exceed $10.00, to reissue a unique PIN or provide a new unique PIN to the consumer, stipulating that no charge may be required for such actions. This will increase the accessibility and feasibility for consumers to place a credit freeze and protect their identity.

Section 2:
The bill will provide increased specificity as to what a regulated entity must provide to Consumer Services in response to its written request. Fines for individuals who fail to comply with requests from Consumer Services will be removed.

Sections 3, 14, and 22:
Changes in these sections will direct that an individual, firm, partnership, corporation, association, or other entity may not act as an adjusting firm unless it complies with section 626.8696, F.S., with respect to possessing an adjusting firm license for each place of business in which it engages in activity that may only be performed by a licensed adjuster. A licensed adjuster conducting business in his/her own name and not employing or appointing other licensees is exempt from the adjusting firm licensing requirements. As to branch locations, if the branch complies with the specific provisions of the section, which are similar to those of a branch insurance agency, the branch need not be individually licensed. If an adjusting firm is required to be licensed, but fails to file an application for licensure, the Department must impose an administrative penalty of up to $10,000.00. Finally, the bill deletes obsolete language regarding the conversion of agency registrations to agency licenses on October 1, 2015 and criminalizes the act of aiding or abetting an unlicensed individual in transacting insurance or otherwise engaging in insurance activities. The bill will also criminalize the aiding or abetting of an unlicensed person who engages in activities which require licensure as a bail bond agent or temporary bail bond agent.

Section 4:
Under section 626.602, F.S., insurance agency names may not include the words "Medicare" or "Medicaid". The bill does permit insurance agencies that are licensed on July 1, 2020, which have names incorporating either of those words to continue to use that name until the agency license expires or is suspended or revoked.

Section 5:
This section will amend section 626.621, F.S., to expand those acts which constitute grounds for licensure sanctions to include permitting the personal financial or medical information of a consumer to be made available or accessible to the general public, regardless of the format in which the records are stored, or initiating in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., unless requested by the prospective customer.

Sections 6, 7, 8, and 17:
The changes in sections 626.782, 626.783, F.S., and the repeal of section 626.796, F.S., will prohibit the sale of industrial life insurance after the effective date of July 1, 2020. Current policies will remain in force according to policy terms, but no new policies may be written. This law change codifies existing practice of insurers as no such insurance has been written in the past year and only 38 insurers maintain existing policies of this type. This change will prevent this outdated product from being re-introduced in the future. The bill will also specify that such an insurer is one that is writing ordinary class insurance and collecting premiums on existing, previously written industrial life policies, as defined in section 626.782, F.S.

Section 9:
The change to amend section 626.8443, F.S., increases the maximum duration of suspension of a title agent's or agency's license from 1 year to 2 years. This change is consistent with other license types, ensures consumer protection, and allows more time for the licensee to renew their suspended license. Further, the change will bring better consistency to the insurance code and department enforcement actions.

Section 10:
The bill will amend section 626.854, F.S., increasing the period during which an insured or claimant may cancel a public adjuster's contract without penalty or obligation from 3 business days, to 7 calendar days after the date upon which the contract was signed or the date the insured notified the insurer of the claim, whichever is later. The period during which an insured or claimant may cancel a public adjuster's contract without penalty or obligation during a state of emergency declared by the Governor and throughout the 1-year period following the date of loss is increased from 5 business days, to 30 calendar days after the date upon which the contract was signed or the date the insured notified the insurer of the claim, whichever is later.

Section 11:
As commercial risk notice are already provided, this section would require personal risk notice to consumers that their insurance policy is being offered by a surplus lines insurer. Section 626.916, F.S., will now include an additional condition that must be met to export a policy, specifically the signing of a disclosure which states, "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

Section 12:
This section will amend section 626.9541, F.S., prohibiting the practice of initiating an insurance policy without the knowledge and consent of the policyholder. The changes will expand the definition of "Sliding" to include "Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured", or "Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effecting an insurance policy, without the prior informed consent of the owner of the property to be insured."

Section 13:
This section will now require companies informing an applicant or insured that a credit report or score is being requested for underwriting or rating purposes, a specific notification must be provided to the consumer stating that the DFS offers free financial literacy programs, and that provides the Department's toll-free Insurance Consumer Helpline telephone number and website.

Sections 15 and 18:
The bill stipulates that a licensed adjuster conducting a physical inspection of a property on behalf of an insurer must provide the policyholder with his/her name, license number and contact information; that an unedited copy of any report received by the insurer, which was produced by the licensed adjuster based upon the physical inspection of the property, must be provided to the policyholder within 7 days after receipt; that if the insurer assigns the claim to a different adjuster after receipt of the report produced by the adjuster that completed the physical inspection of the property, the insurer must provide the policyholder with the name, license number, and contact information of the new adjuster within 7 days of the change. Any subsequent change of handling adjuster must be handled in the same manner.

The legislation dictates that an insurer must establish a process by which the agent of record for an insurance policy has access to the information provided to the policyholder, in order to assist the agent in answering the policyholder's claim-related questions, and that any partial or preliminary estimate of damage or claim settlement

payment issued by the insurer be accompanied by a statement which indicates that the damage estimate is the insurer's current evaluation of the loss, and may be revised as its evaluation continues, or in the case of a partial payment, that the insurer is continuing its evaluation of the claim, and additional payments may follow. Statements in either event must conclude with a request that the policyholder contact the insurer if the insured has any questions, concerns, or additional information to provide. Finally, the act provides that the entire section applies to surplus lines insurers and insurance.

The bill also amends section 627.062, F.S., correcting the referenced subsection in 627.70131, F.S.

Section 16:
The changes to section 627.421, F.S., will require that personal lines residential property insurers deliver a notification to all policyholders during the period March 3-April 2 each year via mail or email which includes the Homeowner Claims Bill of Rights and outlines the hurricane coverage provided by the policy, including the hurricane deductible and coverage exclusions.

Section 19:
The bill will create section 627.7031, F.S., stating that any property insurance policy sold in the state after July 1, 2020 may not require that an insured pursue dispute resolution outside of the state, specifically through litigation, arbitration, or mediation. The section applies to surplus lines insurers and insurance.

Section 20:
The Homeowner Claims Bill of Rights is amended (section 627.7142, F.S.), adding the foregoing amendment to section 627.70131, F.S., specifically stating that the policyholder is entitled to receive notification within 7 days when there is a change of the assigned company adjuster, including the adjuster's contact information. The bill also incorporates an explanation of when interest is due on a claim, based on an insurer's failure to comply with the provisions of section 627.70131(5), F.S.

Section 21:
This section amends section 631.57, F.S., so that policy holders would no longer be required to pay the $100.00 deductible from claims paid by the Florida Insurance Guaranty Association.

Sections 23-29:
These sections will amend statutes of the Division of Unclaimed Property within the Department. Sections 717.124, F.S., 717.12404, F.S., 717.1315, F.S., 717.1322, F.S., and 717.135, F.S., will be amended, and 717.1351, F.S., shall be repealed.

The changes will result in a uniform "recovery agreement" which will continue to be the "claimant's authorization" to act on his or her behalf to file a claim and receive a fee. The unified form will be simplified, though significantly similar to the various LPOA currently utilized by registrants to file more than 90% of the claims filed by registered claimant's representatives. Such a form will be far more claimant friendly, and will protect consumers. Additionally, the changes will create a more level playing field among registered claimant's representatives.

The uniform form is a key element in the Department's ongoing efficiency efforts. Varying fee caps and exceptions thereof will be replaced with a flat maximum that will be more consumer friendly and more easy and efficient for analysts to review and apply. The bill sets forth the required content of the forms and directs that only the foregoing forms may be utilized in the collection, sale, or purchase of unclaimed property.

References to certain power of attorney and similar documents will be removed and replaced with references to the Florida Uniform Unclaimed Property Recovery Agreement and/or the Florida Uniform Property Purchase Agreement.

Section 29:
The act will take effect upon becoming law.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? **Y☒ N☐**

If yes, explain:	The Division of Unclaimed Property appears to be required to promulgate two new forms for use in the collection, purchase and sale of unclaimed property.
Is the change consistent with the agency's core mission?	**Y☒ N☐**
Rule(s) impacted (provide references to F.A.C.):	

V. DOES THE BILL REQUIRE REPORTS OR STUDIES? **Y☐ N☒**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.? **Y☐ N☒**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? **Y☐ N☒**

Revenues:	
Expenditures:	

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	Consumer reporting agencies will not be permitted to charge a nominal fee for providing certain services.
Expenditures:	Property insurers will be required to issue the Homeowner Claims Bill of Rights to all policyholders annually either by mail or email.
Other:	The bill will result in some individual Florida residents and businesses receiving more of their unclaimed property. The bill will result in some registered claimant's representatives receiving a lower fee from some of their individual claims.

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☒ N☐

If yes, explain impact.	Administrative fines could potentially increase for violations of section 624.307, F.S., and section 626.112, F.S.
Bill Section Number:	

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	

FEDERAL IMPACT

I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Rules: Section 27 of the proposed legislation requires the Department to promulgate a new rule(s) adopting two new forms related to claims filed by a claimant's representative for unclaimed property. Other than section 27, the proposed legislation does not require the Department to promulgate a new rule, amend an existing rule, or eliminate an existing rule.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-22-2020
Meeting Date

SB 1492
Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Tim Cornett / FAPIA

Job Title President

Address 4420 Lake in the Woods Dr
Street

Phone 352-345-1377

Spring Hill FL. 34607
City *State* *Zip*

Email TIMC@TC-PA.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FAPIA "Florida Association of Public Adjusters"

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)

JAN 28, 2020
Meeting Date

SB 1492
Bill Number (if applicable)

Topic SB 1492 - Consumer Protection

Amendment Barcode (if applicable)

Name TASHA CARTER

Job Title Florida's Insurance Consumer Advocate

Address 200 E Gaines Street
Street

Phone 850-413-2868

Tallahassee, FL 32399
City *State* *Zip*

Email TASHA.CARTER@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28
Meeting Date

SB 1492
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Protection

Name Jimmy Patronis, Jr.

Job Title Chief Financial Officer

Address PL 17, The Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone (850) 413-2890

Email Meredith.Stanfield@myFloridaCFO.com

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

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

Representing CFO Jimmy Patronis

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20
Meeting Date

1492
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Rutledge

Job Title _____

Address 641 Forest Lair
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-681-6788

Email GaryC.Rutledge-Ecen.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Professional Claimants Representatives Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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 Commerce and Tourism

BILL:	SB 1140
INTRODUCER:	Senator Gruters
SUBJECT:	Public Accountancy
DATE:	January 27, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	**Favorable**
2.	Reeve	McKay	CM	**Pre-meeting**
3.			RC	

I. Summary:

SB 1140 permits a nonresident Florida-licensed certified public accountant (CPA) to renew his or her license if the CPA has complied with the continuing education requirements in the state in which his or her office is located. However, a nonresident CPA must satisfy Florida's ethics-related continuing education requirements. If the state in which the nonresident CPA's office is located does not have continuing education requirements as a condition for license renewal, the nonresident CPA must comply with the continuing education requirements in Florida.

The bill permits a CPA to place his or her license in a retired status. If a licensee on retired status reenters the workforce in a position that has an association with accounting or any of the CPA services, the licensee automatically loses her or his retired status. A retired CPA may continue to be engaged in specific activities but may not offer professional services that require the use of the CPA title. A retired CPA may reactivate her or his license in a conditional manner determined by the Florida Board of Accountancy, which must require the payment of fees and the completion of any required continuing education.

The bill takes effect July 1, 2020.

II. Present Situation:

Certified Public Accountants

The Florida Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating and licensing the more than 38,000 active and 2,700 inactive CPAs and more than 5,700 accounting firms in Florida.[1] The Division of Certified

[1] Florida Department of Business and Professional Regulation, *Fiscal Year 2018-2019 Annual Report*, 12, *available at* http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf (last visited Jan. 27, 2020).

Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.[2]

A certified public accountant is an individual who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.[3]

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[4] To engage in the practice of public accounting,[5] an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

CPA Licensing

Section 473.308, F.S., provides licensing requirements for CPAs. To be licensed as a certified public accountant, a person must be of good moral character, pass the licensure exam, and have at least 150 semester hours of education with a focus on accounting and business.[6] CPA licenses must be renewed on a biennial basis through procedures adopted by the DBPR.[7]

License by Endorsement

Individuals who are licensed as a CPA in another state or territory, as well as individuals who are not licensed in another state or territory but have met certain requirements, may apply to the board for licensure by endorsement.[8] If the applicant is not licensed and has never been licensed in another state or territory, the applicant must:[9]

- Meet the education, work experience, and good moral character requirements;
- Have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306, F.S.; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the 2 years immediately preceding the application for licensure by endorsement.

If the applicant is licensed in another state or territory, the applicant must:[10]

- Have satisfied licensing criteria that were substantially equivalent to the licensure criteria in Florida at the time the license was issued; or

[2] Section 473.303, F.S.
[3] *See* s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.
[4] Section 473.302(8), F.S.
[5] Section 473.302(8), F.S., defines the terms "practice of," practicing public accountancy," and "public accounting"
[6] Sections 473.308(2)-(5), F.S.
[7] Section 473.311(2), F.S.
[8] Section 473.308(7), F.S.
[9] Section 473.308(7)(a), F.S.
[10] Section 473.308(7)(b), F.S.

- Have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state and meet the education, work experience, and good moral character requirements, if the criteria for issuance of such a license were not substantially equivalent to Florida's criteria; or
- Have held a valid license in another state or territory for at least 10 years before applying for a license in Florida, have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state, and meet the education, work experience, and good moral character requirements; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the 2 years immediately preceding the application for licensure by endorsement.

Continuing Education

CPAs, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to the application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board. The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[11]

Not less than 10 percent of the total continuing education hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.[12]

Not less than five percent of the continuing education shall be in ethics applicable to the practice of public accounting, including a review of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules. This requirement must be administered by providers approved by the board.

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPAs to request that their license be placed on inactive status. Licenses can also be placed on inactive status for failing to complete, or failure to report completion of, the continuing education requirements. Section 473.313(2), F.S., authorizes the board to adopt rules establishing fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.[13]

A CPA may reactivate an inactive license by paying the DPBR a $250 application fee[14] and receiving certification that the CPA has completed the education requirements.[15]

[11] Section 473.312(1)(a), F.S.
[12] Section 473.312(1)(b), F.S.
[13] *See* Fla. Admin. Code R. 61H1-33.006 (2019).
[14] Fla Admin. Code R. 61H1-31.006 (2019).
[15] Section 473.313(2), F.S.

If a license that was placed on inactive status for failure to report completed continuing education requirements is inactive on January 1, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.[16]

III. Effect of Proposed Changes:

Licensure by Endorsement

The bill amends s. 473.308(7)(a)1., F.S., referring to applicants for licensure by endorsement who are not licensed in another state, to change the term "another" state to "any" state. The bill does not make the same change throughout s. 473.308, F.S., where the term "another" state is used in several instances.

As amended by the bill, s. 473.308(7)(a)1., F.S., appears to refer to persons who have not been licensed as a CPA in *any* state, including Florida, instead of persons who have not been licensed in any state *aside* from Florida. This change in language would prevent a previously-licensed Florida CPA from using the licensure by endorsement process to regain a license.

Continuing Education

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the state in which his or her office is located. Under the bill, a licensee must still complete no less than 5 percent of the total continuing education hours required in ethics applicable to public accounting as administered by providers approved by the board.

The nonresident licensee must comply with all of Florida's continuing education requirements if the state in which the nonresident licensee's office is located does not have continuing education requirements as a condition for license renewal.

The bill also amends s. 473.312(1)(c), F.S., to require that a majority of the continuing education hours in ethics include a review of the provisions of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules.

Retired Status

Under current law, a CPA licensed in Florida is not permitted to place his or license in a retired status. The bill amends s. 473.313, F.S., to permit a Florida-licensed CPA to submit an application to the DBPR to place his or her license in a retired status if the licensee:

- Is at least 55 years of age;
- Holds a current active or inactive license; and
- Is in good standing and not the subject of any sanction or disciplinary action.

Under the bill, a licensee in retired status that reenters the workforce in a position associated with accounting, or any related services defined in ss. 473.302(8)(a), (c), and (d), F.S., automatically loses his or her retired status. A CPA on retired status may continue to provide services utilizing

[16] Section 473.313(3), F.S.

accounting skills, as well as tax, management advisory, or consulting services, as defined in s. 473.302(8)(b), F.S., but may not provide certain accounting services that involve expressing an opinion on or preparing financial statements, as defined in ss. 473.302(8)(a), (c), and (d), F.S.

Retired licensees are permitted to use the title of "retired CPA" but may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

The bill authorizes a retired licensee to serve without compensation on a board of directors or board of trustees, provide volunteer tax preparation services, participate in a government-sponsored business mentoring program, and participate in an advisory role for a similar charitable, civic, or nonprofit organizations. A retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the retired licensee to cover such expenses as allowed by law.

Retired licensees are not required to maintain the continuing education requirements set forth in ch. 473, F.S.

A retired licensee must affirm in writing his or her understanding of the limited types of activities in which he or she may engage while in retired status and that he or she has a professional duty to ensure that he or she holds the professional competencies necessary to participate in such activities.

A retired licensee may reactivate his or her license in a conditional manner determined by the board, which must require the payment of fees and the completion of any required continuing education.

Effective Date

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a 2/3 vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

SB 1140 permits a licensed CPA in retired status to reactivate his or her license in a conditional manner determined by the Florida Board of Accountancy. The bill requires that the conditions for the reactivation of a license in retired status must include the payment of fees. The board currently has the authority to impose a fee for the reactivation of an inactive license. Because the bill requires the board to impose a fee of an unknown amount for the reactivation of a license in retired status, it is unclear if the voting and separate bill requirements found in the State Constitution apply to the bill.

B. Private Sector Impact:

Retired CPAs wishing to reactivate their licenses will be subject to reactivation fees in an amount determined by the board.

C. Government Sector Impact:

The DBPR has stated that the technological modifications required to administer the bill can be made with existing resources. Other potential expenditures required by the DBPR are indeterminate but expected to be accommodated with existing resources.

The Revenue Estimating Conference has not yet met regarding the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the *state* in which his or her office is located. It is unclear if these new provisions are intended to apply to territories as well as states. Existing provisions governing the renewal of CPA licenses in ch. 473, F.S., refer to other states *and* territories.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.308, 473.311, 473.312, and 473.313.

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.

By Senator Gruters

23-01202A-20 20201140__

A bill to be entitled

An act relating to public accountancy; amending s. 473.308, F.S.; requiring certain applicants to not be licensed in any state or territory in order to be licensed by endorsement; amending s. 473.311, F.S.; providing license renewal requirements for nonresident licensees; amending s. 473.312, F.S.; requiring that a majority of the hours required for continuing education include specific content; amending s. 473.313, F.S.; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status; providing requirements for such conversion; providing requirements and prohibitions for retired licensees; authorizing retired licensees to use a specified title under certain circumstances; providing that retired licensees are not required to maintain continuing education requirements; authorizing retired licensees to reactivate their licenses if certain conditions are met; defining the term "retired licensee"; providing an effective date.

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

Section 1. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by

23-01202A-20 20201140__

endorsement an applicant who:

(a)1. Is not licensed and has not been licensed in any ~~another~~ state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at

least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

Section 2. Subsection (1) of section 473.311, Florida Statutes, is amended to read:

473.311 Renewal of license.—

(1)(a) The department shall renew a license issued under s. 473.308 upon receipt of the renewal application and fee and upon certification by the board that the Florida certified public accountant has satisfactorily completed the continuing education requirements of s. 473.312.

(b) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the continuing education requirements in s. 473.312, except for the requirements in s. 473.312(1)(c), if the licensee has complied with the continuing education requirements applicable in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no continuing education requirements for license renewals, the nonresident licensee must comply with the continuing education requirements in s. 473.312.

Section 3. Paragraph (c) of subsection (1) of section

473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(c) Not less than 5 percent of the total hours required by the board shall be in ethics applicable to the practice of public accounting. This requirement shall be administered by providers approved by the board and a majority of the hours shall include a review of the provisions of chapter 455 and this chapter and the related administrative rules.

Section 4. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status and retired status.—

(1) A Florida certified public accountant may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(a) ~~(2)~~ A license that has become inactive under this subsection ~~(1)~~ or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.

(b) ~~(3)~~ A license that is delinquent for failure to report

completion of the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. Reactivation requires the payment of an application fee as determined by the board and certification by the Florida certified public accountant that the applicant satisfactorily completed the continuing education requirements set forth under s. 473.311. If the license is delinquent on January 1 because of failure to report completed continuing education requirements, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.

(c) ~~(4)~~ Any Florida certified public accountant holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require the payment of fees and the completion of required continuing education.

(d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the board may, at its discretion, reinstate the license of an individual whose license has become null and void if the individual has made a good faith effort to comply with this section but has failed to comply because of illness or unusual hardship. The individual shall apply to the board for reinstatement in a manner prescribed by rules of the board and shall pay an application fee in an amount determined by rule of the board. The board shall require that the individual meet all continuing education requirements as provided in subsection (2), pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

(2) A Florida certified public accountant who is at least 55 years of age and currently holds an active or inactive

license under this chapter may apply to the department for her or his license to be placed in a retired status. The application must be prescribed by the board and must state that the applicant has no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d). If a licensee who has been granted retired status reenters the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), the licensee automatically loses her or his retired status except as provided in paragraph (a).

(a) A retired licensee who serves without compensation on a board of directors or board of trustees, provides volunteer tax preparation services, participates in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program, or participates in an advisory role for a similar charitable, civic, or other nonprofit organization shall continue to be eligible for retired status.

(b) The board shall require a retired licensee to affirm in writing her or his understanding of the limited types of activities in which she or he may engage while in retired status and that she or he has a professional duty to ensure that she or he holds the professional competencies necessary to participate in such activities.

(c) Licensees may convert their license to retired status only if they hold a license in good standing and are not the subject of any sanction or disciplinary action.

(d) A retired licensee may accept routine reimbursement for

actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law.

(e) A retired licensee may use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document. However, such title must not be applied in such a manner that could confuse the public as to the current status of the licensee. The licensee is not required to have a certificate issued with the word "retired" on the certificate.

(f) A retired licensee is not required to maintain the continuing education requirements under s. 473.312.

(g) A retired licensee may not offer or render professional services that require her or his signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.

(h) A retired licensee may reactivate her or his license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any required continuing education.

For the purposes of this subsection, the term "retired licensee" means a licensee whose license has been placed in retired status by the department.

Section 5. This act shall take effect July 1, 2020.

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 Commerce and Tourism

BILL:	SB 1240
INTRODUCER:	Senator Gruters
SUBJECT:	Corporate Income Tax Credit
DATE:	January 27, 2020
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1240 grants eligible car rental, leasing, or financing companies a $10 million tax credit against their Florida corporate taxes paid for the 2018 taxable year. To be eligible for the tax credit, these companies must have deferred gains on the sale of personal property for corporate federal income tax purposes under s. 1031 of the Internal Revenue Code during the August 1, 2016-August 1, 2017 taxable year, and incurred a specific rise in tax liability in the August 1, 2017-August 1, 2018 taxable year.

II. Present Situation:

Annual Adoption of the Internal Revenue Code

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.[1] A corporation calculates its taxable income for Florida tax purposes by starting with its taxable income determined for federal tax purposes.[2] This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

Bonus Depreciation

The Internal Revenue Code (IRC, or the Code) allows a taxpayer to deduct the cost of long-term business assets by deducting a portion of the cost over the useful life of the property (depreciation).[3] Since taxpayers deduct for depreciation in calculating their federal taxable income, the deduction is already included when the taxpayer begins calculating its Florida taxable income.

[1] Sections 220.11(2) and 220.63(2), F.S.
[2] *See generally* s. 220.13(2), F.S.
[3] *See generally* ss. 167 and 168, IRC.

For the past decade, federal legislation has granted an additional, first-year depreciation deduction (bonus depreciation).[4] The legislation has generally authorized 50 or 100 percent of the cost of qualifying property to be deducted in the first year of depreciation. Currently, some level of bonus depreciation is authorized through 2026.

Generally, the entire cost of an asset is depreciable over time. Therefore, bonus depreciation deductions do not increase the total amount that can be deducted as depreciation; bonus depreciation merely accelerates the depreciation deduction. That being said, the immediate fiscal impact of bonus depreciation can substantially reduce corporate income tax receipts in the near term. As an example, the Revenue Estimating Conference determined that bonus depreciation granted by the Tax Increase Prevention Act of 2014 would reduce Fiscal Year 2015-2016 General Revenue receipts by $180 million.[5]

Due to the near term fiscal impact that bonus depreciation deductions would have on Florida, the Legislature has chosen to "decouple" from these deductions by requiring taxpayers to add back the amount of bonus depreciation to their taxable income for Florida purposes and then subtract 1/7th of that amount over seven years.[6] This treatment has the effect of giving the taxpayer the benefit of bonus depreciation, but requiring the taxpayer to "spread" that benefit over a 7-year period.

The following chart provides a list of recent federal acts that have granted bonus depreciation and the Florida law that "decoupled" from the bonus depreciation provisions.[7]

Federal Act	Applies to Taxable Years beginning on or after January 1 of:	Bonus Depreciation Amount	Florida Law that "Decoupled"
The Economic Stimulus Act of 2008	2008	50 percent	Chapter 2008-206, L.O.F.
The American Recovery and Reinvestment Act of 2009	2009	50 percent	Chapter 2009-192, L.O.F.
The Small Business Jobs Act of 2010	2010	100 percent	Chapter 2011-229, L.O.F.
The Tax Relief, Unemployment Insurance	2011	50 percent	

[4] *See* the Economic Stimulus Act of 2008, Pub. L. No. 110-185; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5; the Small Business Jobs Act of 2010, Pub. L. No. 111-240; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312; the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240; the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113; and the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.
[5] Revenue Impact Conference Impact Statement, Proposed Language, January 26, 2015, *available at:* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page17-18.pdf (last visited Jan. 27, 2020).
[6] *See* chs. 2008-206, 2009-192, 2011-229, 2013-46, 2015-35, 2016-220, and 2018-119, L.O.F.
[7] In some instances, the Florida law also decoupled from increased first-year expensing provisions included in the federal act; however, first-year expensing is not directly relevant to the issue in the bill being analyzed.

Reauthorization, and Job Creation Act of 2010	2012	50 percent	
The American Taxpayer Relief Act of 2012	2013	50 percent	Chapter 2013-46, L.O.F
The Tax Increase Prevention Act of 2014	2014	50 percent	Chapter 2015-35, L.O.F.
The Consolidated Appropriations Act, 2016[8]	2015	50 percent	Chapter 2016-220, L.O.F.
	2016	50 percent	
	2017	50 percent	
Tax Cuts and Jobs Act of 2017	2018	100 percent	Chapter 2018-119, L.O.F.
	2019	100 percent	
	2020	100 percent	
	2021	100 percent	
	2022	100 percent	
	2023	80 percent	
	2024	60 percent	
	2025	40 percent	
	2026	20 percent	
	2027	0 percent	

The Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017 (TCJA).[9] The TCJA made significant changes to federal income tax provisions related to individuals, corporations, and the treatment of foreign income. As shown in the chart above, the TCJA extended bonus depreciation through taxable years beginning before January 1, 2027.[10]

Section 1031 Exchanges

Generally, when a taxpayer sells an asset, the Code requires the taxpayer to recognize as income any gain on the sale.[11] One exception to this general recognition rule is provided by section 1031 of the Code, for transactions commonly known as "like-kind exchanges" or "1031 exchanges."

Prior to the TCJA, s. 1031 of the Code provided that a taxpayer shall not recognize gain or loss when business property was exchanged for business property of a like kind.[12] Thus, a business that was regularly exchanging old business equipment for new business equipment might avoid having to recognize any relevant income at the federal level by exchanging the old equipment for new equipment, rather than selling the old equipment and buying new equipment in separate transactions. For example, this type of transaction could be used by a rental car company that

[8] The Consolidated Appropriations Act, 2016, also provided bonus depreciation amounts for 2018 and 2019 of 40 percent and 30 percent, respectively; however, the Tax Cuts and Jobs Act increased those percentages to 100 percent for both years.
[9] Pub. Law No. 115-97 (December 22, 2017)
[10] For simplicity, the chart above shows the TCJA's bonus depreciation provisions as applying to taxable years beginning January 1, 2018; however, the TCJA also applied its bonus depreciation provisions to qualifying property acquired after September 27, 2017. *See* Tax Cuts and Jobs Act of 2017, s. 13201, Pub. L. No. 115-97.
[11] *See* s. 62(a)(3), IRC
[12] *See* s. 1031(a)(1), IRC (2016)

regularly updates its rental fleet.[13] So, companies that were using s. 1031 of the Code to avoid recognizing income when business equipment was exchanged, would not be required to recognize income at the federal level. When the income was not recognized at the federal level, that income would likewise not be recognized for Florida tax purposes.

Importantly, the TCJA amended s. 1031 of the Code to limit use of the provision to exchanges of realty. Therefore, corporations must report any gain or loss as part of their income moving forward. The effect of losing the ability to use s. 1031 of the Code may be mitigated at the federal level because the TCJA provides 100 percent bonus depreciation deduction on the new equipment purchase. For Florida tax purposes, companies are now required to report their income earned on like-kind exchanges and then "spread" the bonus depreciation amount over seven years.

III. Effect of Proposed Changes:

The bill creates s. 220.197, F.S., which provides a $10 million credit against the 2018 state corporate income tax of certain motor vehicle rental, motor vehicle leasing, and motor vehicle financing companies. A corporation is eligible for a $10 million credit if it deferred gains on the sale of its personal property assets under s. 1031 of the Internal Revenue Code for the purposes of federal income tax during its taxable year that began on or after August 1, 2016, but before August 1, 2017, and it is:

- A car rental or leasing company that is classified under NAICS[14] industry group code 53211, that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least 700 percent greater than its final tax liability from its prior tax year; or
- A car sales financing establishment or car leasing company, classified under NAICS industry group code 522220 and 532112, respectively, that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least $15 million greater than its final tax liability from the prior tax year.

The bill fixes the NAICS references used in s. 220.197, F.S., to the version published in 2007 by the Office of Management and Budget, Executive Office of the President.

The bill operates retroactively to January 1, 2018, and takes effect upon becoming law.

[13] Gerald Auten, David Joulfaian, and Romen Mookerjee, *Recent Trends in Like-kind Exchanges*, 1 (August 1, 2017), *available at* https://ssrn.com/abstract=3049029 or http://dx.doi.org/10.2139/ssrn.3049029. "Indeed, the most common like-kind exchanges are now those involving the 'trade-in' of vehicles and replacement vehicles and vehicle fleets, e.g., by rental car companies, farmers, and businesses."

[14] The NAICS is the North American Industry Classification System developed by the Office of Management and Budget for use by Federal statistical agencies to classify business establishments for the collection, analysis, and publication of statistical data related to the U.S. business economy. U.S. Census Bureau, *Introduction to NAICS*, https://www.census.gov/eos/www/naics/ (last visited Jan. 27, 2020).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some motor vehicle rental, leasing, or financing companies may qualify for a $10 million credit against their Florida taxes for the 2018 taxable year.

C. Government Sector Impact:

The Department of Revenue will incur expenses related to creating and issuing a Taxpayer Information Publication (TIP) to alert eligible taxpayers about the 1031 exchange tax credit.[15]

VI. Technical Deficiencies:

Section 220.02(8), F.S., provides the order in which credits may be applied against a corporation's income tax to reduce its overall tax burden; the bill does not provide guidance regarding the order in which the 1031 exchange tax credit should be applied.

[15] Florida Department of Revenue, *SB 1240 Agency Analysis* at 4 (Dec. 29, 2019), on file with the Committee on Commerce and Tourism.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 220.197 of the Florida Statutes:

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Gruters

23-01181B-20 20201240__

A bill to be entitled

An act relating to a corporate income tax credit; creating s. 220.197, F.S.; defining the term "NAICS"; providing a credit against the corporate income tax, for a specified amount and for a specified taxable year, for taxpayers classified in the sales financing or passenger car rental or leasing industries which meet certain criteria; providing for retroactive operation; providing an effective date.

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

Section 1. Section 220.197, Florida Statutes, is created to read:

220.197 1031 exchange tax credit.—

(1) As used in this section, the term "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

(2) A taxpayer is eligible for a $10 million credit against the tax imposed by this chapter for its 2018 taxable year if:

(a)1. The taxpayer is classified under NAICS industry group code 53211;

2. The taxpayer deferred gains on the sale of personal property assets for federal income purposes under s. 1031 of the Internal Revenue Code during its taxable year beginning on or after August 1, 2016, and before August 1, 2017; and

3. The taxpayer's final tax liability for its taxable year beginning on or after August 1, 2017, and before August 1, 2018, before application of the credit authorized by this section, is greater than $15 million and is at least 700 percent greater than its final tax liability for its taxable year beginning on or after August 1, 2016, and before August 1, 2017; or

(b)1. The taxpayer is classified under NAICS industry group code 522220 or 532112;

2. The taxpayer deferred gains on the sale of personal property assets for federal income purposes under s. 1031 of the Internal Revenue Code during its taxable year beginning on or after August 1, 2016, and before August 1, 2017; and

3. The taxpayer's final tax liability for its taxable year beginning on or after August 1, 2017, and before August 1, 2018, before application of the credit authorized by this section, is greater than $15 million and is at least $15 million greater than its final tax liability for its taxable year beginning on or after August 1, 2016, and before August 1, 2017.

(3) This section operates retroactively to January 1, 2018.

Section 2. This act shall take effect upon becoming a law.

Florida Senate - 2020 **SB 1240**

23-01181B-20 20201240__

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/2020
Meeting Date

1240
Bill Number (if applicable)

Topic Corporate Income Tax Credit

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-321-9386

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-20
Meeting Date

1240
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Corporate Income Taxes

Name Kurt Wenner

Job Title Vice President

Address 106 N. Bronough
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-5052

Email kwenner@floridataxwatch.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida TaxWatch

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28
Meeting Date

SB 1240
Bill Number (if applicable)

Topic Corporate Income Tax Credit

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams. Phone 222-7173
Street

Tlh FL 32301 Email bbevis@aif.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

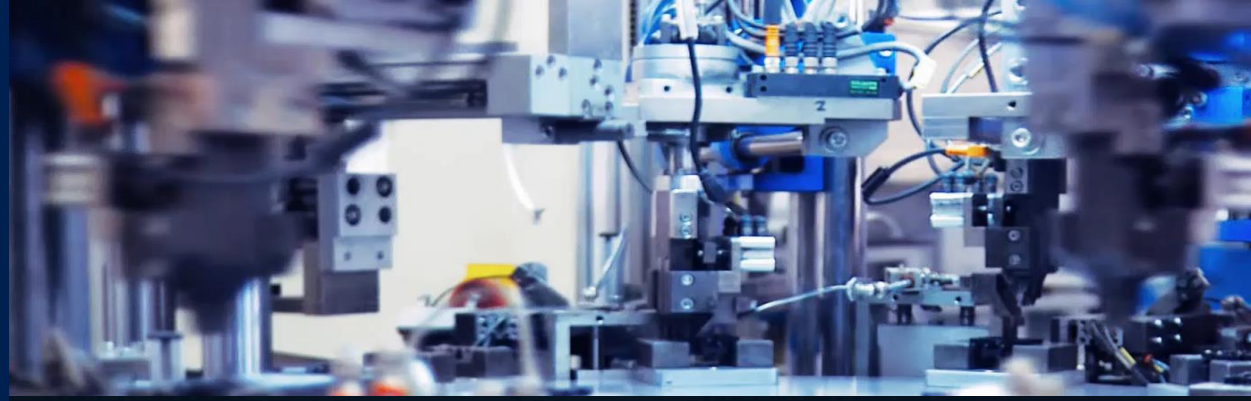
This form is part of the public record for this meeting.

S-001 (10/14/14)

Privacy and Facial Recognition

Pooja Tolani
Associate, Public Policy
Microsoft

What is AI?



Computers Understanding the World

Perception

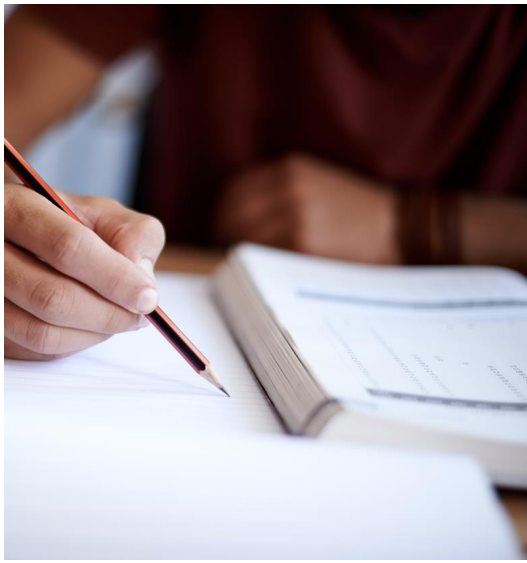
Vision

Speech

Comprehension

Language

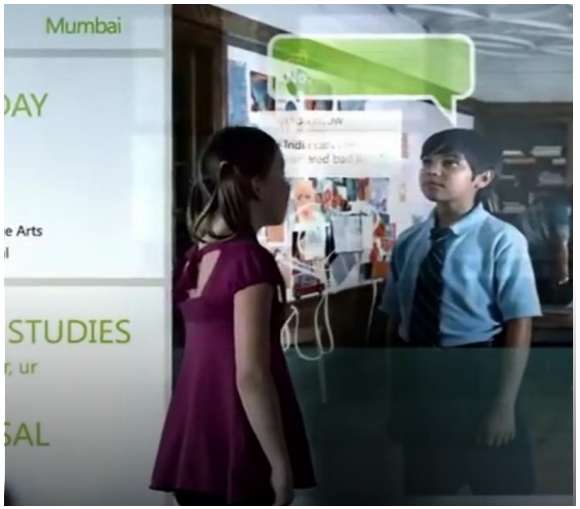
Knowledge



Design AI to augment human abilities

Make AI available to everyone

The Promise of Artificial Intelligence



Education

Healthcare

Transportation

Agriculture

As computers behave more like humans, how will they impact real people?

The New York Times

Police Program Aims to Pinpoint Those Most Likely to Commit Crimes

Tyrone C. Brown, 29, held his son Tylin, 2, at a community picnic that he helped organize last month in Kansas City, Mo. Nick Schnelle for The New York Times

Los Angeles Times

CALIFORNIA

Facial recognition software mistook 1 in 5 California lawmakers for criminals, says ACLU

CRIMINAL JUSTICE

Risk-assessment algorithms challenged in bail, sentencing and parole decisions

BY JASON TASHEA

MARCH 2017

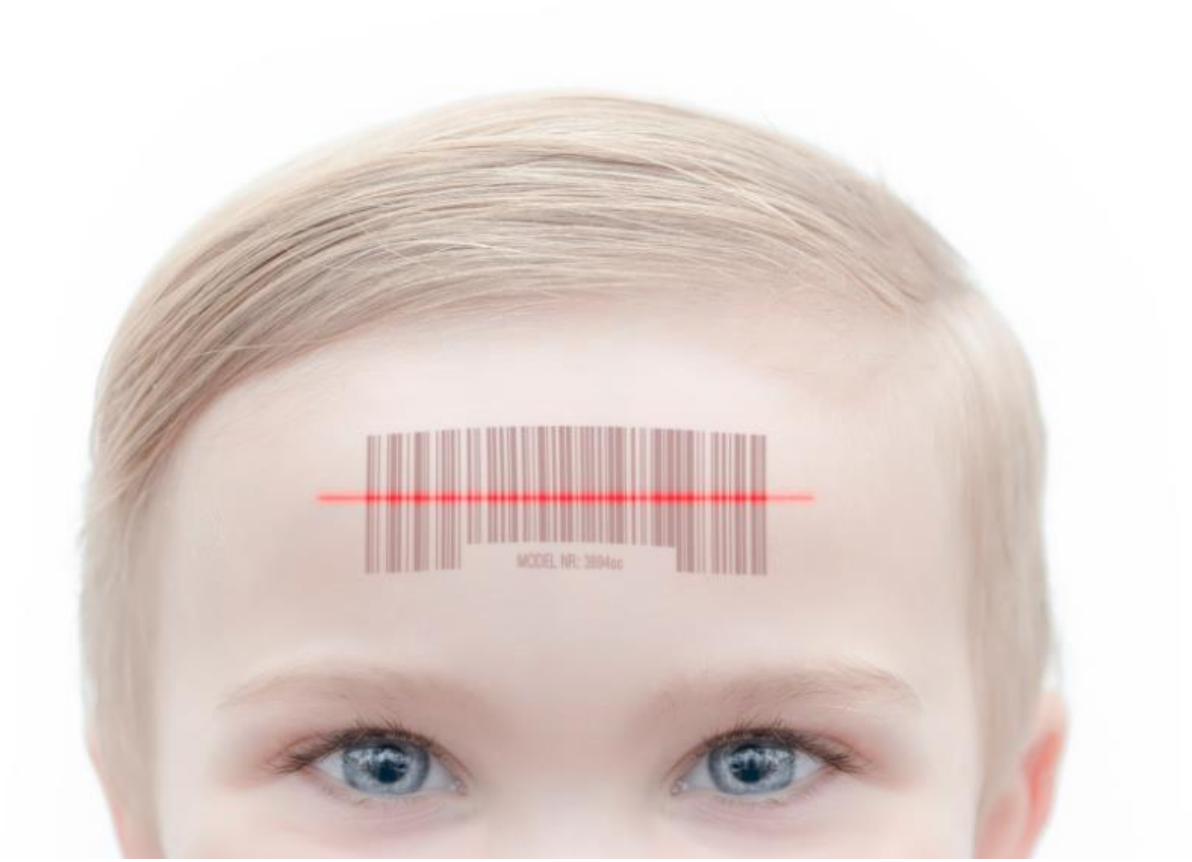
Eric Loomis, 35, was arrested in 2013 for his involvement in a drive-by shooting in La Crosse, Wisconsin. No one was hit, but Loomis faced prison time on a number of charges, including driving a stolen vehicle. He pleaded no contest, and the judge sentenced him to seven years, saying he was "high risk." The judge based this analysis, in part, on the risk assessment score given by Compas, a


TRUST

Ethics and Responsible AI


Sensitive Uses of AI
AI Reliability and Safety
Human-AI Collab and Interaction
Fairness and Bias
Intelligibility and Explanation
Engineering Practices for AI
Human Attention & Cognition
AETHER Committee
AI Ethics and Effects in Engineering and Research

Privacy



The GDPR: the global gold standard

The New York Times

California Passes Sweeping Law to Protect Online Privacy

By Daisuke Wakabayashi

June 28, 2018

SAN FRANCISCO — California has passed a digital privacy law granting consumers more control over and insight into the spread of their personal information online, creating one of the most significant regulations overseeing the data-collection practices of technology companies in the United States.

The bill raced through the State Legislature without opposition on Thursday and was signed into law by Gov. Jerry Brown, just hours before a deadline to pull from the November ballot an initiative seeking even tougher oversight over technology companies.

The new law grants consumers the right to know what information

Facial Recognition Technology

Our Approach

Jul 13, 2018

Framing the issue

Facial recognition technology: The need for public regulation and corporate responsibility

Jul 13, 2018 | Brad Smith - President

All tools can be used for good or ill. Even a broom can be used to sweep the floor or hit someone over the head. The more powerful the tool, the greater the benefit or damage it can cause. The last few months have brought this into stark relief when it comes to computer-assisted facial recognition – the ability of a computer to recognize people's faces from a photo or through a camera. This technology can catalog your photos, help reunite families or potentially be misused and abused by private companies and public authorities alike.

Dec 6, 2018

Call for legislation

Facial recognition: It's time for action

Dec 6, 2018 | Brad Smith - President

In July, we shared our views about the need for government regulation and responsible industry measures to address advancing facial recognition technology. As we discussed, this technology brings important and even exciting societal benefits but also the potential for abuse. We noted the need for broader study and discussion of these issues. In the ensuing months, we've been pursuing these issues further, talking with technologists, companies, civil society groups, academics and public officials around the world. We've learned more and tested new ideas. Based on this work, we believe it's important to move beyond study and discussion. The time for action has arrived.

Dec 17, 2018

Facial Recognition Principles

Six principles to guide Microsoft's facial recognition work

Dec 17, 2018 | Rich Sauer - Microsoft Corporate Vice President & Deputy General Counsel

In his recent speech at the Brookings Institution, Brad Smith talked about the urgent need for governments to adopt laws to regulate facial recognition technology. The recommendations, outlined in an accompanying blog post, frame a broader journey we as a society must take to address important questions about the technology while it is still in its infancy, before it's too late to put the facial recognition genie back in its bottle. He also introduced the principles that will guide Microsoft in how we develop and deploy facial recognition technology. The principles are:

1. ***Fairness.*** We will work to develop and deploy facial recognition technology in a manner that strives to treat all people fairly.
2. ***Transparency.*** We will document and clearly communicate the capabilities and limitations of facial recognition technology.
3. ***Accountability.*** We will encourage and help our customers to deploy facial recognition technology in a manner that ensures an appropriate level of human control for uses that may affect people in consequential ways.
4. ***Non-discrimination.*** We will prohibit in our terms of service the use of facial recognition technology to engage in unlawful discrimination.
5. ***Notice and consent.*** We will encourage private sector customers to provide notice and secure consent for the deployment of facial recognition technology.
6. ***Lawful surveillance.*** We will advocate for safeguards for people's democratic freedoms in law enforcement surveillance scenarios and will not deploy facial recognition technology in scenarios that we believe will put these freedoms at risk.

The New York Times

San Francisco Bans Facial Recognition Technology

Attendees interacting with a facial recognition demonstration at this year's CES in Las Vegas. Joe Buglewicz for The New York Times

By Kate Conger, Richard Fausset and Serge F. Kovaleski

POLICY | TECH | AMAZON

Republicans and Democrats agree: it's time to regulate facial recognition tech

But it's still unclear what legislation might look like

By Makena Kelly | @kellymakena | May 22, 2019, 1:29pm EDT

SHARE

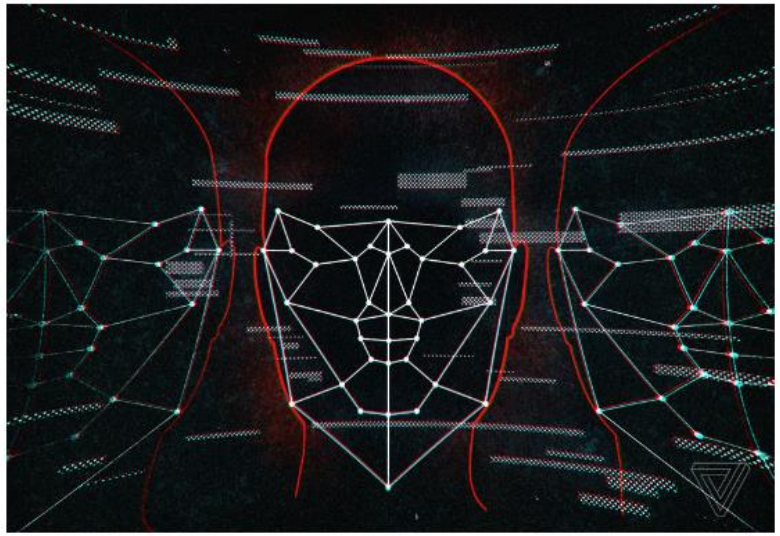


Illustration by Alex Castro / The Verge

GOOD

AN ACT Relating to the management and oversight of personal data; adding a new chapter to Title 19 RCW; adding a new section to chapter 9.73 RCW; creating new sections; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

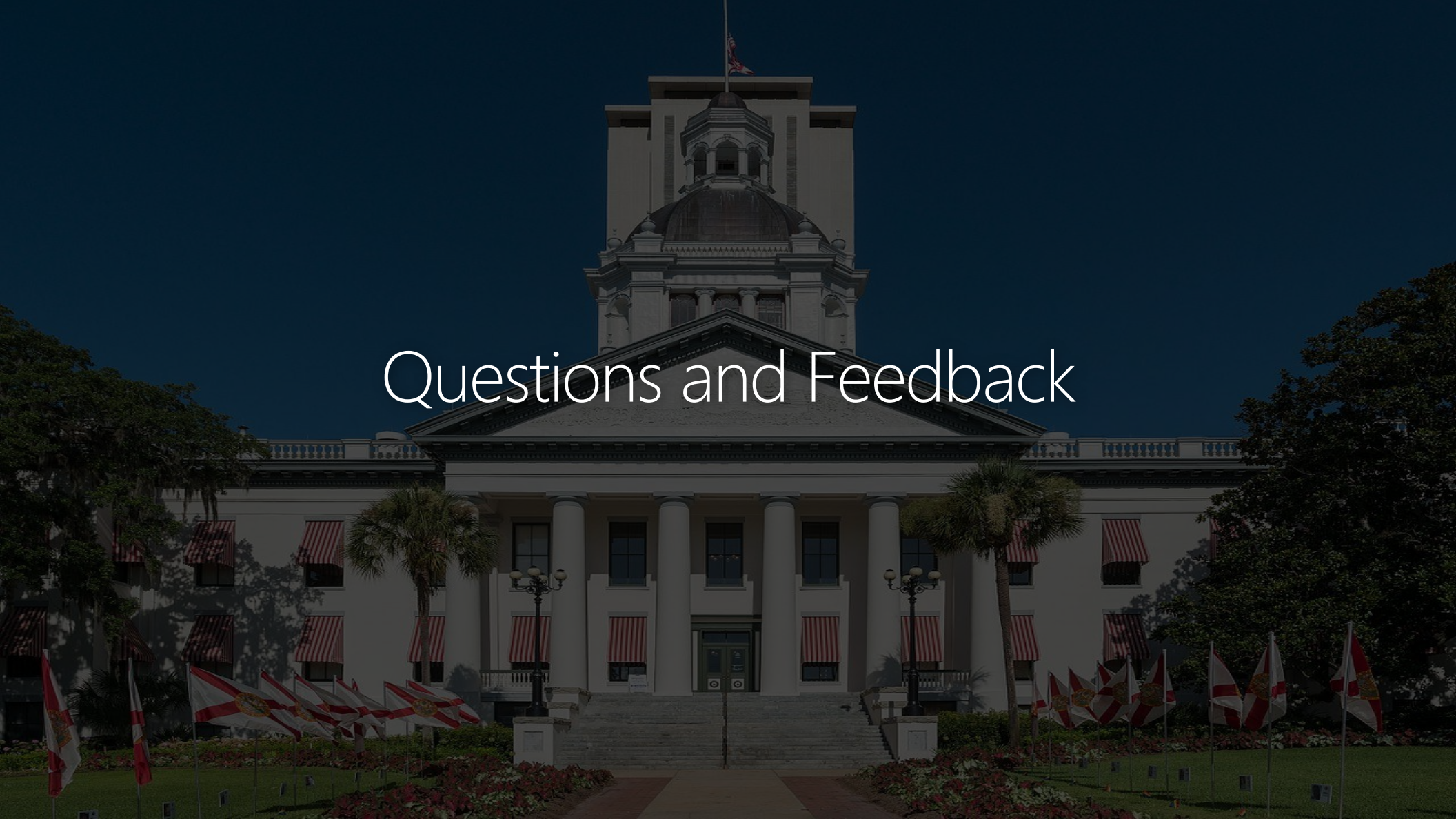
NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. (1) The Legislature finds that:

(a) Washingtonians cherish privacy as an element of their individual freedom.

(b) Washington is a technology leader on a national and global level and recognizes its distinctive position in promoting the efficient balance of consumer privacy and economic benefits.

(c) Washington explicitly recognizes its citizens' right to privacy in its Constitution under Article I, Section 7.

(d) There is rapid growth in the volume and variety of personal data being generated, collected, stored, and analyzed. This growth has the potential for great benefits to human knowledge, technological innovation, and economic growth, but also the potential to harm individual privacy and freedom.



Questions and Feedback

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Commerce Committee **Judge:**

Started: 1/28/2020 1:30:20 PM
Ends: 1/28/2020 2:06:33 PM **Length: 00:36:14**

1:30:19 PM Brittany called roll
1:30:41 PM Quorum is present
1:31:12 PM SB 1140 and SB 1240 will not be heard today.
1:31:30 PM Tab 4, SB 1492, Sen. Wright
1:32:31 PM Gary Rutledge, speaker
1:34:46 PM CFO, Jimmy Petronis, speaker
1:36:58 PM Tasha Carter, waive in support
1:37:08 PM Tim Cornett, FAPIA, speaker
1:38:09 PM Chair Torres comments on bill.
1:38:48 PM Sen. Wright closes on bill
1:39:02 PM Roll call on SB 1492
1:39:19 PM Bill reported favorably
1:39:27 PM Tab 2, Sen. Baxley, SB 1186
1:40:50 PM Sen. Torres, question
1:41:11 PM Response of sponsor
1:41:21 PM Follow up...
1:41:39 PM And response
1:42:07 PM RJ Meyers, waive in support
1:42:26 PM Brittany call roll on SB 1186
1:42:39 PM Bill reported favorably
1:42:57 PM Tab 3, SB 1356, Sen. Bean, presented by Sen. Hutson
1:44:11 PM 234232, tech amendment
1:44:54 PM Amendment adopted
1:45:45 PM Nicholoas Alvarez waive in support
1:45:55 PM Roll call on bill
1:46:05 PM SB 1356 reported favorably
1:46:18 PM Tab 7, Presentation
2:00:33 PM Sen. Wright comment
2:00:58 PM Chair Torres comment
2:01:30 PM Tab 1, SB 1166, Sen. Albritton
2:03:46 PM Amendment 573474
2:04:38 PM DEO waive in support
2:04:51 PM Amendment adopted
2:05:12 PM Nicholas Alvarez, waive in support
2:05:19 PM Chris Doolin waive in support
2:05:34 PM Roll call on SB 1166
2:05:47 PM Bill reported favorably
2:06:11 PM Sen. Wright moves adjournment -- adopted

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

January 28, 2020

The Honorable Victor Torres, Vice-Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Vice-Chair Torres:

Please excuse my absence as I am traveling today during the Commerce and Tourism meeting.

Please let me know if you have any questions. Thank you in advance.

Sincerely,

Joe Gruters

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations
Appropriations Subcommittee on Agriculture, Environment, and General Government
Commerce and Tourism
Infrastructure and Security

JOINT COMMITTEE:
Joint Administrative Procedures Committee, *Alternating Chair*

SENATOR LINDA STEWART
13th District

January 29, 2020
The Honorable Joe Gruters
Committee on Commerce & Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

RE: Vote After Roll Call

Dear Chairman Gruters:

When I was presenting my bill in another committee I missed some votes today's during committee. I would like to record my vote for the record:

Yes - SB 1492: Consumer Protection by Senator Wright
Yes - SB 1186: Drug Free Workplaces by Senator Baxley
Yes - SB 1356: Employee Contributions for Reemployment Assistance by Senator Bean
Yes - SB 1166: Broadband Internet Service by Senator Albritton

Thank you for receiving my votes for the record.

Sincerely,

Linda Stewart

Linda Stewart

REPLY TO:
❒ 1726 South Bumby Avenue, Orlando, Florida 32806 (407) 893-2422 FAX: (888) 263-3680
❒ 205 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: *www.flsenate.gov*