

**SB 1586 by Thrasher;** (Similar to CS/H 1277) Money Services Businesses

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**SB 1584 by Thrasher;** (Similar to H 1279) Public Records/Money Services Businesses/Office of Financial Regulation

**SB 1050 by Bogdanoff;** (Compare to CS/CS/H 0505) Mortgages

536194 D S L RCS BI, Negron Delete everything after 02/07 03:23 PM

**CS/SB 1052 by HR, Ring;** (Similar to H 0829) Newborn Screening for Critical Congenital Heart Disease

**SB 1476 by Richter;** (Compare to CS/H 1065) Annuities

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**SB 458 by Bennett;** Uniform Fraudulent Transfer Act

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**SB 1518 by Hays;** (Identical to H 0211) Property and Casualty Insurance

**SB 1794 by Hays;** (Identical to H 4145) Continuing Education Advisory Board

**SB 1796 by Hays;** (Identical to H 4149) Preferred Worker Program

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**

**Senator Richter, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Tuesday, February 7, 2012

**TIME:** 1:30 —3:30 p.m.

**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1586</b> Thrasher (Similar CS/H 1277, Compare H 1279, Link S 1584)	Money Services Businesses; Revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; prohibiting money services businesses, authorized vendors, and affiliated parties from possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; requiring money services business licensees to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; authorizing the Financial Services Commission to prescribe the time, format, and manner for licensees to submit the transaction information, etc.  BI      02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
2	<b>SB 1584</b> Thrasher (Similar H 1279, Compare CS/H 1277, Link S 1586)	Public Records/Money Services Businesses/Office of Financial Regulation; Providing an exemption from public records requirements for information contained in the database of payment instrument transactions within the Office of Financial Regulation into which payment instrument transaction information submitted by money services business licensees is maintained; providing for specified access to such information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.  BI      02/07/2012 Favorable GO BC	Favorable Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 1050</b> Bogdanoff (Compare CS/CS/H 505)	Mortgages; Requiring that the holder of a mortgage deliver an estoppel letter containing certain information regarding the unpaid balance of the loan secured by the mortgage to an owner of an interest in property encumbered by the mortgage, upon request; providing that if the requestor is not the mortgagor, the estoppel letter need not contain an itemization of the unpaid balance of the loan, but must include a per-day amount for the unpaid balance; requiring that an owner of an interest in property encumbered by a mortgage include, along with the request, a copy of the instrument showing an ownership interest in the property, etc.  BI 02/07/2012 Fav/CS JU	Fav/CS Yeas 10 Nays 0
4	<b>CS/SB 1052</b> Health Regulation / Ring (Similar H 829)	Newborn Screening for Critical Congenital Heart Disease; Providing definitions; providing requirements for screening newborns for critical congenital heart disease; providing an exception; requiring that the physician, midwife, or other person attending the newborn maintain a record if the screening has not been performed and attach a written objection signed by the parent or guardian; requiring appropriate documentation of the screening completion in the medical record; requiring that each hospital and each licensed birth center designate a lead physician and a licensed health care provider, respectively, to provide programmatic oversight for the screening; requiring that the screening for critical congenital heart disease be conducted on all newborns in hospitals and birth centers in this state; authorizing the Department of Health to adopt rules to administer the screening program; providing powers and duties of the department, etc.  HR 01/25/2012 Fav/CS BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
5	<b>SB 1476</b> Richter (Compare CS/H 1065)	Annuities; Providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; deleting requirements relating to information that must be collected on certain forms adopted by rule of the Department of Financial Services; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; deleting certain annuity policy requirements applicable to persons 65 years of age or older, etc.  BI 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>SB 458</b> Bennett	Uniform Fraudulent Transfer Act; Defining the term "exempt organization"; providing that a charitable contribution that was accepted in good faith by an exempt organization is not voidable; providing legislative intent to clarify existing law, etc.  BI 02/07/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 3
7	<b>SB 1518</b> Hays (Identical H 211, H 4059)	Property and Casualty Insurance; Deleting a requirement that the Financial Services Commission provide an annual report to the Legislature consisting of specified data and analysis related to the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation, etc.  BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
8	<b>SB 1794</b> Hays (Identical H 4145)	Continuing Education Advisory Board; Deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board, etc.  BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
9	<b>SB 1796</b> Hays (Identical H 4149)	Preferred Worker Program; Deleting a preferred worker program for permanently impaired workers who are unable to return to work, etc.  BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
Other related meeting materials			

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

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

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

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BILL: SB 1586

INTRODUCER: Senator Thrasher

SUBJECT: Money Services Businesses

DATE: January 30, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. The Office of Financial Regulation (OFR) is responsible for the regulation of money services businesses.

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Currently, legitimate contractors are placed at a significant competitive disadvantage by unscrupulous contractors avoiding the payment of workers' compensation insurance as well as state and federal employment taxes. The bill incorporates the following consensus recommendations of the work group to provide increased regulatory oversight of MSBs that are designed to provide greater prevention, detection, and prosecution of workers' compensation premium fraud:

- Authorizes the OFR to create an integrated statewide database to maintain information from check cashers for check transactions exceeding \$1,000 and corporate payment instruments. Check cashers will be required to enter this information into the database. This database will allow regulators and law enforcement to identify and target individuals who are engaging in

criminal activity as these crimes are occurring instead of attempting to reconstruct the records and activities of defunct shell companies.

- Requires the Financial Services Commission to adopt rules requiring licensees to remit to the OFR a transaction fee, not to exceed \$3 per transaction, which would be used to support the statewide database.
- Eliminates the requirement that the OFR conduct examinations within the first 6 months of a check casher's licensure. The elimination of this requirement will provide the OFR with greater flexibility in the use of resources for purposes of enforcement.
- Requires licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days. This change will enhance the audit trail necessary to assist regulators, law enforcement, and prosecutors.
- Prohibits any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizes the OFR to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by ch. 560, F.S., for noncompliance with the following: maintaining a federally insured depository account; depositing all checks accepted into its depository account; or submitting transactional information to the office.
- Requires a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and prohibits the resumption of check cashing operations until the licensee has secured a new depository relationship.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.109, 560.111, 560.114, 560.126, 560.309, and 560.310.

The bill creates the following section of the Florida Statutes. 560.311

## **II. Present Situation:**

### **Regulation of Check Cashers**

The Office of Financial Regulation (OFR) is responsible for safeguarding the private financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions and financial service companies in the State. Among its responsibilities, the OFR regulates money service businesses, which are subject to the provisions of ch. 560, F.S.

### **Licensure of Check Cashers**

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an

aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.<sup>1</sup>

### **Check Cashing Fees**

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or \$5, whichever is greater.<sup>2</sup>

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,<sup>3</sup> may not exceed \$5. Rule 69V-560.801, F.A.C., provides:

- In addition to the fees established in Section 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the Office administered database for deferred presentment transactions prior to cashing the payment instrument or accepting a personal check in connection with a deferred presentment transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed \$5 per transaction. For example, a check casher shall not charge a drawer more than one (1) verification fee per diem, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of Section 560.309(8), F.S., and this rule, the "direct costs of verification" shall mean those costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

### **Examinations and Investigations**

Section 560.109, F.S., authorizes the OFR to examine each licensee as often is warranted but at least once every 5 years. Generally, the OFR is required to provide licensees with at least 15 days advance notice of an examination. However, if the OFR "suspects that the money services business, authorized vendor, or affiliated party has violated or is about to violate any provisions of ch. 560, F.S., or any criminal laws of the state of Florida or of the U.S., the OFR is not

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<sup>1</sup> Section 560.304, F.S.

<sup>2</sup> Section 560.309(8), F.S.

<sup>3</sup> Id.

required to provide advance notice of an examination or investigation. The OFR is also required to examine a licensee within 6 months of licensure.

### **Recordkeeping Requirements**

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of 5 years. In additions, s. 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third party instruments exceeding \$1,000. Rule 69V-560.704, F.A.C., requires licensees to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, articles of incorporation, information from the Department of Financial Services Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. Customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Licensees must maintain this information in an electronic format that is “readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL.” The maintenance of this information has been intended to be used in the audit process. While this can be useful, it does not allow regulators and law enforcement to analyze information in a “real time” format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

A check casher is required to deposit all checks into a commercial account with a financial institution or sell the payment instruments within 5 business days after acceptance, pursuant to s. 560.309(3), F.S. When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect potential illegal activities.



## Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashiers have colluded on a scheme that allows these contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashers are allowed to charge.<sup>4</sup>

A 2008 Statewide Grand Jury described a typical scheme.<sup>5</sup> First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the U.S. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers' compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor. According to the statewide grand jury, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears that the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the \$10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.<sup>6</sup> The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are 3rd degree felonies.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force last year on a case that targeted individuals who were running a shell company scheme using undocumented foreign national laborers to avoid paying workers' compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately \$4 million at a check-cashing store to pay the workers under the table. The suspects were arrested; three vehicles and \$67 thousand in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has

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<sup>4</sup> *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.

<sup>5</sup> *Id.*

<sup>6</sup> The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than \$10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

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

**Section 1** amends s. 560.103, F.S., to create definitions.

**Section 2** amends s. 560.109, F.S., to eliminate the general requirement to provide 15-days advance notice to a licensee regarding an examination or investigation by the OFR. Under current law, the OFR is authorized to conduct an examination or investigation unannounced if the OFR suspects the entity has violated or will violate ch. 560, F.S., or any criminal laws of Florida or any state or of the U.S. Additionally, this section eliminates the requirement for the OIR to conduct an examination of a business within 6 months of licensure. The bill retains the requirement for the OFR to examine each licensee at least once every 5 years.

**Section 3** amends s. 560.111, F.S., to make it unlawful for any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check cashier. A person who willfully violates these provisions commits a felony of the third degree.

**Section 4** amends s. 560.114, F.S., to provide the OIR the authority to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by the statute for the following:

1. Failure to maintain a federally insured depository account;
2. Failure to deposit all checks accepted into its depository account, or
3. Failure to submit transactional information to the office.

Additionally, this section provides that failure to maintain the required bank account or to submit transactional data to the statewide database would constitute an immediate harm, thereby allowing the OFR to suspend immediately the license of the check cashier until the licensee can resolve these issues.

**Section 5** amends s. 560.126, F.S., to require a licensee to provide notice to the OFR within 5 business days after the cessation of its depository banking account. Prior to resuming operations, the check cashier must reestablish such account and notify the OFR of the account.

**Section 6** amends s. 560.309, F.S., to require a licensee to suspend its check cashing operations immediately if the licensee ceases to have a depository account. The licensee may not resume check-cashing operations until it has secured a new depository relationship. Additionally, this section provides that a licensee may not cash payment instruments from any person who is not the original payee (including authorized individuals if the payee is a legal entity).

The bill also places a cap of \$5 on the verification fee that is currently authorized under s. 560.309(8), F.S. Under current law, a check cashier may collect, in addition to fees established

under s. 560.309, F.S., the direct costs of verification. The statute currently does not contain a cap on the amount of the verification fee. The Financial Services Commission has adopted Rule 69V-560.801, F.A.C., which provides that the direct costs of verification, which include verifying a customer's identity, employment, etc., may not exceed \$5 per transaction. The bill codifies this requirement.

**Section 7** clarifies recordkeeping requirements under s. 560.310, F.S. The bill eliminates the requirement for an electronic payment instrument log for checks that exceed \$1,000. This provision is being replaced with the requirement for submission of the transaction information to a statewide database created in Section 8 of the bill. The cashing of third party checks would be prohibited.

**Section 8** creates s. 560.111, F.S., which establishes a statewide transactional database for all checks cashed by a licensed business that exceed \$1,000. The new section specifies the data elements to be collected, the authority of the OFR to administer the database, the power of the commission to make rules regarding the database, and requires the OIR to interface this information with existing databases maintained by the Division of Workers' Compensation in the Department of Financial Service and the Department of State (Sunbiz).

The Financial Services Commission is required to adopt rules requiring a licensee to remit to the OFR a transaction fee, as part of the direct costs of the verification fee, not to exceed \$3 per transaction.

**Section 9** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

Check cashers may incur additional costs in connection with reporting the required data to the statewide database. In order to establish and maintain the database required under the bill, the bill requires a licensee to remit to the OFR a transaction fee not to exceed \$3, as part of the direct costs of verification, on checks exceeding \$1,000 that are cashed. It is unclear whether the check casher would incur this fee or pass it on to the customer.

According to the OIR, as of February 3, 2012, there were 1,508 licensees reporting under part III of ch. 560, F.S.; of which 1,065 have authority to engage in check cashing. Currently, approximately 90 percent of all licensees do not charge a verification fee. Approximately 4 percent of the checks cashed had a verification fee imposed.

**B. Private Sector Impact:**

It is unclear how many licensees will absorb the transaction fee not to exceed \$3 or pass this fee onto the customers. Presently, the OFR does not capture transactional data that would indicate the number of checks presented that exceed \$1,000, and that are assessed a fee by the check casher.

For checks cashed in excess of \$1,000, check cashers will need to report certain data to a statewide database. Currently, this data must be maintained by the check casher in an electronic format (i.e., excel spreadsheet) and made available to the OFR during the examination process. The database may reduce some administrative burden for licensees.

Elimination of the competitive advantage resulting from use of subcontractors without obtaining adequate workers' compensation insurance would create a more level playing field for law-abiding contractors.

**C. Government Sector Impact:**

The bill provides the OFR, law enforcement, and prosecutors with additional enforcement tools to detect and prosecute workers' compensation insurance fraud.

The OFR plans to use a third party administrator to establish and maintain the database similar to the procedure that was used to establish the deferred presentment database under s. 560.404(23), F.S. For the deferred presentment database, the vendor agreed to bear all of the initial development costs. Once the database was established, the OFR paid the vendor a portion of the transaction fees collected on each transaction to compensate the vendor for establishing, maintaining, and administering the database. Because of the uncertainty of the number of transactions, the contract provided for a review after the first year of operation to adjust the reimbursement rate if necessary.

The OFR does not require additional resources to administer the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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The Committee on Banking and Insurance (Gaetz) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (9) and (10) of section 560.103, Florida Statutes, are renumbered as subsections (11) and (12), respectively, present subsections (11) through (14) are renumbered as subsections (14) through (17), respectively, present subsections (15) through (27) are renumbered as subsections (19) through (31), respectively, present subsections (28) through (30) are renumbered as subsections (33) through (35), respectively, and new subsections (9), (10), (13), (18),



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13 and (32), are added to that section, to read:

14 560.103 Definitions.—As used in this chapter, the term:

15 (9) "Conductor" means a natural person who presents himself  
16 or herself to a licensee for purposes of cashing a payment  
17 instrument.

18 (10) "Corporate payment instrument" means a payment  
19 instrument on which the payee named on the instrument's face is  
20 other than a natural person.

21 (13) "Department" means the Department of Financial  
22 Services.

23 (18) "Fraudulent identification paraphernalia" means all  
24 equipment, products, or materials of any kind that are used,  
25 intended for use, or designed for use in the misrepresentation  
26 of a customer's identity. The term includes, but is not limited  
27 to:

28 (a) A signature stamp, thumbprint stamp, or other tool or  
29 device used to forge a customer's personal identification  
30 information.

31 (b) An original of any type of personal identification  
32 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully  
33 issued.

34 (c) A blank, forged, fictitious, or counterfeit instrument  
35 in the similitude of any type of personal identification listed  
36 in s. 560.310(2)(b) which would in context lead a reasonably  
37 prudent person to believe that such instrument is an authentic  
38 original of such personal identification.

39 (d) Counterfeit, fictitious, or fabricated information in  
40 the similitude of a customer's personal identification  
41 information that, although not authentic, would in context lead



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42 a reasonably prudent person to credit its authenticity.

43 (32) "Personal identification information" means a  
44 customer's name that, alone or together with any of the  
45 following information, may be used to identify that specific  
46 customer:

47 (a) Customer's signature.

48 (b) Photograph, digital image, or other likeness of the  
49 customer.

50 (c) Unique biometric data, such as the customer's  
51 thumbprint or fingerprint, voice print, retina or iris image, or  
52 other unique physical representation of the customer.

53 Section 2. Subsections (1) and (7) of section 560.109,  
54 Florida Statutes, are amended to read:

55 560.109 Examinations and investigations.—The office may  
56 conduct examinations and investigations, within or outside this  
57 state to determine whether a person has violated any provision  
58 of this chapter and related rules, or of any practice or conduct  
59 that creates the likelihood of material loss, insolvency, or  
60 dissipation of the assets of a money services business or  
61 otherwise materially prejudices the interests of their  
62 customers.

63 (1) The office may, without advance notice, examine or  
64 investigate each licensee as often as is warranted for the  
65 protection of customers and in the public interest. However, the  
66 office must examine each licensee, but at least once every 5  
67 years. A new licensee shall be examined within 6 months after  
68 the issuance of the license. The office shall provide at least  
69 15 days' notice to a money services business, its authorized  
70 vendor, or license applicant before conducting an examination or





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~~investigation. However,~~ The office may, without advance notice, ~~examine~~ ~~conduct an examination~~ or ~~investigate~~ ~~investigation of~~ a money services business, authorized vendor, ~~or~~ affiliated party, ~~or license applicant~~ at any time ~~and without advance notice~~ if the office suspects that the money services business, authorized vendor, ~~or~~ affiliated party, or license applicant has violated or is about to violate any provision ~~provisions~~ of this chapter or any criminal law ~~laws~~ of this state or of the United States.

(7) Reasonable and necessary costs incurred by the office or third parties authorized by the office in connection with examinations or investigations may be assessed against any person subject to this chapter on the basis of actual costs incurred. Assessable expenses include, but are not limited to, expenses for: interpreters; certified translations of documents into the English language required by this chapter or related rules; communications; legal representation; economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office is a ground for denial of a license application, denial of a license renewal, or for revocation of any approval thereof. Except for examinations authorized under this section ~~s. 560.109~~, costs may not be assessed against a person unless the office determines that the person has operated or is operating in violation of this chapter.

Section 3. Paragraph (g) is added to subsection (1) of section 560.111, Florida Statutes, subsection (3) is renumbered as subsection (4), present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (3) is added to that section, to read:



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560.111 Prohibited acts.—

(1) A money services business, authorized vendor, or affiliated party may not:

(g) Knowingly possess any fraudulent identification paraphernalia. This paragraph does not prohibit the maintenance and retention of any records required by this chapter.

(3) A person other than the conductor of a payment instrument may not provide a licensee engaged in cashing the payment instrument with the customer's personal identification information.

(5)~~(4)~~ Any person who willfully violates any provision of s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb), and (cc) are added to that subsection, and subsection (2) of that section is amended, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111.

(aa) Failure of a check casher to maintain a federally insured depository account as required by s. 560.309.

(bb) Failure of a check casher to deposit into its own



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federally insured depository account any payment instrument  
cashed as required by s. 560.309.

(cc) Failure to submit transaction information to the  
office as required by s. 560.311 for any payment instrument  
cashed.

(2) The office may immediately suspend the license of any  
money services business if the money services business fails to:

(a) Provide to the office, upon written request, any of the  
records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211, or  
s. ~~and~~ 560.310 or any rule adopted under those sections. The  
suspension may be rescinded if the licensee submits the  
requested records to the office.

(b) Maintain a federally insured depository account as  
required by s. 560.309.

(c) Submit transaction information to the office as  
required by s. 560.311 for any payment instrument cashed.

For purposes of s. 120.60(6), failure to perform ~~provide~~ any of  
the acts specified in this subsection ~~above-mentioned records~~  
constitutes immediate and serious danger to the public health,  
safety, and welfare.

Section 5. Subsection (4) is added to section 560.126,  
Florida Statutes, to read:

560.126 Required notice by licensee.—

(4) A licensee that engages in check cashing must notify  
the office within 5 business days after the licensee ceases to  
maintain a federally insured depository account as required by  
s. 560.309(3) and, before resuming check cashing, must  
reestablish such an account and notify the office of the



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account.

Section 6. Subsections (3), (4), and (8) of section 560.309, Florida Statutes, are amended to read:

560.309 Conduct of business.—

(3) A licensee under this part must maintain and deposit payment instruments into its own a commercial account at a federally insured financial institution. If a licensee ceases to maintain such a depository account, the licensee must not engage in check cashing until the licensee reestablishes such an account and notifies the office of the account as required by s. 560.126(4) or sell payment instruments within 5 business days after the acceptance of the payment instrument.

(4) A licensee may not accept or cash a ~~multiple~~ payment instrument ~~instruments~~ from a conductor ~~person~~ who is not the original payee, ~~unless the person is licensed to cash payment instruments pursuant to this part and all payment instruments accepted are endorsed with the legal name of the person.~~ However, this subsection does not prohibit a licensee from accepting or cashing a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face.

(8) Exclusive of the direct costs of verification, which shall be established by rule not to exceed \$5, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater, if such



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payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or \$5, whichever is greater.

Section 7. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

~~(1) In addition to the record retention requirements specified in s. 560.1105,~~ A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

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

(a) Customer files, as prescribed by rule, on all customers who cash corporate ~~or third-party~~ payment instruments that exceed ~~exceeding~~ \$1,000.

~~(b) For any payment instrument accepted having a face value of \$1,000 or more:~~

~~1-~~ A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver ~~driver's~~ license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military



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identification card.

(c)2. A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

~~(c) A payment instrument log that must be maintained electronically as prescribed by rule. For purposes of this paragraph, multiple payment instruments accepted from any one person on any given day which total \$1,000 or more must be aggregated and reported on the log.~~

(3)(2) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

Section 8. Section 560.311, Florida Statutes, is created to read:

560.311 Reporting of payment instruments cashed; database of payment instrument transactions.-

(1) A licensee that cashes a payment instrument that exceeds \$1,000 must submit the following transaction information about the payment instrument to the office within the time and in the format and manner prescribed by commission rule:

(a) Transaction date.

(b) Payor name.

(c) Payee name.

(d) Conductor name, if different from the payee name.

(e) Amount of the payment instrument.

(f) Amount of the currency provided.

(g) Type of payment instrument, which may include, as prescribed by commission rule, but is not limited to, a personal



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check, payroll check, government check, corporate check, or  
third-party check.

(h) Location or branch where the payment instrument is  
accepted.

(i) Payee's workers' compensation policy number, if the  
payment instrument is a corporate payment instrument.

(j) Any other transaction information that may be required  
by commission rule.

Multiple payment instruments accepted from any one conductor on  
any given day that exceeds \$1,000 must be aggregated and  
reported to the office through the payment instrument database.

(2) (a) The office shall establish and administer a  
centralized database that maintains and provides real-time  
access to the transaction information submitted to the office  
under subsection (1). The commission may require licensees to  
submit the transaction information through the Internet or by  
other electronic means that provide for inclusion of the  
submitted information in the database.

(b) The office shall design and administer the database to  
interface with other government databases, including, but not  
limited to:

1. The department's workers' compensation proof of coverage  
database.

2. The Department of State's database of corporations,  
partnerships, limited liability companies, corporations not for  
profit, trusts, associations, cooperatives, and other business  
organizations registered with the Department of State.

(3) The commission shall adopt rules requiring a licensee



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to remit to the office a transaction fee, as part of the direct costs of verification authorized under s. 560.309(8), not to exceed \$3 per transaction submitted under subsection (1) to establish and administer the database required by this section.

(4) The commission may adopt rules to administer this section, including, but not limited to, rules governing the operation and security of the database.

Section 9. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining terms for purposes of provisions regulating money services businesses; amending s. 560.109, F.S.; revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; amending s. 560.111, F.S.; prohibiting money services businesses, authorized vendors, and affiliated parties from knowingly possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; prohibiting certain persons from providing a customer's personal identification information to a money services business licensee and providing





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penalties; reenacting s. 560.114(1)(h), F.S., relating to penalties for certain prohibited acts by money services businesses, to incorporate the amendment made by the act to s. 560.111, F.S., in a reference thereto; amending s. 560.114, F.S.; prohibiting certain acts by money services businesses, authorized vendors, and affiliated parties, for which penalties apply; revising the conditions for which a money services business license may be suspended; amending ss. 560.126 and 560.309, F.S.; requiring a money services business licensee to maintain its own federally insured depository account and deposit into the account any payment instruments cashed; requiring a licensee to notify the office and cease to cash payment instruments if the licensee ceases to maintain the account; prohibiting a licensee from accepting or cashing a payment instrument from a conductor who is not the original payee; authorizing a licensee to accept or cash a corporate payment instrument from certain conductors; establishing a limit on the amount of fees that licensees may charge for the direct costs of verification of payment instruments cashed; amending s. 560.310, F.S.; revising requirements for the records that a money services business licensee must maintain related to the payment instruments cashed; creating s. 560.311, F.S.; requiring money services business licensees to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed;



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requiring the office to maintain the transaction  
information in a centralized database; authorizing the  
Financial Services Commission to prescribe the time,  
format, and manner for licensees to submit the  
transaction information; requiring that the database  
be designed to interface with certain other state  
databases; providing a transaction fee for the  
submission of transaction information; authorizing the  
commission to adopt rules for the operation and  
security of the database; providing an effective date.

By Senator Thrasher

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1 A bill to be entitled  
 2 An act relating to money services businesses; amending  
 3 s. 560.103, F.S.; defining terms for purposes of  
 4 provisions regulating money services businesses;  
 5 amending s. 560.109, F.S.; revising the frequency and  
 6 notice requirements for examinations and  
 7 investigations by the Office of Financial Regulation  
 8 of money services business licensees; amending s.  
 9 560.111, F.S.; prohibiting money services businesses,  
 10 authorized vendors, and affiliated parties from  
 11 possessing certain paraphernalia used or intended or  
 12 designed for use in misrepresenting a customer's  
 13 identity, for which penalties apply; prohibiting  
 14 certain persons from providing a customer's personal  
 15 identification information to a money services  
 16 business licensee and providing penalties; reenacting  
 17 s. 560.114(1)(h), F.S., relating to penalties for  
 18 certain prohibited acts by money services businesses,  
 19 to incorporate the amendment made by the act to s.  
 20 560.111, F.S., in a reference thereto; amending s.  
 21 560.114, F.S.; prohibiting certain acts by money  
 22 services businesses, authorized vendors, and  
 23 affiliated parties, for which penalties apply;  
 24 revising the conditions for which a money services  
 25 business license may be suspended; amending ss.  
 26 560.126 and 560.309, F.S.; requiring a money services  
 27 business licensee to maintain its own federally  
 28 insured depository account and deposit into the  
 29 account any payment instruments cashed; requiring a

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30 licensee to notify the office and cease to cash  
 31 payment instruments if the licensee ceases to maintain  
 32 the account; prohibiting a licensee from accepting or  
 33 cashing a payment instrument from a person who is not  
 34 the original payee; establishing a limit on the amount  
 35 of fees that licensees may charge for the direct costs  
 36 of verification of payment instruments cashed;  
 37 amending s. 560.310, F.S.; revising requirements for  
 38 the records that a money services business licensee  
 39 must maintain related to the payment instruments  
 40 cashed; creating s. 560.311, F.S.; requiring money  
 41 services business licensees to submit certain  
 42 transaction information to the Office of Financial  
 43 Regulation related to the payment instruments cashed;  
 44 requiring the office to maintain the transaction  
 45 information in a centralized database; authorizing the  
 46 Financial Services Commission to prescribe the time,  
 47 format, and manner for licensees to submit the  
 48 transaction information; requiring that the database  
 49 be designed to interface with certain other state  
 50 databases; providing a transaction fee for the  
 51 submission of transaction information; authorizing the  
 52 commission to adopt rules for the operation and  
 53 security of the database; providing an effective date.

54  
 55 Be It Enacted by the Legislature of the State of Florida:

56  
 57 Section 1. Subsections (9) and (10) of section 560.103,  
 58 Florida Statutes, are renumbered as subsections (11) and (12),

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respectively, present subsections (11) through (14) are renumbered as subsections (14) through (17), respectively, present subsections (15) through (27) are renumbered as subsections (19) through (31), respectively, present subsections (28) through (30) are renumbered as subsections (33) through (35), respectively, and new subsections (9), (10), (13), (18), (32), and (36) are added to that section, to read:

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

(9) “Conductor” means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) “Corporate payment instrument” means a payment instrument on which the payee named on the instrument’s face is other than a natural person.

(13) “Department” means the Department of Financial Services.

(18) “Fraudulent identification paraphernalia” means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer’s identity. The term includes, but is not limited to:

(a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer’s personal identification information.

(b) An original of any type of personal identification listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully issued.

(c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed

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in s. 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.

(d) Counterfeit, fictitious, or fabricated information in the similitude of a customer’s personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.

(32) “Personal identification information” means a customer’s name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer’s signature.

(b) Photograph, digital image, or other likeness of the customer.

(c) Unique biometric data, such as the customer’s thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

(36) “Third-party payment instrument” means a payment instrument being negotiated by a party other than the payee named on the instrument’s face.

Section 2. Subsections (1) and (7) of section 560.109, Florida Statutes, are amended to read:

560.109 Examinations and investigations.—The office may conduct examinations and investigations, within or outside this state to determine whether a person has violated any provision of this chapter and related rules, or of any practice or conduct that creates the likelihood of material loss, insolvency, or dissipation of the assets of a money services business or otherwise materially prejudices the interests of their

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customers.

(1) The office may, without advance notice, examine or investigate each licensee as often as is warranted for the protection of customers and in the public interest. However, the office must examine each licensee, but at least once every 5 years. ~~A new licensee shall be examined within 6 months after the issuance of the license. The office shall provide at least 15 days' notice to a money services business, its authorized vendor, or license applicant before conducting an examination or investigation. However,~~ The office may, without advance notice, examine ~~conduct an examination or investigate~~ investigation of a money services business, authorized vendor, ~~or~~ affiliated party, or license applicant at any time ~~and without advance notice~~ if the office suspects that the money services business, authorized vendor, ~~or~~ affiliated party, or license applicant has violated or is about to violate any provision ~~provisions~~ of this chapter or any criminal law ~~laws~~ of this state or of the United States.

(7) Reasonable and necessary costs incurred by the office or third parties authorized by the office in connection with examinations or investigations may be assessed against any person subject to this chapter on the basis of actual costs incurred. Assessable expenses include, but are not limited to, expenses for: interpreters; certified translations of documents into the English language required by this chapter or related rules; communications; legal representation; economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office is a ground for denial of a license application, denial of a license renewal, or for revocation of any approval thereof. Except for

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examinations authorized under this section ~~s. 560.109~~, costs may not be assessed against a person unless the office determines that the person has operated or is operating in violation of this chapter.

Section 3. Paragraph (g) is added to subsection (1) of section 560.111, Florida Statutes, subsection (3) is renumbered as subsection (4), present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (3) is added to that section, to read:

560.111 Prohibited acts.—

(1) A money services business, authorized vendor, or affiliated party may not:

(g) Possess any fraudulent identification paraphernalia. This paragraph does not prohibit the maintenance and retention of any records required by this chapter.

(3) A person other than the conductor of a payment instrument may not provide a licensee engaged in cashing the payment instrument with the customer's personal identification information.

(5)(4) Any person who willfully violates any provision of s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb), and (cc) are added to that subsection, and subsection (2) of that section is amended, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business,

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authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111.

(aa) Failure of a check casher to maintain a federally insured depository account as required by s. 560.309.

(bb) Failure of a check casher to deposit into its own federally insured depository account any payment instrument cashed as required by s. 560.309.

(cc) Failure to submit transaction information to the office as required by s. 560.311 for any payment instrument cashed.

(2) The office may immediately suspend the license of any money services business if the money services business fails to:

(a) Provide to the office, upon written request, any of the records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211, or s. ~~and~~ 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.

(b) Maintain a federally insured depository account as required by s. 560.309.

(c) Submit transaction information to the office as required by s. 560.311 for any payment instrument cashed.

For purposes of s. 120.60(6), failure to ~~perform~~ provide any of the ~~acts specified in this subsection~~ above-mentioned records constitutes immediate and serious danger to the public health,

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safety, and welfare.

Section 5. Subsection (4) is added to section 560.126, Florida Statutes, to read:

560.126 Required notice by licensee.—

(4) A licensee that engages in check cashing must notify the office within 5 business days after the licensee ceases to maintain a federally insured depository account as required by s. 560.309(3) and, before resuming check cashing, must reestablish such an account and notify the office of the account.

Section 6. Subsections (3), (4), and (8) of section 560.309, Florida Statutes, are amended to read:

560.309 Conduct of business.—

(3) A licensee under this part must maintain and deposit payment instruments into its own a commercial account at a federally insured financial institution. If a licensee ceases to maintain such a depository account, the licensee must not engage in check cashing until the licensee reestablishes such an account and notifies the office of the account as required by s. 560.126(4) or sell payment instruments within 5 business days after the acceptance of the payment instrument.

(4) A licensee may not accept or cash ~~a multiple payment instrument instruments~~ from a person who is not the original payee, ~~unless the person is licensed to cash payment instruments pursuant to this part and all payment instruments accepted are endorsed with the legal name of the person.~~

(8) Exclusive of the direct costs of verification, which shall be established by rule not to exceed \$5, a check casher may not:

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233 (a) Charge fees, except as otherwise provided by this part,  
 234 in excess of 5 percent of the face amount of the payment  
 235 instrument, or \$5, whichever is greater;

236 (b) Charge fees in excess of 3 percent of the face amount  
 237 of the payment instrument, or \$5, whichever is greater, if such  
 238 payment instrument is the payment of any kind of state public  
 239 assistance or federal social security benefit payable to the  
 240 bearer of the payment instrument; or

241 (c) Charge fees for personal checks or money orders in  
 242 excess of 10 percent of the face amount of those payment  
 243 instruments, or \$5, whichever is greater.

244 Section 7. Section 560.310, Florida Statutes, is amended to  
 245 read:

246 560.310 Records of check cashers and foreign currency  
 247 exchangers.—

248 (1) ~~In addition to the record retention requirements~~  
 249 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing  
 250 must maintain for the period specified in s. 560.1105 a copy of  
 251 each payment instrument cashed.

252 (2) If the payment instrument exceeds \$1,000 or is a  
 253 corporate or third-party payment instrument, the following  
 254 additional information must be maintained ~~the following:~~

255 (a) Customer files, as prescribed by rule, on all customers  
 256 who cash corporate or third-party payment instruments that  
 257 exceed ~~exceeding~~ \$1,000.

258 (b) ~~For any payment instrument accepted having a face value~~  
 259 ~~of \$1,000 or more:~~

260 ~~1-~~ A copy of the personal identification that bears a  
 261 photograph of the customer used as identification and presented

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262 by the customer. Acceptable personal identification is limited  
 263 to a valid driver ~~driver's~~ license; a state identification card  
 264 issued by any state of the United States or its territories or  
 265 the District of Columbia, and showing a photograph and  
 266 signature; a United States Government Resident Alien  
 267 Identification Card; a passport; or a United States Military  
 268 identification card.

269 (c) ~~2-~~ A thumbprint of the customer taken by the licensee  
 270 when the payment instrument is presented for negotiation or  
 271 payment.

272 ~~(c) A payment instrument log that must be maintained~~  
 273 ~~electronically as prescribed by rule. For purposes of this~~  
 274 ~~paragraph, multiple payment instruments accepted from any one~~  
 275 ~~person on any given day which total \$1,000 or more must be~~  
 276 ~~aggregated and reported on the log.~~

277 (3) ~~(2)~~ A licensee under this part may engage the services  
 278 of a third party that is not a depository institution for the  
 279 maintenance and storage of records required by this section if  
 280 all the requirements of this section are met.

281 Section 8. Section 560.311, Florida Statutes, is created to  
 282 read:

283 560.311 Reporting of payment instruments cashed; database  
 284 of payment instrument transactions.—

285 (1) A licensee that cashes a payment instrument that  
 286 exceeds \$1,000, a corporate payment instrument, or a third-party  
 287 payment instrument must submit the following transaction  
 288 information about the payment instrument to the office within  
 289 the time and in the format and manner prescribed by commission  
 290 rule:

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291 (a) Transaction date.  
 292 (b) Payor name.  
 293 (c) Payee name.  
 294 (d) Conductor name, if different from the payee name.  
 295 (e) Amount of the payment instrument.  
 296 (f) Amount of the currency provided.  
 297 (g) Type of payment instrument, which may include, as  
 298 prescribed by commission rule, but is not limited to, a personal  
 299 check, payroll check, government check, corporate check, or  
 300 third-party check.  
 301 (h) Location or branch where the payment instrument is  
 302 accepted.  
 303 (i) Payee's workers' compensation policy number, if the  
 304 payment instrument is a corporate payment instrument.  
 305 (j) Any other transaction information that may be required  
 306 by commission rule.  
 307  
 308 If, on any given day, a licensee cashes multiple payment  
 309 instruments that collectively exceed \$1,000 for any payor-payee  
 310 combination, the licensee must aggregate the payment instruments  
 311 as one transaction and submit the aggregated transaction  
 312 information as prescribed by commission rule.  
 313 (2)(a) The office shall establish and administer a  
 314 centralized database that maintains and provides real-time  
 315 access to the transaction information submitted to the office  
 316 under subsection (1). The commission may require licensees to  
 317 submit the transaction information through the Internet or by  
 318 other electronic means that provide for inclusion of the  
 319 submitted information in the database.

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320 (b) The office shall design and administer the database to  
 321 interface with other government databases, including, but not  
 322 limited to:  
 323 1. The department's workers' compensation proof of coverage  
 324 database.  
 325 2. The Department of State's database of corporations,  
 326 partnerships, limited liability companies, corporations not for  
 327 profit, trusts, associations, cooperatives, and other business  
 328 organizations registered with the Department of State.  
 329 (3) The commission shall adopt rules requiring a licensee  
 330 to remit to the office a transaction fee, as part of the direct  
 331 costs of verification authorized under s. 560.309(8), not to  
 332 exceed \$3 per transaction submitted under subsection (1).  
 333 (4) The commission may adopt rules to administer this  
 334 section, including, but not limited to, rules governing the  
 335 operation and security of the database.  
 336 Section 9. This act shall take effect July 1, 2012.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2.7.12

Meeting Date

Topic Money Services Businesses

Bill Number 1586  
(if applicable)

Name Sarah Busk

Amendment Barcode N/A  
(if applicable)

Job Title Dir of Gov. Affairs

Address 215 S. Monroe St, #602

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Tallahassee FL 32301  
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Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Carpenters Regional Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

*Meeting Date* \_\_\_\_\_

Topic SB 1586 / Money Service Business Bill Number 1586  
(if applicable)

Name Robin Westcott Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Ins. Consumer Advocate

Address LL 22 The Capitol Phone 413-2868  
*Street*

TLH FL 32399 E-mail Robin.Westcott@myfloridacfo.com  
*City State Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

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

2/7

Meeting Date

Topic MSB Legislation

Bill Number 1586  
(if applicable)

Name Jim Daughton

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 215 S. Monroe Street

Phone 205-9000

Street

Tallahassee

City

FL

State

32301

Zip

E-mail jim.daughton@wrtzfla.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Financial Service Centers of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.9.12

Meeting Date

Topic workers comp fraud

Bill Number 1586  
(if applicable)

Name Ashley Mayer

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Dir. Policy & Legal Affairs

Address Capitol - PL-14  
Street

Phone 413-2863

Tallahassee FL  
City State Zip

E-mail ashley.mayer@myfloridach.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/7/12

Meeting Date

Topic money Services Business  
Name Andrea Moreland  
Job Title Legislative Affairs Director

Bill Number SB 1586  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Address 200 E. Gaines St.  
Street  
Tallahassee, FL  
City State Zip

Phone 410-9601

E-mail andrea.moreland@flafr.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 7 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1586  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-7-12  
Meeting Date

Topic MONEY SERVICES BUSINESSES

Bill Number SB 1586  
(if applicable)

Name CLAM FENTRISS

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 1400 VILLAGE SQ  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing FCA ROOFING SHEET METAL + AC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**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 Banking and Insurance Committee

---

BILL: SB 1584

INTRODUCER: Senator Thrasher

SUBJECT: Public Records/Money Services Businesses/Office of Financial Regulation

DATE: January 31, 2012

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Burgess	BI	<b>Favorable</b>
2. _____	_____	GO	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

---

**I. Summary:**

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation (OFR).

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.<sup>1</sup>

This bill creates the following section of the Florida Statutes: 560.312

**II. Present Situation:**

**Public Records Law**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an

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<sup>1</sup> Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.



existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

### **Statewide database**

Section 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third-party instruments exceeding \$1,000. These files must contain a copy of the customer's personal identification and a thumbprint taken by the licensee. Licensees must also maintain an electronic payment log.

Under Rule 69V-560.704, F.A.C., licensees are required to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as secure and maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, Articles of Incorporation, information from Department of Financial Services' Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. These customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,

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<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> s. 119.15, F.S.

- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Legislation proposed during the 2012 Legislative Session<sup>4</sup> authorizes the OFR to implement a centralized statewide database to gather transactional data from check cashers for checks exceeding \$1,000, corporate payment instruments, and third-party payment instruments. Check cashers will be required to enter this information into the database in a timely manner.

The centralization of the data will allow regulators and law enforcement to effectively target individuals who are engaging in criminal activity as these crimes are occurring instead of forensically attempting to reconstruct the activities of defunct shell companies. The centralization of the data will also allow information to be compared on a statewide basis.

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

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation.

The bill sets forth legislative findings of public necessity to protect the integrity of the database and all personal information contained within.

The bill takes effect on the date that SB 1586, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session takes effect and subsequently becomes a law.

#### **Other Potential Implications:**

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>4</sup> 2012 - SB 1586

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

None.

**B. Amendments:**

None.

By Senator Thrasher

8-01441A-12

20121584

A bill to be entitled

An act relating to public records; creating s. 560.312, F.S.; providing an exemption from public records requirements for information contained in the database of payment instrument transactions within the Office of Financial Regulation into which payment instrument transaction information submitted by money services business licensees is maintained; providing for specified access to such information; authorizing the office to enter into information-sharing agreements and provide access to information contained in the database to certain governmental agencies; requiring any department or agency that receives confidential information to maintain the confidentiality of the information, except as otherwise required by court order; providing a penalty for willful disclosure of confidential information; providing for future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 560.312, Florida Statutes, is created to read:

560.312 Database of payment instrument transactions; confidentiality.-

(1) Information contained in the database of payment instrument transactions administered by the office pursuant to

8-01441A-12

20121584

s. 560.311 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) (a) A licensee may access information that it submits to the office for inclusion in the database.

(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes. Any department or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of this information to a specific party or parties.

(3) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information contained in the database of payment instrument transactions administered by the Office of Financial Regulation pursuant to s. 560.311, Florida Statutes, be held confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The electronic database provides for the maintenance of payment instrument transaction information that, pursuant to s. 560.311, Florida Statutes, money services business licensees are required to

8-01441A-12 20121584

59 submit to the office and is intended to assist the office, the  
60 Department of Financial Services, law enforcement agencies, and  
61 other governmental agencies in detecting and deterring financial  
62 crimes. Licensees that cash a payment instrument exceeding a  
63 specified amount, a corporate payment instrument, or a third-  
64 party payment instrument must submit information about the  
65 transaction to the office for inclusion in the database.  
66 Information submitted includes personal identifying information  
67 of licensees, sensitive financial information, and other  
68 sensitive information such as insurance policy numbers and  
69 workers' compensation information that, if not held exempt from  
70 public disclosure, could be used to the detriment or  
71 disadvantage of a licensee.

72       Section 3. This act shall take effect on the same date that  
73 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
74 is adopted in the same legislative session or an extension  
75 thereof and becomes a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 7 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1584  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**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 Banking and Insurance Committee

---

BILL: SB 1050

INTRODUCER: Senator Bogdanoff

SUBJECT: Mortgages

DATE: February 4, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Pre-meeting</b>
2.			JU	
3.				
4.				
5.				
6.				

**I. Summary:**

Current law allows mortgagors to request and receive, within 14 days, information about their loan, such as the payoff, from the mortgagee. The bill would require mortgagees to provide subsequent owners of real property with mortgage payoff information. To receive information about the mortgage, the bill requires an owner of an interest in the encumbered property to provide an instrument proving that ownership interest to the mortgagee. The mortgagee must then provide the unpaid balance, but may include more information.

This bill substantially amends the following sections of the Florida Statutes: 701.04.

**II. Present Situation:**

Chapter 701 allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days of a written request.<sup>1</sup> The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

The statute does not require the mortgagee to provide that information to any other owner of the encumbered property. For example, a person could become an owner of an interest in the property by any number of ways, including but not limited to, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

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<sup>1</sup> Section 701.04, F.S.

## Privacy Laws

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC, Subchapter I, Section 6801-6809, addresses privacy requirements and disclosure of nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title. The act contains an exception to the prohibition of disclosure restrictions as contained in Section 6802(e)(8) of this act to comply with state laws.

Pursuant to s. 655.059, F.S., the records of a financial institution<sup>2</sup> are confidential and are made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities. Under current law, if the mortgagee is a financial institution, the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information.

### III. Effect of Proposed Changes:

**Section 1** amends s. 701.04(1), F.S., to require a holder of a mortgage, or the servicer of the mortgage, to release limited payoff information as to the encumbered property so that an owner can obtain the information necessary to pay the mortgagee or servicer the unpaid balance and obtain a satisfaction of the mortgage. Such information must be provided within 14 days after receipt of a written request.

If the requestor is not the mortgagor, the estoppel letter does not need to contain an itemization of the unpaid balance of the loan secured by the mortgage, but must include a per-day amount for the unpaid balance. An owner of an interest in property encumbered by a mortgage must include, along with the request, a copy of the instrument showing an ownership interest in the property.

**Section 2** provides that this act will take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>2</sup> Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.



C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow an owner of an interest to pay off a mortgage and clear title to the property.

Holders of mortgages may incur some indeterminate costs to accommodate additional requests.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 701.04, Florida Statutes, is amended to  
read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of  
a mortgagor, a record title owner of the property, a fiduciary  
or trustee lawfully acting on behalf of a record title owner, or  
any other person lawfully authorized to act on behalf of a  
mortgagor or record title owner of the property, the holder of a



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mortgage shall deliver or cause the servicer of the mortgage to deliver to the person making the request ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.<sup>7</sup>

(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the ~~including~~ principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.

(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:

1. The request must include a copy of the instrument showing title in the property or lawful authorization.

2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

3. The mortgagee or servicer of the mortgagee acting in accordance with a request in substantial compliance with this paragraph is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(c) A mortgage holder may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information notwithstanding s. 655.059.



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(2) Whenever the amount of money due on any mortgage, lien, or judgment has been ~~shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute in writing an instrument acknowledging satisfaction of the ~~said~~ mortgage, lien, or judgment and have the instrument ~~same~~ acknowledged, or proven, and duly entered ~~of record in the book provided by law for such purposes~~ in the official records of the proper county. Within 60 days after ~~of~~ the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of ~~the provisions of this~~ section, the prevailing party is ~~shall be~~ entitled to attorney ~~attorney's~~ fees and costs.

(3) ~~(2)~~ Whenever a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is ~~shall be~~ the responsibility of the party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Present subsections (3) through (13) of section 738.102, Florida Statutes, are renumbered as subsections (4) through (14), respectively, and a new subsection (3) is added to that section, to read:

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

(3) "Carrying value" means the fair market value at the



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time the assets are received by the fiduciary. For the estates of decedents and trusts described in s. 733.707(3), after the grantor's death, the assets are considered received as of the date of death. If there is a change in fiduciaries, a majority of the continuing fiduciaries may elect to adjust the carrying values to reflect the fair market value of the assets at the beginning of their administration. If such election is made, it must be reflected on the first accounting filed after the election. For assets acquired during the administration of the estate or trust, the carrying value is equal to the acquisition costs of the asset.

Section 3. Subsection (3) is added to section 738.103, Florida Statutes, to read:

738.103 Fiduciary duties; general principles.—

(3) Except as provided in s. 738.1041(9), this chapter pertains to the administration of a trust and is applicable to any trust that is administered in this state or under its law. This chapter also applies to any estate that is administered in this state unless the provision is limited in application to a trustee, rather than a fiduciary.

Section 4. Subsections (5) and (11) of section 738.104, Florida Statutes, are amended to read:

738.104 Trustee's power to adjust.—

~~(5)(a) A trustee may release the entire power to adjust conferred by subsection (1) if the trustee desires to convert an income trust to a total return unitrust pursuant to s. 738.1041.~~

~~(b)~~ A trustee may release the entire power to adjust conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from



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principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (3)(a)-(e) or paragraph (3)(g) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (3).

~~(e) A release under this subsection may be permanent or for a specified period, including a period measured by the life of an individual. Notwithstanding anything contrary to this subsection, a release of the power to adjust pursuant to paragraph (a) shall remain effective only for as long as the trust is administered as a unitrust pursuant to s. 738.1041.~~

~~(11) This section shall be construed as pertaining to the administration of a trust and is applicable to any trust that is administered either in this state or under Florida law.~~

Section 5. Section 738.1041, Florida Statutes, is amended to read:

738.1041 Total return unitrust.—

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

(a) "Average fair market value" means the average of the fair market values of assets held by the trust at the beginning of the current and each of the 2 preceding years, or for the entire term of the trust if there are less than 2 preceding years, and adjusted as follows:

1. If assets have been added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition was not included.

2. If assets have been distributed from the trust during the years used to determine the average, other than in



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129 satisfaction of the unitrust amount, the amount of each  
130 distribution is subtracted from all years in which such  
131 distribution was not included.

132 (b)~~(a)~~ "Disinterested person" means a person who is not a  
133 "related or subordinate party"~~as defined in s. 672(c) of the~~  
134 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~  
135 ~~any successor provision thereof,~~ with respect to the person then  
136 acting as trustee of the trust and excludes the grantor and any  
137 interested trustee.

138 (c)~~(b)~~ "Fair market value" means the fair market value of  
139 the assets held by the trust as otherwise determined under this  
140 chapter, reduced by all known noncontingent liabilities.

141 (d)~~(c)~~ "Income trust" means a trust, created by ~~either~~ an  
142 inter vivos or a testamentary instrument, which directs or  
143 permits the trustee to distribute the net income of the trust to  
144 one or more persons, ~~either~~ in fixed proportions or in amounts  
145 or proportions determined by the trustee and regardless of  
146 whether the trust directs or permits the trustee to distribute  
147 the principal of the trust to one or more such persons.

148 (e)~~(d)~~ "Interested distributee" means a person to whom  
149 distributions of income or principal can currently be made and  
150 who has the power to remove the existing trustee and designate  
151 as successor a person who may be a "related or subordinate  
152 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~  
153 ~~672(c),~~ with respect to such distributee.

154 (f)~~(e)~~ "Interested trustee" means an individual trustee to  
155 whom the net income or principal of the trust can currently be  
156 distributed or would be distributed if the trust were then to  
157 terminate and be distributed, any trustee whom an interested



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158 distributee has the power to remove and replace with a related  
159 or subordinate party ~~as defined in paragraph (d)~~, or an  
160 individual trustee whose legal obligation to support a  
161 beneficiary may be satisfied by distributions of income and  
162 principal of the trust.

163 (g) "Related or subordinate party" has the same meaning as  
164 provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or  
165 any successor provision thereof.

166 (h) ~~(f)~~ "Unitrust amount" means the amount determined by  
167 multiplying the average fair market value of the assets as  
168 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage  
169 calculated under paragraph (2) (b).

170 (2) A trustee may, without court approval, convert an  
171 income trust to a total return unitrust, reconvert a total  
172 return unitrust to an income trust, or change the percentage  
173 used to calculate the unitrust amount or the method used to  
174 determine the fair market value of the trust if:

175 (a) The trustee adopts a written statement regarding trust  
176 distributions which ~~that~~ provides:

177 1. In the case of a trust being administered as an income  
178 trust, that future distributions from the trust will be unitrust  
179 amounts rather than net income, and indicates the manner in  
180 which the unitrust amount will be calculated and the method in  
181 which the fair market value of the trust will be determined.

182 2. In the case of a trust being administered as a total  
183 return unitrust, that:

184 a. Future distributions from the trust will be net income  
185 rather than unitrust amounts; or

186 b. The percentage used to calculate the unitrust amount or





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the method used to determine the fair market value of the trust will be changed, and indicates the manner in which the new unitrust amount will be calculated and the method in which the new fair market value of the trust will be determined;

(b) The trustee determines the terms of the unitrust under one of the following methods:

1. A disinterested trustee determines, or if there is no trustee other than an interested trustee, the interested trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the interested trustee:

a. The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent;

b. The method to be used in determining the fair market value of the trust; and

c. Which assets, if any, are to be excluded in determining the unitrust amount; or

2. The interested trustee or disinterested trustee administers the trust such that:

a. The percentage used to calculate the unitrust amount is 50 percent of the ~~applicable federal~~ rate as defined in the Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the month the conversion under this section becomes effective and for each January thereafter; however, if the percentage calculated exceeds 5 percent, the unitrust percentage is ~~shall~~ be 5 percent and if the percentage calculated is less than 3 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

b. The fair market value of the trust shall be determined



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at least annually on an asset-by-asset basis, reasonably and in good faith, in accordance with ~~the provisions of~~ s. 738.202(5), except the following property shall not be included in determining the value of the trust:

(I) Any residential property or any tangible personal property that, as of the first business day of the current valuation year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or have had the right to possess or control, ~~other than in his or her capacity as trustee of the trust~~, and instead the right of occupancy or the right to possession and control ~~is shall be deemed to be~~ the unitrust amount with respect to such property; however, the unitrust amount ~~shall~~ must be adjusted to take into account partial distributions from or receipt into the trust of such property during the valuation year; ~~:-~~

(II) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment shall be distributable to ~~the such beneficiary; or-~~ the such beneficiary

(III) Any asset while held in a ~~testator's~~ decedent's estate;

(c) The trustee sends written notice of its intention to take such action, along with copies of ~~the such~~ the written statement regarding trust distributions and this section, and, if applicable, the determinations of ~~either~~ the trustee or the disinterested person to:

1. The grantor of the trust, if living.
2. All living persons who are currently receiving or eligible to receive distributions of income ~~from~~ of the trust.
3. All living persons who would receive distributions of



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principal of the trust if the trust were to terminate at the time of ~~the~~ giving ~~of~~ such notice ~~(without~~ regard to the exercise of any power of appointment~~,)~~ or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subparagraph 2. were deceased.

4. All persons acting as advisers or protectors of the trust.

Notice under this paragraph shall be served informally~~,~~ in the manner provided in the Florida Rules of Civil Procedure relating to service of pleadings subsequent to the initial pleading. Notice may be served on a legal representative or natural guardian of a person without ~~the~~ filing ~~of~~ any proceeding or approval of any court;

(d) At least one person receiving notice under each of subparagraphs (c)2. and 3. is legally competent; and

(e) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 60 days after service of such notice. An objection ~~under this section~~ may be executed by a legal representative or natural guardian of a person without ~~the~~ filing ~~of~~ any proceeding or approval of any court.

(3) If a trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine a fair market



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value of the trust but does not have the ability to or elects not to do it under subsection (2), the trustee may petition the circuit court for such order as the trustee deems appropriate. In that event, the court, in its own discretion or on the petition of such trustee or any person having an income or remainder interest in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as is ~~shall be~~ necessary for the court to make a determination hereunder.

~~(4) All determinations made pursuant to sub-subparagraph (2)(b)2.b. shall be conclusive if reasonable and made in good faith. Such determination shall be conclusively presumed to have been made reasonably and in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008. The burden will be on the objecting interested party to prove that the determinations were not made reasonably and in good faith.~~

~~(4)(5)~~ Following the conversion of an income trust to a total return unitrust, the trustee:

(a) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.

(b) May allocate to trust income for each taxable year of the trust, or portion thereof:

1. Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income, as determined under the provisions of this chapter without regard



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to this section and s. 738.104, for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

2. Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph 1., allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof.

(5)~~(6)~~ In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(a) The effective date of the conversion.

(b) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.

(c) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.

(d) If the trust is reconverted to an income trust, the effective date of such reconversion.

(e) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(6)~~(7)~~ Conversion to a total return unitrust under ~~the provisions of this section~~ does ~~shall~~ not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(7)~~(8)~~ Any trustee or disinterested person who in good faith takes or fails to take any action under this section is



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shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section ~~or and regardless of whether~~ such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy ~~is shall~~ be to obtain, under subsection (8) ~~(9)~~, an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount. If a court determines that the trustee or disinterested person has not acted in good faith in taking or failing to take any action under this section, ~~the provisions of~~ s. 738.105(3) applies ~~apply~~.

(8) ~~(9)~~ If a majority in interest of ~~either~~ the income or remainder beneficiaries of an income trust has delivered to the trustee a written objection to the amount of the income distributions of the trust, and, if the trustee has failed to resolve the objection to the satisfaction of the objecting beneficiaries within 6 months after ~~from the~~ receipt of such written objection, ~~then~~ the objecting beneficiaries may petition the court in accordance with subsection (3).

(9) ~~(10)~~ This section pertains ~~shall be construed as~~ ~~pertaining~~ to the administration of a trust and is applicable to any trust that is administered ~~either~~ in this state or under Florida law unless:

(a) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(b) The trust is a trust described in the Internal Revenue



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Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s. 2702(a)(3), or s. 2702(b);

(c) One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust:

1. That is not subject to an ascertainable standard under the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and exceeds in any calendar year the amount set forth in the Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

2. A power of withdrawal over the trust that can be exercised to discharge a duty of support he or she possesses; or

(d) The governing instrument expressly prohibits use of this section by specific reference to the section. A provision in the governing instrument that, "The provisions of section 738.1041, Florida Statutes, as amended, or any corresponding provision of future law, may ~~shall~~ not be used in the administration of this trust," or similar words reflecting such intent are ~~shall be~~ sufficient to preclude the use of this section; ~~or~~

~~(e) The trust is a trust with respect to which a trustee currently possesses the power to adjust under s. 738.104.~~

~~(10)-(11)~~ The grantor of a trust may create an express total return unitrust that ~~which~~ will be ~~become~~ effective as provided in the trust instrument ~~document~~ without requiring a conversion under this section.

(a) An express total return unitrust created by the grantor of the trust is ~~shall be~~ treated as a unitrust ~~under this section~~ only if the terms of the trust instrument ~~document~~ contain all of the following provisions:

1.~~(a)~~ That distributions from the trust will be unitrust



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amounts and the manner in which the unitrust amount will be calculated; ~~and the method in which the fair market value of the trust will be determined.~~

2.(b) The percentage to be used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent.

(b) The trust instrument may also contain provisions specifying:

1.(c) The method to be used in determining the fair market value of the trust, including whether to use an average fair market value or the fair market value of the assets held by the trust at the beginning of the current year; or-

2.(d) Which assets, if any, are to be excluded in determining the unitrust amount.

(c) This section establishes the method of determining the fair market value of the trust if the trust instrument is silent as to subparagraph (b)1., and to specify those assets, if any, which are to be excluded in determining the unitrust amount if the trust instrument is silent as to subparagraph (b)2.

Section 6. Subsections (1), (3), and (4) of section 738.105, Florida Statutes, are amended to read:

738.105 Judicial control of discretionary powers.—

(1) A court may ~~shall~~ not change a trustee's ~~fiduciary's~~ decision to exercise or not to exercise a discretionary power conferred by this chapter unless the court determines that the decision was an abuse of the trustee's ~~fiduciary's~~ discretion. A court may ~~shall~~ not determine that a trustee ~~fiduciary~~ abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the





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discretion.

(3) If a court determines that a trustee ~~fiduciary~~ has abused its discretion, the remedy is ~~shall be~~ to restore the income and remainder beneficiaries to the positions they would have occupied if the trustee ~~fiduciary~~ had not abused its discretion, in accordance with ~~according to~~ the following ~~rules~~:

(a) To the extent the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the trustee ~~fiduciary~~ to distribute from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.

(b) To the extent the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall restore the beneficiaries, the trust, or both, in whole or in part, to their appropriate positions by requiring the trustee ~~fiduciary~~ to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or requiring that beneficiary to return some or all of the distribution to the trust.

(c) To the extent the court is unable, after applying paragraphs (a) and (b), to restore the beneficiaries or, the trust, or both, to the positions they would have occupied if the trustee ~~fiduciary~~ had not abused its discretion, the court may require the trustee ~~fiduciary~~ to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(4) Upon the filing of a petition by the trustee ~~fiduciary~~, the court having jurisdiction over the trust ~~or estate~~ shall



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determine whether a proposed exercise or nonexercise by the trustee ~~fiduciary~~ of a discretionary power conferred by this chapter will result in an abuse of the trustee's ~~fiduciary's~~ discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee ~~fiduciary~~ relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that such exercise or nonexercise will result in an abuse of discretion.

Section 7. Subsections (1) through (4) of section 738.201, Florida Statutes, are amended to read:

738.201 Determination and distribution of net income.—After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under ~~the rules in ss. 738.301-738.706 which apply to trustees~~ and ~~the rules in~~ subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under ~~the rules in ss. 738.301-738.706 which apply to trustees~~ and by:

(a) Including in net income all income from property used to discharge liabilities.



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(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes. ~~but~~ The fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction under the Internal Revenue Code or comparable law of any state only to the extent the payment of those expenses from income will not cause the reduction or loss of the deduction.

(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) ~~If A fiduciary shall distribute to a beneficiary who receives a pecuniary devise amount outright is also entitled to receive the interest or any other amount on the devise under the terms of provided by the will or, the terms of the trust, the fiduciary shall distribute the interest or other amount applicable law from net income determined under subsection (2) or from principal to the extent net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.~~



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(4) A fiduciary shall distribute the net income remaining after distributions required under subsections (1)-(3) ~~by subsection (3)~~ in the manner described in s. 738.202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

Section 8. Section 738.202, Florida Statutes, is amended to read:

738.202 Distribution to residuary and remainder beneficiaries.—

(1) Each beneficiary described in s. 738.201(4) is entitled to receive a portion of the net income remaining after the application of s. 738.201(1)-(3), which is equal to the beneficiary's fractional interest in undistributed principal assets, using carrying values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary ~~has~~ received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following applies ~~rules apply~~:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the carrying value of the undistributed principal assets immediately



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before the distribution date, excluding the amount of unpaid liabilities including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets shall be calculated: ~~without regard to~~

1. At the time the interest began and adjusted for any disproportionate distributions since the interest began;

2. By excluding any liabilities of the estate or trust from the calculation;

3. By also excluding property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust; and-

~~4. (c) The beneficiary's fractional interest in the undistributed principal assets shall be calculated~~ On the basis of the aggregate carrying value of those assets determined under subsection (1) as of the distribution date ~~without reducing the value by any unpaid principal obligation.~~

(c) If a disproportionate distribution of principal is made to any beneficiary, the respective fractional interests of all beneficiaries in the remaining underlying assets shall be recomputed by:

1. Adjusting the carrying value of the principal assets to their fair market value before the distribution;

2. Reducing the fractional interest of the recipient of the disproportionate distribution in the remaining principal assets by the fair market value of the principal distribution; and

3. Recomputing the fractional interests of all beneficiaries in the remaining principal assets based upon the



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now restated carrying values.

~~(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.~~

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the provisions of ~~rules in~~ this section, to the extent the fiduciary considers appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

(5) The carrying value or fair market value of trust assets shall be determined on an asset-by-asset basis and are ~~shall be~~ conclusive if reasonable and determined in good faith. Determinations of fair market value based on appraisals performed within 2 years before or after the valuation date are ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets are ~~shall be~~ conclusively presumed to be reasonable and determined in good faith unless proven otherwise in a proceeding commenced by or on behalf of a person interested in the trust within the time provided in s. 736.1008.

(6) All distributions to a beneficiary shall be valued based on their fair market value on the date of distribution.

Section 9. Subsection (4) of section 738.301, Florida Statutes, is amended to read:



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738.301 When right to income begins and ends.—An income beneficiary is entitled to net income from the date on which the income interest begins.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a fiduciary trustee may distribute income.

Section 10. Subsections (1) and (2) of section 738.302, Florida Statutes, are amended to read:

738.302 Apportionment of receipts and disbursements when decedent dies or income interest begins.—

(1) A fiduciary trustee shall allocate an income receipt or disbursement other than one to which s. 738.201(1) applies to principal if the due date of the receipt or disbursement occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A fiduciary trustee shall allocate an income receipt or disbursement to income if the due date of the receipt or disbursement occurs on or after the date on which a decedent dies or an income interest begins and the due date is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if the due date of the receipt or disbursement is not periodic or the receipt or disbursement has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

Section 11. Subsections (2) and (3) of section 738.303,



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Florida Statutes, are amended to read:

738.303 Apportionment when income interest ends.—

(2) When a mandatory income interest ends, the fiduciary ~~trustee~~ shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the fiduciary ~~trustee~~ shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its grantor relating to income, gift, estate, or other tax requirements.

Section 12. Section 738.401, Florida Statutes, is amended to read:

738.401 Character of receipts.—

(1) For purposes of this section, the term "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a fiduciary ~~trustee~~ has an interest other than a trust or estate to which s. 738.402 applies, a business or activity to which s. 738.403 applies, or an asset-backed security to which s. 738.608 applies.

(2) Except as otherwise provided in this section, a





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651 fiduciary ~~trustee~~ shall allocate to income money received from  
652 an entity.

653 (3) Except as otherwise provided in this section, a  
654 fiduciary ~~trustee~~ shall allocate the following receipts from an  
655 entity to principal:

656 (a) Property other than money.

657 (b) Money received in one distribution or a series of  
658 related distributions in exchange for part or all of a trust's  
659 or estate's interest in the entity.

660 (c) Money received in total or partial liquidation of the  
661 entity.

662 (d) Money received from an entity that is a regulated  
663 investment company or a real estate investment trust if the  
664 money received ~~distributed~~ represents short-term or long-term  
665 capital gain realized within the entity.

666 (e) Money received from an entity listed on a public stock  
667 exchange during any year of the trust or estate which exceeds 10  
668 percent of the fair market value of the trust's or estate's  
669 interest in the entity on the first day of that year. The amount  
670 to be allocated to principal must be reduced to the extent that  
671 the cumulative distributions from the entity to the trust or  
672 estate allocated to income does not exceed a cumulative annual  
673 return of 3 percent of the fair market value of the interest in  
674 the entity at the beginning of each year or portion of a year  
675 for the number of years or portion of years in the period that  
676 the interest in the entity has been held by the trust or estate.  
677 If a trustee has exercised a power to adjust under s. 738.104  
678 during any period the interest in the entity has been held by  
679 the trust, the trustee, in determining the total income



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distributions from that entity, must take into account the extent to which the exercise of that power resulted in income to the trust from that entity for that period. If the income of the trust for any period has been computed under s. 738.1041, the trustee, in determining the total income distributions from that entity for that period, must take into account the portion of the unitrust amount paid as a result of the ownership of the trust's interest in the entity for that period.

(4) If a fiduciary ~~trustee~~ elects, or continues an election made by its predecessor, to reinvest dividends in shares of stock of a distributing corporation or fund, whether evidenced by new certificates or entries on the books of the distributing entity, the new shares ~~shall~~ retain their character as income.

(5) Money is received in partial liquidation:

(a) To the extent the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(b) To the extent ~~If~~ the total amount of money and property received in a distribution or series of related distributions from an entity that is not listed on a public stock exchange exceeds ~~is greater than~~ 20 percent of the trust's or estate's pro rata share of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

This subsection does not apply to an entity to which subsection (7) applies.

(6) Money may not ~~is not received in partial liquidation,~~ ~~nor may money~~ be taken into account in determining any excess



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under paragraph (5)(b), to the extent that the cumulative  
distributions from the entity to the trust or the estate  
allocated to income do not exceed the greater of: ~~such money~~  
~~does not exceed the amount of income tax a trustee or~~  
~~beneficiary must pay on taxable income of the entity that~~  
~~distributes the money.~~

(a) A cumulative annual return of 3 percent of the entity's  
carrying value computed at the beginning of each period for the  
number of years or portion of years that the entity was held by  
the fiduciary. If a trustee has exercised a power to adjust  
under s. 738.104 during any period the interest in the entity  
has been held by the trust, the trustee, in determining the  
total income distributions from that entity, must take into  
account the extent to which exercise of the power resulted in  
income to the trust from that entity for that period. If the  
income of a trust for any period has been computed pursuant to  
s. 738.1041, the trustee, in determining the total income  
distributions from the entity for that period, must take into  
account the portion of the unitrust amount paid as a result of  
the ownership of the trust's interest in the entity for that  
period; or

(b) If the entity is treated as a partnership, subchapter S  
corporation, or a disregarded entity pursuant to the Internal  
Revenue Code of 1986, as amended, the amount of income tax  
attributable to the trust's or estate's ownership share of the  
entity, based on its pro rata share of the taxable income of the  
entity that distributes the money, for the number of years or  
portion of years that the interest in the entity was held by the  
fiduciary, calculated as if all of that tax was incurred by the



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738 fiduciary.

739       (7) The following applies ~~special rules shall apply~~ to  
740 money ~~moneys~~ or property received by a private trustee as a  
741 distribution from an investment entity ~~entities~~ described in  
742 this subsection:

743       (a) The trustee shall first treat as income of the trust  
744 all of the money or property received from the investment entity  
745 in the current year which would be considered income under this  
746 chapter if the trustee had directly held the trust's pro rata  
747 share of the assets of the investment entity. For this purpose,  
748 all distributions received in the current year must be  
749 aggregated.

750       (b) The trustee shall next treat as income of the trust any  
751 additional money or property received in the current year which  
752 would have been considered income in the prior 2 years under  
753 paragraph (a) if additional money or property had been received  
754 from the investment entity in any of those prior 2 years. The  
755 amount to be treated as income shall be reduced by any  
756 distributions of money or property made by the investment entity  
757 to the trust during the current and prior 2 years which were  
758 treated as income under this paragraph.

759       (c) The remainder of the distribution, if any, is treated  
760 as principal.

761       (d) As used in this subsection, the term:

762       1. "Investment entity" means an entity, other than a  
763 business activity conducted by the trustee described in s.  
764 738.403 or an entity that is listed on a public stock exchange,  
765 which is treated as a partnership, subchapter S corporation, or  
766 disregarded entity pursuant to the Internal Revenue Code of



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1986, as amended, and which normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.

2. "Private trustee" means a trustee who is a natural person, but only if the trustee is unable to use the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104. A bank, trust company, or other commercial trustee is not considered a private trustee.

(8) This section shall be applied before ss. 738.705 and 738.706 and does not modify or change any of the provisions of those sections.

~~(a) Moneys or property received from a targeted entity that is not an investment entity which do not exceed the trust's pro rata share of the undistributed cumulative net income of the targeted entity during the time an ownership interest in the targeted entity was held by the trust shall be allocated to income. The balance of moneys or property received from a targeted entity shall be allocated to principal.~~

~~(b) If trust assets include any interest in an investment entity, the designated amount of moneys or property received from the investment entity shall be treated by the trustee in the same manner as if the trustee had directly held the trust's pro rata share of the assets of the investment entity attributable to the distribution of such designated amount. Thereafter, distributions shall be treated as principal.~~

~~(c) For purposes of this subsection, the following~~



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~~definitions shall apply:~~

~~1. "Cumulative net income" means the targeted entity's net income as determined using the method of accounting regularly used by the targeted entity in preparing its financial statements, or if no financial statements are prepared, the net book income computed for federal income tax purposes, for every year an ownership interest in the entity is held by the trust. The trust's pro rata share shall be the cumulative net income multiplied by the percentage ownership of the trust.~~

~~2. "Designated amount" means moneys or property received from an investment entity during any year that is equal to the amount of the distribution that does not exceed the greater of:~~

~~a. The amount of income of the investment entity for the current year, as reported to the trustee by the investment entity for federal income tax purposes; or~~

~~b. The amount of income of the investment entity for the current year and the prior 2 years, as reported to the trustee by the investment entity for federal income tax purposes, less any distributions of moneys or property made by the investment entity to the trustee during the prior 2 years.~~

~~3. "Investment entity" means a targeted entity that normally derives 50 percent or more of its annual cumulative net income from interest, dividends, annuities, royalties, rental activity, or other passive investments, including income from the sale or exchange of such passive investments.~~

~~4. "Private trustee" means a trustee who is an individual, but only if the trustee is unable to utilize the power to adjust between income and principal with respect to receipts from entities described in this subsection pursuant to s. 738.104. A~~



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~~bank, trust company, or other commercial trustee shall not be considered to be a private trustee.~~

~~5. "Targeted entity" means any entity that is treated as a partnership, subchapter S corporation, or disregarded entity pursuant to the Internal Revenue Code of 1986, as amended, other than an entity described in s. 738.403.~~

~~6. "Undistributed cumulative net income" means the trust's pro rata share of cumulative net income, less all prior distributions from the targeted entity to the trust that have been allocated to income.~~

~~(d) This subsection shall not be construed to modify or change any of the provisions of ss. 738.705 and 738.706 relating to income taxes.~~

~~(8) A trustee may rely upon a statement made by an entity about the source or character of a distribution, about the amount of profits of a targeted entity, or about the nature and value of assets of an investment entity if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.~~

Section 13. Section 738.402, Florida Statutes, is amended to read:

738.402 Distribution from trust or estate.—A fiduciary ~~trustee~~ shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and ~~shall~~ allocate to principal an amount received as a distribution of principal from such a trust or estate. If a fiduciary ~~trustee~~



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purchases an interest in a trust that is an investment entity,  
or a decedent or donor transfers an interest in such a trust to  
a fiduciary trustee, s. 738.401 or s. 738.608 applies to a  
receipt from the trust.

Section 14. Section 738.403, Florida Statutes, is amended  
to read:

738.403 Business and other activities conducted by  
fiduciary trustee.—

(1) If a fiduciary trustee who conducts a business or other  
activity determines that it is in the best interest of all the  
beneficiaries to account separately for the business or activity  
instead of accounting for the business or activity as part of  
the trust's or estate's general accounting records, the  
fiduciary trustee may maintain separate accounting records for  
the transactions of the such business or other activity, whether  
or not the assets of such business or activity are segregated  
from other trust or estate assets.

(2) A fiduciary trustee who accounts separately for a  
business or other activity may determine the extent to which the  
net cash receipts of the such business or activity must be  
retained for working capital, the acquisition or replacement of  
fixed assets, and other reasonably foreseeable needs of the  
business or activity, and the extent to which the remaining net  
cash receipts are accounted for as principal or income in the  
trust's or estate's general accounting records. If a fiduciary  
trustee sells assets of the business or other activity, other  
than in the ordinary course of the business or activity, the  
fiduciary must trustee shall account for the net amount received  
as principal in the trust's or estate's general accounting





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records to the extent the fiduciary ~~trustee~~ determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a fiduciary ~~trustee~~ may maintain separate accounting records include:

(a) Retail, manufacturing, service, and other traditional business activities.

(b) Farming.

(c) Raising and selling livestock and other animals.

(d) Management of rental properties.

(e) Extraction of minerals and other natural resources.

(f) Timber operations.

(g) Activities to which s. 738.607 ~~738.608~~ applies.

Section 15. Section 738.501, Florida Statutes, is amended to read:

738.501 Principal receipts.—A fiduciary ~~trustee~~ shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a donor ~~transferor~~ during the donor's ~~transferor's~~ lifetime, a decedent's estate, a trust with a terminating income interest, or a payor under a contract naming the trust, estate, or fiduciary ~~its trustee~~ as beneficiary.

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this section.

(3) Amounts recovered from third parties to reimburse the trust or estate because of disbursements described in s. 738.702(1)(g) or for other reasons to the extent not based on



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the loss of income.

(4) Proceeds of property taken by eminent domain; however,  
~~but~~ a separate award made for the loss of income with respect to  
an accounting period during which a current income beneficiary  
had a mandatory income interest is income.

(5) Net income received in an accounting period during  
which there is no beneficiary to whom a fiduciary ~~trustee~~ may or  
shall distribute income.

(6) Other receipts as provided in ss. 738.601-738.608.

Section 16. Section 738.502, Florida Statutes, is amended  
to read:

738.502 Rental property.—~~If To the extent~~ a fiduciary  
~~trustee~~ accounts for receipts from rental property pursuant to  
this section, the fiduciary ~~trustee~~ shall allocate to income an  
amount received as rent of real or personal property, including  
an amount received for cancellation or renewal of a lease. An  
amount received as a refundable deposit, including a security  
deposit or a deposit that is to be applied as rent for future  
periods, must ~~shall~~ be added to principal and held subject to  
the terms of the lease and is not available for distribution to  
a beneficiary until the fiduciary's ~~trustee's~~ contractual  
obligations have been satisfied with respect to that amount.

Section 17. Subsections (1), (2), and (3) of section  
738.503, Florida Statutes, are amended to read:

738.503 Obligation to pay money.—

(1) An amount received as interest, whether determined at a  
fixed, variable, or floating rate, on an obligation to pay money  
to the fiduciary ~~trustee~~, including an amount received as  
consideration for prepaying principal, shall be allocated to



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income without any provision for amortization of premium.

(2) Except as otherwise provided herein, a fiduciary ~~trustee~~ shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary ~~trustee~~.

(3) The increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable at a future time in excess of the price at which it was issued or purchased, if purchased after issuance, is distributable as income. If the increment in value accrues and becomes payable pursuant to a fixed schedule of appreciation, it may be distributed to the beneficiary who was the income beneficiary at the ~~this~~ time of increment from the first principal cash available or, if none is available, when the increment is realized by sale, redemption, or other disposition. If ~~When~~ unrealized increment is distributed as income but out of principal, the principal must ~~shall~~ be reimbursed for the increment when realized. If, in the reasonable judgment of the fiduciary ~~trustee~~, exercised in good faith, the ultimate payment of the bond principal is in doubt, the fiduciary ~~trustee~~ may withhold the payment of incremental interest to the income beneficiary.

Section 18. Subsections (1) and (2) of section 738.504, Florida Statutes, are amended to read:

738.504 Insurance policies and similar contracts.—

(1) Except as otherwise provided in subsection (2), a fiduciary ~~trustee~~ shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust, estate, or fiduciary ~~its trustee~~ is named as beneficiary,



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including a contract that insures the trust, estate, or fiduciary ~~its trustee~~ against loss for damage to, destruction of, or loss of title to a trust or estate asset. The fiduciary ~~trustee~~ shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A fiduciary ~~trustee~~ shall allocate to income the proceeds of a contract that insures the fiduciary ~~trustee~~ against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to s. 738.403, loss of profits from a business.

Section 19. Section 738.601, Florida Statutes, is amended to read:

738.601 Insubstantial allocations not required.—If a fiduciary ~~trustee~~ determines that an allocation between principal and income required by s. 738.602, s. 738.603, s. 738.604, s. 738.605, or s. 738.608 is insubstantial, the fiduciary ~~trustee~~ may allocate the entire amount to principal unless one of the circumstances described in s. 738.104(3) applies to the allocation. This power may be exercised by a cofiduciary under ~~co-trustee in~~ the circumstances described in s. 738.104(4) and may be released for the reasons and in the manner described in s. 738.104(5). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the



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total value of the trust or estate ~~trust's~~ assets at the beginning of the accounting period.

Section 20. Section 738.602, Florida Statutes, is amended to read:

738.602 Payments from deferred compensation plans, annuities, and retirement plans or accounts.—

(1) As used in ~~For purposes of~~ this section, the term:

(a) "Fund" means a private or commercial annuity, an individual retirement account, an individual retirement annuity, a deferred compensation plan, a pension plan, a profit-sharing plan, a stock-bonus plan, an employee stock-ownership plan, or another similar arrangement in which federal income tax is deferred.

(b) "Income of the fund" means income that is determined according to subsection (2) or subsection (3).

(c) "Nonseparate account" means a fund for which the value of the participant's or account owner's right to receive benefits can be determined only by the occurrence of a date or event as defined in the instrument governing the fund.

(d) "Payment" means a distribution from a fund that a fiduciary ~~trustee~~ may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes a distribution made in money or property from the payor's general assets or from a fund created by the payor or payee.

(e) "Separate account" means a fund holding assets exclusively for the benefit of a participant or account owner and:



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1. The value of such assets or the value of the separate account is ascertainable at any time; or

2. The administrator of the fund maintains records that show receipts and disbursements associated with such assets.

(2)(a) For a fund that is a separate account, income of the fund shall be determined:

1. As if the fund were a trust subject to the provisions of ss. 738.401-738.706; or

2. As a unitrust amount calculated by multiplying the fair market value of the fund as of the first day of the first accounting period and, thereafter, as of the last day of the accounting period that immediately precedes the accounting period during which a payment is received by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The fiduciary ~~trustee~~ shall determine such percentage as of the first month that the fiduciary's ~~trustee's~~ election to treat the income of the fund as a unitrust amount becomes effective. For purposes of this subparagraph, "fair market value" means the fair market value of the assets held in the fund as of the applicable valuation date determined as provided in this subparagraph. The fiduciary ~~trustee~~ is not liable for good faith reliance upon any valuation supplied by the person or persons in possession of the fund. If the fiduciary ~~trustee~~ makes or terminates an election under this subparagraph, the fiduciary ~~trustee~~ shall make such disclosure in a trust disclosure document that satisfies the requirements of s. 736.1008(4)(a).

(b) The fiduciary may ~~trustee shall have discretion to~~ elect the method of determining the income of the fund pursuant to this subsection and may change the method of determining



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income of the fund for any future accounting period.

(3) For a fund that is a nonseparate account, income of the fund is a unitrust amount determined by calculating the present value of the right to receive the remaining payments under 26 U.S.C. s. 7520 of the Internal Revenue Code as of the first day of the accounting period and multiplying it by the percentage determined in accordance with s. 738.1041(2)(b)2.a. The fiduciary ~~trustee~~ shall determine the unitrust amount as of the first month that the fiduciary's ~~trustee's~~ election to treat the income of the fund as a unitrust amount becomes effective.

(4) Except for those trusts described in subsection (5), the fiduciary ~~trustee~~ shall allocate to income the lesser of the payment received from a fund or the income determined under subsection (2) or subsection (3). Any remaining amount of the payment shall be allocated to principal ~~a payment from a fund as follows:~~

~~(a) That portion of the payment the payor characterizes as income shall be allocated to income, and any remaining portion of the payment shall be allocated to principal.~~

~~(b) To the extent that the payor does not characterize any portion of a payment as income or principal and the trustee can ascertain the income of the fund by the fund's account statements or any other reasonable source, the trustee shall allocate to income the lesser of the income of the fund or the entire payment and shall allocate to principal any remaining portion of the payment.~~

~~(c) If the trustee, acting reasonably and in good faith, determines that neither paragraph (a) nor paragraph (b) applies and all or part of the payment is required to be made, the~~



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~~trustee shall allocate to income 10 percent of the portion of the payment that is required to be made during the accounting period and shall allocate the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this paragraph, a payment is not "required to be made" to the extent the payment is made because the trustee exercises a right of withdrawal.~~

(5) For a trust ~~that~~ which, in order to qualify for the estate or gift tax marital deduction under the Internal Revenue Code or comparable law of any state, entitles the spouse to all of the income of the trust, and the terms of the trust are silent as to the time and frequency for distribution of the income of the fund, ~~then:~~

(a) For a fund that is a separate account, unless the spouse directs the fiduciary ~~trustee~~ to leave the income of the fund in the fund, the fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least ~~no less frequently than~~ annually:

1. All of the income of the fund determined in accordance with subparagraph (2)(a)1.; or

2. The income of the fund as a unitrust amount determined in accordance with subparagraph (2)(a)2.

(b) For a fund that is a nonseparate account, the fiduciary ~~trustee~~ shall withdraw and pay to the spouse, at least ~~no less frequently than~~ annually, the income of the fund as a unitrust amount determined in accordance with subsection (3).

(6) This section does not apply to payments to which s. 738.603 applies.





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Section 21. Section 738.603, Florida Statutes, is amended to read:

738.603 Liquidating asset.—

(1) For purposes of this section, the term “liquidating asset” means an asset the value of which will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments for during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to s. 738.602, resources subject to s. 738.604, timber subject to s. 738.605, an activity subject to s. 738.607, an asset subject to s. 738.608, or any asset for which the fiduciary trustee establishes a reserve for depreciation under s. 738.703.

(2) A fiduciary trustee shall allocate to income 5 10 percent of the receipts from the carrying value of a liquidating asset and the balance to principal. Amounts allocated to principal shall reduce the carrying value of the liquidating asset, but not below zero. Amounts received in excess of the remaining carrying value must be allocated to principal.

Section 22. Subsections (1), (3), and (4) of section 738.604, Florida Statutes, are amended to read:

738.604 Minerals, water, and other natural resources.—

(1) If To the extent a fiduciary trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the fiduciary trustee shall allocate such receipts as follows:

(a) If received as nominal delay rental or nominal annual



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rent on a lease, a receipt shall be allocated to income.

(b) If received from a production payment, a receipt shall be allocated to income if and to the extent the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in paragraph (a), paragraph (b), or paragraph (c), 90 percent of the net amount received shall be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust or estate.

(4) If a trust or estate owns an interest in minerals, water, or other natural resources on January 1, 2003, the fiduciary trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary trustee before January 1, 2003. If the trust or estate acquires an interest in minerals, water, or other natural resources after January 1, 2003, the fiduciary trustee shall allocate receipts from the interest as provided in this chapter.

Section 23. Section 738.605, Florida Statutes, is amended to read:

738.605 Timber.—

(1) ~~If To the extent~~ a fiduciary trustee accounts for receipts from the sale of timber and related products pursuant



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to this section, the fiduciary trustee shall allocate such the  
net receipts as follows:

(a) To income to the extent the amount of timber removed  
from the land does not exceed the rate of growth of the timber  
during the accounting periods in which a beneficiary has a  
mandatory income interest;

(b) To principal to the extent the amount of timber removed  
from the land exceeds the rate of growth of the timber or the  
net receipts are from the sale of standing timber;

(c) To or between income and principal if the net receipts  
are from the lease of timberland or from a contract to cut  
timber from land owned by a trust or estate by determining the  
amount of timber removed from the land under the lease or  
contract and applying the rules in paragraphs (a) and (b); or

(d) To principal to the extent advance payments, bonuses,  
and other payments are not allocated pursuant to paragraph (a),  
paragraph (b), or paragraph (c).

(2) In determining net receipts to be allocated pursuant to  
subsection (1), a fiduciary trustee shall deduct and transfer to  
principal a reasonable amount for depletion.

(3) This chapter applies whether or not a decedent or donor  
~~transferor~~ was harvesting timber from the property before the  
property became subject to the trust or estate.

(4) If a trust or estate owns an interest in timberland on  
January 1, 2003, the fiduciary trustee may allocate net receipts  
from the sale of timber and related products as provided in this  
chapter or in the manner used by the fiduciary trustee before  
January 1, 2003. If the trust or estate acquires an interest in  
timberland after January 1, 2003, the fiduciary trustee shall



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allocate net receipts from the sale of timber and related products as provided in this chapter.

Section 24. Subsection (1) of section 738.606, Florida Statutes, is amended to read:

738.606 Property not productive of income.—

(1) If a marital deduction under the Internal Revenue Code or comparable law of any state is allowed for all or part of a trust the income of which must ~~is required to~~ be distributed to the grantor's spouse and the assets of which consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041. The trustee may decide which action or combination of actions to take.

Section 25. Subsections (2) and (3) of section 738.607, Florida Statutes, are amended to read:

738.607 Derivatives and options.—

(2) To the extent a fiduciary ~~trustee~~ does not account under s. 738.403 for transactions in derivatives, the fiduciary ~~trustee~~ shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a fiduciary ~~trustee~~ grants an option to buy property from the trust or estate whether or not the trust or estate owns



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the property when the option is granted, grants an option that permits another person to sell property to the trust or estate, or acquires an option to buy property for the trust or estate or an option to sell an asset owned by the trust or estate, and the fiduciary ~~trustee~~ or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a grantor of the trust or estate for services rendered, shall be allocated to principal.

Section 26. Subsections (2) and (3) of section 738.608, Florida Statutes, are amended to read:

738.608 Asset-backed securities.—

(2) If a trust or estate receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the fiduciary ~~trustee~~ shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return and ~~shall~~ allocate the balance of the payment to principal.

(3) If a trust or estate receives one or more payments in exchange for the trust's or estate's entire interest in an asset-backed security during a single accounting period, the fiduciary ~~trustee~~ shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary ~~trustee~~ shall allocate 10 percent of the payment to income and the balance to principal.



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Section 27. Section 738.701, Florida Statutes, is amended to read:

738.701 Disbursements from income.—A fiduciary ~~trustee~~ shall make the following disbursements from income to the extent they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~ applies:

(1) One-half of the regular compensation of the fiduciary ~~trustee~~ and of any person providing investment advisory or custodial services to the fiduciary ~~trustee~~.

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Section 28. Subsection (1) of section 738.702, Florida Statutes, is amended to read:

738.702 Disbursements from principal.—

(1) A fiduciary ~~trustee~~ shall make the following disbursements from principal:

(a) The remaining one-half of the disbursements described in s. 738.701(1) and (2).

(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination



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and disbursements made to prepare property for sale.

(c) Payments on the principal of a trust debt.

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or will, or to protect the trust, estate, or its property.

(e) Premiums paid on a policy of insurance not described in s. 738.701(4) of which the trust or estate is the owner and beneficiary.

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of such activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(h) Payments representing extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments; however, a fiduciary ~~trustee~~ may establish an allowance for depreciation out of income to the extent permitted by s. 738.703.

Section 29. Subsection (2) of section 738.703, Florida Statutes, is amended to read:

738.703 Transfers from income to principal for depreciation.—



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(2) A fiduciary ~~trustee~~ may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation but may not transfer any amount for depreciation:

(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) During the administration of a decedent's estate; or

(c) Under this section if the fiduciary ~~trustee~~ is accounting under s. 738.403 for the business or activity in which the asset is used.

Section 30. Subsections (1), (2), and (3) of section 738.704, Florida Statutes, are amended to read:

738.704 Transfers from income to reimburse principal.—

(1) If a fiduciary ~~trustee~~ makes or expects to make a principal disbursement described in this section, the fiduciary ~~trustee~~ may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent the fiduciary ~~trustee~~ has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because the amount is unusually large.

(b) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and





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broker's commissions.

(c) Disbursements described in s. 738.702(1)(g).

(3) If the asset the ownership of which gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a fiduciary ~~trustee~~ may continue to transfer amounts from income to principal as provided in subsection (1).

Section 31. Section 738.705, Florida Statutes, is amended to read:

738.705 Income taxes.—

(1) A tax required to be paid by a fiduciary ~~trustee~~ based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a fiduciary ~~trustee~~ based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a fiduciary ~~trustee~~ on the trust's or estate's share of an entity's taxable income shall be paid proportionately:

(a) From income to the extent receipts from the entity are allocated to income; ~~and~~

(b) From principal to the extent—

~~1. receipts from the entity are allocated to principal; and~~

~~2. The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (a) and subparagraph 1.~~

(c) From principal to the extent that the income taxes payable by the trust or estate exceed the total receipts from the entity.

(4) After applying subsections (1)-(3), the fiduciary shall



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adjust income or principal receipts to the extent that the  
trust's or estate's income taxes are reduced, but not  
eliminated, because the trust or estate receives a deduction for  
payments made to a beneficiary. The amount distributable to that  
beneficiary as income as a result of this adjustment shall be  
equal to the cash received by the trust or estate, reduced, but  
not below zero, by the entity's taxable income allocable to the  
trust or estate multiplied by the trust's or estate's income tax  
rate. The reduced amount shall be divided by the difference  
between 1 and the trust's or estate's income tax rate in order  
to determine the amount distributable to that beneficiary as  
income before giving effect to other receipts or disbursements  
allocable to that beneficiary's interest. ~~For purposes of this~~  
~~section, receipts allocated to principal or income shall be~~  
~~reduced by the amount distributed to a beneficiary from~~  
~~principal or income for which the trust receives a deduction in~~  
~~calculating the tax.~~

Section 32. Section 738.801, Florida Statutes, is amended  
to read:

(Substantial rewording of section. See  
s. 738.801, F.S., for present text.)

738.801 Apportionment of expenses; improvements.-

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

(a) "Remainderman" means the holder of the remainder  
interests after the expiration of a tenant's estate in property.

(b) "Tenant" means the holder of an estate for life or term  
of years in real property or personal property, or both.

(2) If a trust has not been created, expenses shall be  
apportioned between the tenant and remainderman as follows:



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(a) The following expenses are allocated to and shall be paid by the tenant:

1. All ordinary expenses incurred in connection with the administration, management, or preservation of the property, including interest, ordinary repairs, regularly recurring taxes assessed against the property, and expenses of a proceeding or other matter that concerns primarily the tenant's estate or use of the property.

2. Recurring premiums on insurance covering the loss of the property or the loss of income from or use of the property.

3. Any of the expenses described in subparagraph (b)3. which are attributable to the use of the property by the tenant.

(b) The following expenses are allocated to and shall be paid by the remainderman:

1. Payments on the principal of a debt secured by the property, except to the extent the debt is for expenses allocated to the tenant.

2. Expenses of a proceeding or other matter that concerns primarily the title to the property, other than title to the tenant's estate.

3. Except as provided in subparagraph (a)3., expenses related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of such activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations,



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statutory or common law claims by third parties, and defending claims based on environmental matters.

4. Extraordinary repairs.

(c) If the tenant or remainderman incurred an expense for the benefit of his or her own estate without consent or agreement of the other, he or she must pay such expense in full.

(d) Except as provided in paragraph (c), the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant if the improvement is not reasonably expected to outlast the estate of the tenant. In all other cases, only a part shall be paid by the tenant while the remainder shall be paid by the remainderman. The part payable by the tenant is ascertainable by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant, except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made by using the rate defined in 26 U.S.C. s. 7520, then in effect and, in the case of an estate for life, the official mortality tables then in effect under 26 U.S.C. s. 7520. Other evidence of duration or expectancy may not be considered.

(3) This section does not apply to the extent it is inconsistent with the instrument creating the estates, the agreement of the parties, or the specific direction of the taxing or other statutes.

(4) The common law applicable to tenants and remaindermen



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supplements this section, except as modified by this section or other laws.

Section 33. This act shall take effect January 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to fiduciaries; amending s. 701.04, F.S.; requiring a mortgage holder to provide certain information within a specified time relating to the unpaid loan balance due under a mortgage if a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property makes a written request under certain circumstances; allowing financial institutions to release certain mortgagor information to specified persons without penalty; amending s. 738.102, F.S.; defining the term "carrying value"; amending s. 738.103, F.S.; providing for application; amending s. 738.104, F.S.; deleting a provision authorizing a trustee to release the power to adjust between principal and income if the trustee desires to convert the form of certain trusts; limiting the power to adjust a trust; deleting a provision that provides construction and application relating to the



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administration of trusts in this state or under this state's law; amending s. 738.1041, F.S.; defining the term "average fair market value" and revising the term "unitrust amount"; deleting a duplicative provision relating to conclusive determinations of the terms of a unitrust; revising provisions relating to an express total return unitrust; amending s. 738.105, F.S.; substituting the term "trustee" for "fiduciary" with respect to judicial control of discretionary powers; amending s. 738.201, F.S.; revising provisions relating to the determination and distribution of net income; amending s. 738.202, F.S.; revising provisions relating to distributions to residuary and remainder beneficiaries; amending ss. 738.301, 738.302, and 738.303, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; amending s. 738.401, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising how distributions from entities are allocated between income and principal; amending ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; amending s. 738.602, F.S.; substituting the term "fiduciary" for "trustee" to clarify that provisions apply to all fiduciaries; revising provisions relating to allocations to trusts; amending s. 738.603, F.S.; substituting the term "fiduciary" for "trustee" to



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1521 clarify that provisions apply to all fiduciaries;  
1522 revising provisions relating to the allocation between  
1523 income and principal when liquidating assets; amending  
1524 ss. 738.604, 738.605, 738.606, 738.607, 738.608,  
1525 738.701, 738.702, 738.703, and 738.704, F.S.;  
1526 substituting the term "fiduciary" for "trustee" to  
1527 clarify that provisions apply to all fiduciaries;  
1528 amending s. 738.705, F.S.; substituting the term  
1529 "fiduciary" for "trustee" to clarify that provisions  
1530 apply to all fiduciaries; revising the method for  
1531 allocating income taxes between income and principal;  
1532 amending s. 738.801, F.S.; clarifying the  
1533 apportionment of expenses between tenants and  
1534 remaindermen; providing an effective date.

By Senator Bogdanoff

25-00953-12

20121050

A bill to be entitled

An act relating to mortgages; amending s. 701.04, F.S.; requiring that the holder of a mortgage deliver an estoppel letter containing certain information regarding the unpaid balance of the loan secured by the mortgage to an owner of an interest in property encumbered by the mortgage, upon request; providing that if the requestor is not the mortgagor, the estoppel letter need not contain an itemization of the unpaid balance of the loan, but must include a per-day amount for the unpaid balance; requiring that an owner of an interest in property encumbered by a mortgage include, along with the request, a copy of the instrument showing an ownership interest in the property; providing an effective date.

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

Section 1. Subsection (1) of section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receiving a receipt of the written request ~~by of~~ a mortgagor or an owner of an interest in property encumbered by a mortgage, the holder of a mortgage shall deliver, or cause to be delivered through the mortgage servicer, to the requestor ~~mortgagor~~ at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage, including principal, interest, and any other charges properly due under or secured by the

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mortgage and interest on a per-day basis for the unpaid balance. However, if the requestor is not the mortgagor, the estoppel letter need not contain an itemization of the unpaid balance of the loan secured by the mortgage, but must include a per-day amount for the unpaid balance. An owner of an interest in property encumbered by a mortgage shall include, along with the request, a copy of the instrument showing an ownership interest in the property. Whenever the amount of money due on any mortgage, lien, or judgment ~~is shall be~~ fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment ~~has shall have~~ been made, shall execute in writing an instrument acknowledging satisfaction of ~~the said~~ mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such purposes in the proper county. Within 60 days ~~after of~~ the date of receiving receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of the provisions of this section, the prevailing party ~~is shall be~~ entitled to attorney ~~attorney's~~ fees and costs.

Section 2. This act shall take effect upon becoming a law.



**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 Health Regulation Committee

BILL: CS/SB 1052

INTRODUCER: Health Regulation Committee and Senator Ring

SUBJECT: Newborn Screening for Critical Congenital Heart Disease

DATE: January 26, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	<b>Fav/CS</b>
2.	Burgess	Burgess	BI	<b>Favorable</b>
3.			BC	
4.				
5.				
6.				

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

- |                              |  |   |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>                   | Technical amendments were recommended   |
|                              | <input type="checkbox"/>                   | Amendments were recommended             |
|                              | <input type="checkbox"/>                   | Significant amendments were recommended |

**I. Summary:**

The bill requires all licensed hospitals and licensed birth centers that provide maternity and newborn care to screen all newborns, prior to discharge, for Critical Congenital Heart Disease (CCHD). For a home birth, the health care provider in attendance is responsible for the screening for CCHD. A parent or legal guardian may object to the screening with a signed written objection. If the parent or legal guardian objects, the screening must not be completed.

The bill defines screening to mean measuring blood oxygen saturation using pulse oximetry to determine whether the newborn needs additional diagnostic evaluation for CCHD. The bill requires each hospital to designate a lead physician to be responsible for programmatic oversight of the screening and to ensure that appropriate referrals are completed. Each birth center must designate a licensed health care provider to provide programmatic oversight and to ensure that appropriate referrals are being completed.

The bill provides specific rulemaking authority to the Department of Health (DOH or department) and defines the powers and duties of the department for administering the screening requirements.

This bill creates section 383.146 of the Florida Statutes.

## II. Present Situation:

### **Congenital Heart Disease**

Congenital Heart Disease (CHD) is a term that embraces a variety of defects that are present in the structure of the heart at birth. Defects may involve the interior walls of the heart, valves inside the heart, or the arteries and veins that carry blood to the heart or out to the body. These congenital defects change the normal flow of blood through the heart, leading to a range of conditions and symptoms. CHD affects about 7 to 9 of every 1,000 live births in the United States and Europe and is the most common cause of death in the first year of life, with defects accounting for 3 percent of all infant deaths and more than 40 percent of all deaths due to congenital malformations.<sup>1</sup>

*Critical* CHD is a subset of congenital heart defects that causes severe and life-threatening symptoms and requires intervention within the first days or first year of life. Critical Congenital Cyanotic Heart Disease is a group of congenital heart defects characterized by a diminished availability of oxygen to the body tissues.

Current methods for detecting CHD generally include prenatal ultrasound screening and careful and repeated clinical examinations, both in the hospital nursery and as part of routine well-child care. CCHD and Critical Congenital Cyanotic Heart Disease are often missed by hospital discharge and post-discharge clinical exams of infants.

Pulse oximetry screening can identify some newborns with CCHD. A pulse oximeter is a medical device that measures the percentage of hemoglobin in the blood that is saturated with oxygen. The device indirectly monitors the oxygen saturation of a patient's blood without the need to take a blood sample. It is estimated that one quarter of congenital heart defects could be detected and potentially treated by measuring blood oxygen saturation.<sup>2</sup> Neonates with abnormal pulse oximetry screening results need confirmatory testing for the cause of the low oxygen saturation, and immediate intervention, often involving a surgical procedure.

A screen is considered positive if: any oxygen saturation measure is less than 90 percent (in the initial screen or in repeat screens); oxygen saturation is less than 95 percent in the right hand and foot on three measures, each separated by 1 hour; or a greater than 3 percent absolute difference exists in oxygen saturation between the right hand and foot on three measures, each separated by one hour. Any screening that is greater than or equal to 95 percent in the right hand or foot with a

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<sup>1</sup> Letter dated October 15, 2010, to The Honorable Kathleen Sebelius, Secretary of Health and Human Services, from R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children. Found at:

<<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/criticalcongenital.pdf>> (Last visited on January 23, 2012).

<sup>2</sup> Letter dated September 21, 2011, to R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, from The Honorable Kathleen Sebelius, Secretary of Health and Human Services. Found at:

<<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/cyanoticheartsecre09212011.pdf>> (Last visited on January 23, 2012).

less than or equal to 3 percent absolute difference in oxygen saturation between the right hand or foot is considered a negative screen and screening would end.<sup>3</sup>

Any infant with a positive screen should have a diagnostic echocardiogram. The infant's pediatrician should be notified immediately and the infant might need to be seen by a cardiologist for follow-up.<sup>4</sup>

### **Newborn Screening**

All babies born in the United States are checked for certain medical conditions soon after birth. This is called newborn screening. Over 4 million infants are screened each year. Newborn screening identifies conditions that can affect a child's long-term health or survival. Early detection, diagnosis, and intervention can prevent death or disability and enable children to reach their full potential. All babies are screened, even if they look healthy, because some medical conditions cannot be seen by just looking at the baby. Each state runs its own newborn screening program.

Newborn screening usually takes place before a newborn leaves the hospital. Most tests use a few drops of blood from pricking the baby's heel. The blood specimen is placed on a special filter paper and, in Florida, the specimen card is sent to the DOH Newborn Screening Laboratory in Jacksonville for testing. The laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24-48 hours. The DOH Children's Medical Services program provides the follow-up for all abnormal screening results.

Section 383.14, F.S., requires the Florida DOH to promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, *as screening programs accepted by current medical practice become available and practical in the judgment of the department*.

Section 383.145, F.S., establishes the state's newborn and infant hearing screening program. Hospitals perform the hearing screening on all babies prior to discharge. Licensed birth centers are required to provide referrals for the hearing screening. A hearing test involves placing a tiny earphone in the baby's ear and measuring his or her response to sound. If a screening test suggests a problem, the baby's doctor will follow up with further testing.

Most states screen for a standard number of conditions, but some states may screen for more conditions. Florida currently screens for 35 disorders, including hearing impairment, but does not screen for CHD.<sup>5</sup> The National Newborn Screening and Genetics Resource Center provides a current list of conditions included in each state's newborn screening program. As of

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<sup>3</sup> *Pulse Oximetry Screening for Critical Congenital Heart Defects*, Centers for Disease Control and Prevention. Found at: <<http://www.cdc.gov/ncbddd/pediatricgenetics/pulse.html>> (Last visited on January 23, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

December 19, 2011, only one state (New Jersey) requires screening of all newborns for congenital heart disease, but the requirement has not yet been implemented.<sup>6</sup>

### **Adding Conditions to Required Screening**

The DOH is required, after consultation with the Genetics and Newborn Screening Advisory Council, to adopt rules requiring every newborn in this state, prior to becoming 1 week of age, to be subjected to a test for phenylketonuria and, at the appropriate age, to be tested for other metabolic diseases and hereditary or congenital disorders *as the department deems necessary*.<sup>7</sup> The purpose of the Genetics and Newborn Screening Advisory Council<sup>8</sup> is to advise the department about:

- Conditions for which testing should be included under the screening program and the genetics program.
- Procedures for collection and transmission of specimens and recording of results.
- Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

At the national level, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children advises the Secretary, U.S. Department of Health and Human Services, on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and standards. The advisory committee recommends conditions that should be added to the Recommended Uniform Screening Panel.

On September 17, 2010, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children recommended that Critical Congenital *Cyanotic* Heart Disease be added to the Recommended Uniform Screening Panel.<sup>9</sup> Secretary Sebelius accepted the committee's recommendation on September 21, 2011, and CCHD screening was added to the Recommended Uniform Screening Panel as a core condition.<sup>10</sup> The Secretary included a broader group of congenital heart defects (Critical CHD) than what the Advisory Committee had originally recommended (Critical Congenital Cyanotic Heart Disease).

On January 20, 2012, the Florida Genetics and Newborn Screening Advisory Council recommended that CHD be added to the panel of disorders screened in the Florida Newborn Screening Program.

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<sup>6</sup> National Newborn Screening Status Report, updated 11/21/11. Found at: <<http://genes-r-us.uthscsa.edu/nbsdisorders.pdf>> (Last visited on January 23, 2012).

<sup>7</sup> s. 383.14(2), F.S.

<sup>8</sup> s. 383.14(5), F.S.

<sup>9</sup> Supra, fn 1.

<sup>10</sup> Supra, fn 2.

## **Hospital, Birth Center, and Home Deliveries**

In 2010 there were 214,519 resident live births in Florida.<sup>11</sup> Of these births, 211,485 (98.6 percent) occurred in hospitals and physicians attended 88.5 percent of the hospital births.<sup>12</sup> Midwives attended 10.9 percent of live births in hospitals. Birth centers accounted for 1,377 births (0.64 percent of live births) and midwives attended 96.9 percent of birth center births. Physicians attended 2.8 percent of birth center births. In 2010, there were 1,508 births in an identified place other than a hospital or birth center and 149 births where the place of delivery was unknown.<sup>13</sup>

Hospitals are licensed and regulated under ch. 395, F.S., and part II of ch. 408, F.S. Birth centers are licensed and regulated under ss. 383.30-383.335, F.S., and part II of ch. 408, F.S. There are 23 licensed birth centers in Florida.

## **Health Insurance**

Section 627.6416, F.S., requires individual health insurance policies that provide coverage on an expense-incurred basis, which provide coverage for a member of a family of the insured or subscriber, to include, for children, coverage for child health supervision services. These services are covered from the moment of birth to age 16 years. The term “child health supervision services” means physician-delivered or physician-supervised services that include, at a minimum, periodic visits including a history, a physical examination, a developmental assessment and anticipatory guidance, and appropriate immunizations and laboratory tests. These services must be provided in accordance with prevailing medical standards consistent with the Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics. The recommendations currently include newborn metabolic and hemoglobin screening.

The same child health supervision requirements applicable to individual health insurance policies are also applied to group, blanket, and franchise health insurance policies under s. 627.6579, F.S., and to health maintenance organization contracts under s. 641.31(30), F.S.

## **Insurance Mandates**

Pursuant to s. 624.215, F.S., every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies, must submit to the Agency for Health Care Administration (Agency) and the legislative committee having jurisdiction a report which assesses the social and financial impacts of the proposed coverage.

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<sup>11</sup> Department of Health, *2010 Florida Vital Statistics Annual Report – Live Births*. Found at: <<http://www.flpublichealth.com/VSBOOK/pdf/2010/Births.pdf>> (Last visited on January 23, 2012).

<sup>12</sup> *Id.*

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

## **Medicaid**

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency is responsible for Medicaid. Medicaid serves approximately 3.19 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion.

The total number of live births paid for by Medicaid through fee for service and health maintenance organizations during FY 2010-2011 was 130,989.<sup>14</sup>

Under s. 383.145(3)(j), F.S., which establishes the requirements for newborn and infant hearing screening, the Medicaid program must cover the initial procedure for screening the hearing of newborns or infants and any medically necessary follow-up reevaluations leading to diagnosis. These services are reimbursable under Medicaid as an expense compensated supplemental to the per diem rate for Medicaid patients enrolled in MediPass or Medicaid patients covered by a fee for service program. For Medicaid patients who are enrolled in a health maintenance organization, Medicaid must reimburse providers directly at the Medicaid rate. These services may not be considered a covered service for the purposes of establishing the payment rate for Medicaid health maintenance organizations. Nonhospital-based providers are eligible to bill Medicaid for the professional and technical component of each procedure code.

Medicaid pays hospitals a per diem rate for hospital inpatient services based on hospital cost reports. Cost reports are submitted annually and rates are adjusted as appropriate. Standard testing of a patient's vital signs is included in the per diem rate regardless of the Medicaid recipient's age. Measuring blood oxygen saturation using pulse oximetry is considered a standard part of testing a patient's vital signs. A separate screening for newborns for congenital heart disease is not currently reimbursed by Medicaid other than as a part of the hospital per diem rate. Medicaid currently does not reimburse separately for the screening of newborns for congenital heart disease in any other setting either.

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

The bill requires each licensed hospital and birth center that provides maternity and newborn care services to screen all newborns, prior to discharge, for CCHD. This requirement must be implemented by October 1, 2012. For home births, the health care provider in attendance is responsible for the screening.

The bill defines screening to mean measuring blood oxygen saturation using pulse oximetry to determine whether the newborn needs additional diagnostic evaluation for CCHD.

A parent or legal guardian may object to the screening by providing a signed written objection, in which case the screening must not be completed. The physician, midwife, or other person who

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<sup>14</sup> See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 1052 – on file with the Senate Health Regulation Committee.

is attending the newborn is required to maintain a record that the screening has not been performed and attach the written objection.

Appropriate documentation of the screening completion, results, interpretation, and recommendations must be placed in the medical record within 24 hours after completion of the screening procedure.

The bill requires each hospital to formally designate a lead physician to be responsible for programmatic oversight of the newborn CCHD screening and to ensure that the appropriate referrals are being completed following a positive screening test result. The bill requires each birth center to designate a licensed health care provider to be responsible for programmatic oversight and to ensure that the appropriate referrals are being completed.

The DOH is provided with specific rulemaking authority. The bill requires the department to administer and provide services pursuant to this newly created section of law and specifically to:

- Furnish all physicians, county health departments, perinatal centers, birthing centers, and hospitals forms on which the results of tests for CCHD are to be reported to the department.
- Charge and collect fees sufficient to administer the newborn screening program for CCHD.

The effective date of the bill is July 1, 2012.

**Other Potential Implications:**

Section 383.14, F.S., gives the DOH, in consultation with the Genetics and Newborn Screening Advisory Council, the authority to, *by rule*, add to the list of disorders or diseases for which newborns must be screened. This provides a mechanism for newborn screening to be expanded as tests become available that are accepted by current medical practice and that are practical in the judgment of the department. If the department decides that infants should be tested for an additional condition, the department would need budget authority to cover the costs of conducting additional tests, however.

In regard to CCHD, both the federal and state advisory groups have recommended adding CCHD to the list of mandatory newborn screening. If the Legislature provides budget authority to the department, there is no need to specifically include CCHD in the Florida Statutes. If the Legislature does not provide this budget authority, the bill cannot be implemented.

Does the Legislature want to include all thirty-four current mandatory tests in statute and amend the statute in the future to add tests as they become available? Is the need for approval of budget authority a sufficient check to keep the list of mandatory tests from growing out of control? Is the need for approval of budget authority a sufficient check to keep impractical tests from being added to the list of mandatory tests?

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**D. Other Constitutional Issues:**

The requirement in the bill that the objection to screening must contain the parent's or guardian's signature may violate the right of privacy under the Florida Constitution, Article I, Section 23.

The bill may impair existing contracts since the requirement for health insurers and health maintenance organizations to cover screening for CCHD takes effect on July 1, 2012, and does not provide an exemption for existing contracts.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The DOH currently collects a maximum hospital fee of \$15 per live birth, as authorized in s. 383.14(3)(g), F.S., to cover the cost of newborn screening. Adding CCHD to the list of newborn screenings could require an increase in the hospital fee from \$15 to \$15.78 per live birth.

**B. Private Sector Impact:**

Hospitals, birth centers, and health care practitioners attending home births will have additional screening and reporting requirements.

Early detection with prompt early treatment may lead to a better outcome for babies born with severe heart disease. Detection prior to hospital discharge may also prevent unexpected events such as death or an emergency health crisis in the home setting.

The private sector fiscal impact is indeterminate at this point.



**C. Government Sector Impact:**

The DOH will need to create and implement a system to track CCHD test results within the existing program structure. The CCHD screening is similar to newborn hearing screening in that the birthing facility conducts the actual testing and the DOH tracks the results and provides surveillance activities for infants who fail the screening test.

The main costs of adding CCHD to the Florida Newborn Screening Program are related to the necessary modifications of the current data system to add the screening results and staff time to track infants who fail the screening test. Follow-up actions would include communicating with physicians and parents regarding the outcome of the confirmatory testing and obtaining the final diagnosis and outcome. The department estimates its expenditures to be \$166,191 in FY 2012-2013 and \$154,922 in FY 2013-2014.

Funding for the program could come from surplus revenue generated from billing for other disorders tested in the Newborn Screening program. The department must be provided budget authority to spend the surplus funding for this purpose. As of November 22, 2011, the Newborn Screening program had a surplus of revenue in FY 2010-2011 totaling \$2,110,778.<sup>15</sup>

The fiscal impact on the state group insurance plans is indeterminate at this point.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The requirement for a written signature for objecting to screening by a parent or guardian at lines 57 and 58 is more prescriptive than a similar requirement under s. 383.14(4), F.S., which does not require a signature.

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal mandating health coverage to submit to the Agency and the appropriate legislative committees having jurisdiction a report assessing the social and financial impacts of the proposed coverage. Neither the Committee on Health Regulation nor the Committee on Banking and Insurance received a report analyzing newborn screening for CCHD as created by the bill.

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

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

**CS by Health Regulation on January 25, 2012:**

The CS narrows the screening requirements to apply to *Critical* Congenital Heart Disease

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<sup>15</sup> See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

and specifies that screening means measuring blood oxygen saturation using pulse oximetry. The CS requires birth centers and the health care providers in attendance at home births to conduct the test rather than requiring them to refer the infant to a hospital or physician. The CS no longer requires a physician to conduct the screening test. The CS removes the requirement for Medicaid to pay for the screening in addition to its usual reimbursement to providers. It also removes the requirement for health insurers and health maintenance organizations to compensate providers for the screening test.

**B. Amendments:**

None.

By the Committee on Health Regulation; and Senator Ring

588-02355-12

20121052c1

A bill to be entitled

An act relating to newborn screening for critical congenital heart disease; creating s. 383.146, F.S.; providing definitions; providing requirements for screening newborns for critical congenital heart disease; providing an exception; requiring that the physician, midwife, or other person attending the newborn maintain a record if the screening has not been performed and attach a written objection signed by the parent or guardian; requiring appropriate documentation of the screening completion in the medical record; requiring that each hospital and each licensed birth center designate a lead physician and a licensed health care provider, respectively, to provide programmatic oversight for the screening; requiring that the screening for critical congenital heart disease be conducted on all newborns in hospitals and birth centers in this state; authorizing the Department of Health to adopt rules to administer the screening program; providing powers and duties of the department; providing an effective date.

WHEREAS, congenital heart disease is the most common birth defect in infants, affecting 8 out of every 1,000 newborn babies, and

WHEREAS, early detection of congenital heart disease is crucial to the health of a newborn baby because, if the condition goes undiagnosed, it can cause major problems later in the child's life, and

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

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WHEREAS, pulse oximetry is a noninvasive method of monitoring the oxygen level in the blood and is recommended as a method of screening a patient for critical congenital heart disease, and

WHEREAS, physical exertion and participation in sports can cause excess stress on the heart and, if the disease is not detected and is severe enough, participation in strenuous activity can result in death, NOW, THEREFORE,

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

Section 1. Section 383.146, Florida Statutes, is created to read:

383.146 Newborn screening for critical congenital heart disease.—

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

(a) "Department" means the Department of Health.

(b) "Newborn" means an age range from birth through 29 days.

(c) "Screening" means measuring blood oxygen saturation using pulse oximetry to determine whether a newborn needs additional diagnostic evaluation for critical congenital heart disease.

(2) REQUIREMENTS FOR SCREENING OF NEWBORNS; REFERRAL FOR ONGOING SERVICES.—

(a) Each licensed hospital that provides maternity and newborn care services shall ensure that, prior to discharge, all newborns are screened for the detection of critical congenital heart disease.

Page 2 of 4

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

588-02355-12

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59 (b) Each licensed birth center that provides maternity and  
 60 newborn care services shall ensure that, prior to discharge, all  
 61 newborns are screened for the detection of critical congenital  
 62 heart disease.

63 (c) If the parent or legal guardian of the newborn objects  
 64 to the screening, the screening must not be completed,  
 65 notwithstanding any other provision of this section. In such  
 66 case, the physician, midwife, or other person who is attending  
 67 the newborn shall maintain a record that the screening has not  
 68 been performed and attach a written objection that must be  
 69 signed by the parent or guardian.

70 (d) For home births, the health care provider in attendance  
 71 is responsible for the screening.

72 (e) Appropriate documentation of the screening completion,  
 73 results, interpretation, and recommendations must be placed in  
 74 the medical record within 24 hours after completion of the  
 75 screening procedure.

76 (f) Each hospital shall formally designate a lead physician  
 77 who is responsible for programmatic oversight of newborn  
 78 congenital heart disease screening. Each licensed birth center  
 79 shall designate a licensed health care provider to provide such  
 80 programmatic oversight. Such physician or health care provider  
 81 shall ensure that the appropriate referrals are completed  
 82 following a positive screening test result.

83 (g) By October 1, 2012, screening for critical congenital  
 84 heart disease must be conducted on all newborns in hospitals and  
 85 birth centers in this state following birth admission.

86 (3) RULES.—After consultation with the Genetics and Newborn  
 87 Screening Advisory Council, the department shall adopt and

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88 enforce rules requiring that every newborn in this state be  
 89 screened for critical congenital heart disease. The department  
 90 shall adopt such additional rules as are necessary for the  
 91 administration of this section, including rules providing  
 92 definitions of terms, rules relating to the methods used and  
 93 time or times for testing as accepted medical practice  
 94 indicates, rules relating to charging and collecting fees for  
 95 the administration of the newborn screening program required by  
 96 this section, rules for processing requests and releasing test  
 97 and screening results, and rules requiring mandatory reporting  
 98 of the results of tests and screenings for this condition to the  
 99 department.

100 (4) POWERS AND DUTIES OF THE DEPARTMENT.—The department  
 101 shall administer and provide services required pursuant to this  
 102 section and shall:

103 (a) Furnish to all physicians, county health departments,  
 104 perinatal centers, birth centers, and hospitals forms on which  
 105 the results of tests for critical congenital heart disease shall  
 106 be reported to the department.

107 (b) Have the authority to charge and collect fees  
 108 sufficient to administer the newborn screening program required  
 109 under this section.

110 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

7 Feb 12

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

Meeting Date

Topic Newborn Screening Bill Number 1052  
(if applicable)

Name James Mosteller Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Government Relations Director

Address 2851 Remington Green Circle, NE Phone 850/727-3712  
Street

Tallahassee FL 32309  
City State Zip

E-mail James.Mosteller@heart.org

Speaking: ☒ For ☐ Against ☐ Information

Representing American Heart 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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 7 / 2012

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1052  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/7/12

Meeting Date

Topic Newborn Screening for CHD

Name Karen Thurston Chavez

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

Address \_\_\_\_\_  
Street

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Broken Hearts 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 (10/20/11)

Bill Number SB 1052  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Phone 850-443-2984

E-mail Ktchavez@  
brokenheartsofflorida.org

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/7/12  
Meeting Date

Topic Congenital Heart Defect

Bill Number SB 1052  
(if applicable)

Name JASON HAESLER

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 306 NE 7th Ave  
Street  
Gainesville FL  
City State Zip

Phone \_\_\_\_\_

E-mail jhaesler@cox.net

Speaking: ☒ For ☐ Against ☐ Information

Representing March of Dimes

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 (10/20/11)



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

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

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

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BILL: SB 1476

INTRODUCER: Senator Richter

SUBJECT: Annuities

DATE: February 3, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 1476 substantially revises the Florida consumer protection laws related to sales of annuities by incorporating the 2010 National Association of Insurance Commissioners model regulation on annuity protections. The bill expands the scope of the consumer protection laws to include all consumers purchasing annuities. Under current law, the consumer protections only apply to senior consumers 65 years of age and older. However, the bill also deletes some consumer protections that are currently available to senior consumers. The bill's provisions can be summarized as follows:

*Suitability of Annuities* – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer's suitability information. Additional duties are placed on insurers or insurance agents when a transaction involves the exchange or replacement of an annuity.

*Documentation of Sales Transaction* – An agent or agent's representative must make a record of any recommendation made to a consumer.

*Prohibitions on Agents* – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer's request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

*Agent Training* – Agents are prohibited from selling annuity products unless they have sufficient knowledge of annuities and complete a one-time 4-hour annuity training course approved by the Department of Financial Services (DFS).

*Provisions Related to Senior Consumers Repealed by the Bill* – The bill repeals the following provisions related to annuity sales to senior consumers:

- Requirement to document suitability information on a form promulgated by the DFS that is signed by both the agent and consumer.
- Prior to entering into a contract to replace or exchange an annuity, the agent must provide a written disclosure to the consumer detailing the differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer.
- Prohibition against surrender charges or deferred sales charges in annuity contracts issued to a senior consumer exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.
- Requirement that unconditional refunds to senior consumers related to fixed or variable annuities must be available for 21 days and to be equal to the surrender value of the annuity contract.

The bill has an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 627.4554 and 626.99

## **II. Present Situation:**

### **Annuities: Fixed vs. Variable<sup>1</sup>**

An annuity is a contract between a customer and an insurer for which the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. There are two basic annuity types. A fixed annuity guarantees fixed payments at a fixed interest rate to the annuitant, while a variable annuity provides a rate of return that is not guaranteed and is based on the success of the investment option that underlies the annuity. In a variable annuity, the premium dollars are placed into a variety of investments called subaccounts. The performance of the investments in the subaccounts determines the performance of the annuity. Variable annuities will often offer a wide range of subaccount investment options with varying degrees of risk. Fixed annuities are considered insurance products that may be sold by a licensed life insurance and annuity agent. Variable annuities are considered investment products and under the jurisdiction of both securities regulators and state insurance departments. Agents selling this type of annuity must hold a variable annuity license from the state insurance regulator, a securities license and an active securities registration with a broker/dealer. Variable annuity sales are subject to the suitability standards contained in the Financial Industry Regulatory Authority (FINRA) under FINRA Rule 2821.

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<sup>1</sup> The Present Situation is based in part on *Florida Department of Financial Services 2008 White Paper on Annuities*, Roxanne Rehm (March 5, 2008).

Both fixed and variable annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer.

Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows on a tax-deferred basis. However, unlike some other investments that are subject to the capital gains tax (maximum 15 percent), a deferred annuity is subject to the ordinary income tax rates of up to 35 percent. Both deferred and immediate annuities are long-term contracts that typically restrict investor's ability to access money placed in the annuity. Deferred annuities may be unsuitable investments for many senior citizens because of this fact.

### **Equity Indexed Annuities**

Equity indexed annuities are defined and regulated as fixed annuity products, but act more as a hybrid of a fixed and variable annuity. Equity indexed annuities provide a "minimum guaranteed" interest rate in combination with an index-linked component. This is different than a traditional fixed annuity which provides a specific guaranteed rate of interest.

Equity indexed annuities are one of the fastest growing segments of the insurance industry today and many insurance agents are aggressively marketing them to seniors in Florida. The products are touted as a vehicle for investors to realize gains similar to those in the stock market without the corresponding risk. However, such annuities rarely provide returns that are the equivalent of a stock market index. Additionally, even with a guaranteed minimum interest rate, investors may still lose money purchasing an equity indexed annuity if the rate is less than the premium or initial payment. Investors who need to cancel an annuity to access funds prior to the maturity of the contract may lose principal through surrender charges.

Equity indexed annuities are complex and can contain many detrimental features such as hidden penalties, fees, and large multi-year surrender charges. These annuities are not considered securities and not required to register with the federal Securities and Exchange Commission, as is the case with variable annuities. As a result, the law does not require equity indexed annuities to be accompanied with a prospectus that discloses possible investment risks. Additionally, unlike variable annuity products that may only be sold by agents with securities and insurance licenses, agents that have only an insurance license may sell equity indexed annuities.

Equity based annuities have several unique factors that may affect potential return. The unique factors used to calculate the interest an investor may receive often include:

- **Interest Rate Caps** – A maximum rate of interest that an investor will receive, even if the underlying stock market index performs well. For example, if an equity indexed annuity has

a cap of 6 percent the investor is limited to a 6 percent return even if the underlying investment index earns a much higher percentage.

- **Participation Rates** – Determines how much of the increase or return of the underlying stock market index will be used to calculate the annuity's return on investment. For example, if the participation rate is 70 percent, and the index increases 20 percent, the return credited to the equity indexed annuity would be only 14 percent.
- **Index Crediting Methods** – Permit investors to choose the method by which interest will be credited to equity indexed annuities. For instance, the annual ratchet method usually credits an amount of interest based on the increase (if any) in value of the underlying index from the beginning to the end of the year. The point-to-point method credits an amount of interest based on any increase in the value of the underlying index from the beginning to the end of a specific period of time, sometimes based on the contract date.

Equity indexed annuities often have various fees and charges. These include:

- **Surrender Charges** – These vary dramatically among annuities and can be as high as 25 percent and be valid for up to 20 years.
- **Administrative Fees or Margins** – The fees in some equity indexed annuities amount to the difference between the percentage gain in the index and the actual amount credited to the investor. These fees or "margins" are not always disclosed clearly in marketing materials or contracts.
- **Market Value Adjustments** – Typically function to alter or reduce the cash value of an annuity dependent on changes in the interest rate since the contract's issue. Such adjustments may result in a loss of previously credited bonuses or interest credits.
- **Asset Fees** – Charged by the company, based upon a percentage of the value of the annuity, sometimes subject to change annually.

It is important to note that whether an annuity is fixed, variable or equity indexed, the industry does not require that the annuity contract be provided to the consumer prior to or at the time of purchase. Thus, the consumer must rely on the representations of the agent. Florida requires that contracts contain a free look provision that allows consumers to read and review their contracts and request cancellation within 10 days after receiving the contract.

### **Common Types of Annuity and Life Insurance Fraud**

When unsuitable annuities are sold to consumers, the transaction commonly involves inappropriate conduct by the agent such as misrepresentations and material omissions designed to hide the fact that the product is not suitable to meet the consumer's needs. Forgeries are also commonplace. Annuity or life insurance transactions involving misrepresentations or material omissions are administratively prosecutable under the Unfair Insurance Trade Practices Act in ch. 626, F.S.

Two common unfair insurance trade practices are "twisting" and "churning." Twisting involves knowingly making misleading representations, or incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer to take an action regarding their current insurance policy or take out an insurance

policy with another insurer.<sup>2</sup> Churning is similar to twisting, but instead involves the surrender or withdrawal from a product to fund another product issued by the same company.<sup>3</sup> Agents that engage in these practices do so to obtain additional agent commissions.

### **Suitability of Annuity and Life Insurance Products**

In Florida, the suitability—the appropriateness of a particular product relative to the consumer’s age, investment objectives, and current and future financial needs—is a primary concern with regard to transactions involving senior consumers. The Department of Financial Services indicates that consumer complaints regarding annuities have historically involved the suitability of the product itself, deceptive sales practices by agents, or both. In 2004, the Florida Legislature enacted the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.

Section 627.4554, F.S., provides standards and procedures that must be followed when recommending the purchase of an annuity product to senior consumers (age 65 and older). The section sets forth duties on insurers and insurance agents when recommending the purchase of an annuity by a senior. The agent or insurer must make reasonable efforts to obtain information about the senior’s financial status, tax status, and investment objectives prior to completing the sale of an annuity. Additionally, the agent or insurer must have objectively reasonable grounds for recommending the annuity on the basis of the facts disclosed by the senior consumer as to his or her investments, other insurance products, financial situation, and needs.<sup>4</sup> If an agent recommends replacing or exchanging an existing annuity for a new annuity, the agent must provide a written summary detailing the differences between the existing annuity and the new annuity product.<sup>5</sup> The disclosure must provide the benefits, terms, and limitations of each annuity, the fees and charges of each annuity, and the basis for the agent’s recommendation, including all relevant information the agent considered in making the recommendation.<sup>6</sup> Insurers and insurance agents are required to develop written procedures designed to ensure compliance with the statutory disclosure requirements.

If a senior consumer is harmed due to the failure of an insurer or insurance agent to comply with the provisions, the insurer or insurance agent may be ordered to take corrective action.<sup>7</sup> The Office of Insurance Regulation has authority to order the rescission of the annuity contract and order the refund of all premiums paid or the accumulation value of the annuity, whichever is greater. The Department of Financial Services may order an insurance agent to provide monetary restitution of all monies misappropriated, converted, or unlawfully withheld as well as restitution of penalties and fees incurred by a senior consumer. The DFS may also require insurance agencies to take reasonably appropriate corrective action for a senior consumer harmed by an agent’s noncompliance.

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<sup>2</sup> Section 626.9541(1)(l), F.S.

<sup>3</sup> Section 626.9541(1)(aa), F.S.

<sup>4</sup> Section 627.4554(4), F.S.

<sup>5</sup> Section 627.4554(4)(d), F.S.

<sup>6</sup> The written disclosure must be made on a form developed by the DFS.

<sup>7</sup> Section 627.4554(5), F.S.

Florida law also allows consumers to obtain an unconditional refund within 14 days of entering into a fixed or variable annuity contract.<sup>8</sup> Senior consumers may obtain such refunds within 21 days. An annuity contract issued to a senior consumer also is prohibited from containing a surrender or deferred sales charge for a withdrawal of money that exceeds 10 percent of the amount withdrawn.<sup>9</sup> Such charges must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

### **Unfair Insurance Trade Practices Act**

The “Unfair Insurance Trade Practices Act” under s. 626.9541, F.S., specifies and prohibits practices which constitute unfair methods of competition or unfair or deceptive acts. Insurers, insurance agents, and any other person involved in the business of insurance can be fined for violating the act, up to \$5,000 for each non-willful violation up to an aggregate \$20,000 fine, and up to \$40,000 for each willful violation up to an aggregate \$200,000 fine. Willful violations of these provisions are also subject to criminal prosecution as a second degree misdemeanor (s. 624.15, F.S.).

Further, the unfair trade practice laws authorize the OIR or the DFS to issue cease and desist orders against insurers and agents that violate those provisions (s. 626.9581, F.S.). Violation of a cease and desist order is subject to a penalty not to exceed \$50,000 (s. 626.9601, F.S.). An insurance agent that violates this section is also subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500, under the authority of the DFS (s. 626.681, F.S.).

Certain violations are subject to increased penalties. The act contains increased penalties for “twisting” and “churning” Such violations are first degree misdemeanors. Each non-willful violation is subject to a \$5,000 fine up to an aggregate \$50,000 fine, while each willful violation is subject to a \$75,000 fine up to an aggregate \$250,000 fine. Willfully submitting fraudulent signatures on an application or policy-related document is a third degree felony, and is subject to an administrative fine not greater than \$5,000 for each nonwillful violation up to an aggregate fine of \$50,000, while each willful violation is subject to an administrative fine not greater than \$75,000 up to an aggregate fine of \$250,000.

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

Section 1. Amends s. 627.4554, F.S., which under current law contains standards and procedures for making annuity recommendations to senior consumers. The bill incorporates the 2010 National Association of Insurance Commissioners model regulation on annuity protections, which expands the scope of the section to include all annuity transactions and generally places additional duties on insurers. However, the bill also deletes some consumer protections that are currently available to senior consumers. The major provisions of the bill are as follows:

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<sup>8</sup> Section 626.99(4)(b), F.S.

<sup>9</sup> Section 627.4554(9), F.S.

### Duties of Insurers and Agents

*Suitability of Annuities* – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer's suitability information. The insurer or agent must also have a reasonable basis to believe that:

- The consumer has been reasonably informed of:
  - The annuity's features such as the potential surrender period and surrender charge;
  - Potential tax penalties if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
  - Mortality and expense fees;
  - Investment advisory fees;
  - Riders, their features, and potential charges;
  - Limits on interest returns;
  - Insurance and investment components; and
  - Market risk.
- The consumer would benefit from certain features of the annuity such as tax-deferred growth, annuitization, or the death or living benefit.
- The annuity and any associated subaccounts, riders, and product enhancements are suitable. If the annuity is being exchanged or replaced, the annuity must be suitable for the particular consumer based on his or her suitability information.

*Suitability of the Exchange or Replacement of an Annuity* – Additional duties are placed on insurers or insurance agents when a transaction involves the exchange or replacement of an annuity. The bill provides criteria for determining whether the new annuity is suitable for a particular consumer. The insurer or agent must consider whether the consumer:

- Will incur a surrender charge; be subject to commencement of a new surrender period; lose existing benefits (death, living, or other contractual benefits), or be subject to increased fees (including investment advisory fees or charges for riders or other similar product enhancements).
- Will benefit from product enhancements and improvements; and
- Has had another annuity exchange or replacement, in particular within the past 36 months.

*Requirement to Obtain Suitability Information* – The bill retains the requirement in current law that the insurer or its agent must make reasonable efforts to obtain a consumer's suitability information. An insurer may not issue an annuity unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information. However, the insurer or its agent are not obliged to have a reasonable basis for believing the annuity is suitable if no recommendation has been made, the recommendation was based on materially inaccurate information, the consumer refuses to provide relevant suitability information and the annuity transaction is not recommended, or the consumer decides to enter into an annuity transaction not based on a recommendation of an insurer or its agent.

*Documentation of Sales Transaction* – An agent or agent's representative must make a record of any recommendation made to a consumer. If the consumer refuses to provide suitability

information, the agent or representative must obtain a signed statement from the consumer documenting his or her refusal to provide suitability information. If the consumer enters into an annuity transaction that is not based on the recommendation of the insurer or insurance agent, the agent or representative must obtain a signed statement from the consumer acknowledging that the annuity transaction is not recommended.

*Compliance Measures* – As under current law, insurers must establish a supervision system designed to ensure insurer and agent compliance with the requirements of the statute. The measures include maintaining procedures to inform agents of their legal requirements when selling annuities, providing training and training materials that explain the insurer's annuity products, maintaining procedures for reviewing each recommendation before issuing an annuity, procedures for detecting recommendations that are not suitable, and an annual report to senior managers. Insurers may contract with outside entities to perform these duties, but if an insurer does so, must supervise contractual performance.

*Prohibitions on Agents* – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer's request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

*Agent Training* – Agents are prohibited from selling annuity products unless they have sufficient knowledge of the product to recommend the annuity and the agent complies with the insurer's standards for product training. All agents selling annuity products must also complete a one-time 4-hour annuity training course approved by the DFS. Each insurer must verify that the insurer's agent has completed the annuity training course. Agents with a life insurance line of authority as of July 1, 2012, have 6 months from that date to complete the course; agents who obtain the line of authority after that date may not sell annuity products prior to taking the course.

*Compliance and Penalties* – Insurers are responsible for compliance with this section, both with regard to the insurer and its agents. The OIR may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the actions of the insurer or an insurer's agent. Current law does not specify that insurers are responsible for their agent's compliance; however, it does authorize the OIR to require the insurer to order rescission of the annuity policy and a full refund of premiums or accumulation value (whichever is greater).

The DFS is authorized to order an insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer. The DFS must order an insurance agent to pay restitution to a consumer who is deprived of money due to the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to a senior consumer. The DFS also may order a managing general agency or insurance agency to take corrective action.

Insurance code penalties must be reduced or eliminated by the OIR or the DFS if corrective action for the consumer is promptly taken after the discovery of a violation. Violations under this section do not give rise to a cause of action.



*Other Provisions* – The bill also contains the following provisions:

- The bill defines “suitability information” as information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer.
- Annuity sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions must also comply with the requirements contained in this section. This requirement only applies when (1) the FINRA broker dealer sells an annuity and the suitability and supervision is similar to those applied to variable annuity sales; (2) the insurer monitors the FINRA member broker-dealer; and (3) the insurer provides information to the FINRA member broker-dealer in maintaining its supervision system.
- Insurers and agents must retain records of the annuity transaction for 5 years.
- The DFS has rulemaking authority to adopt rules to administer the section.

*Provisions Related to Senior Consumers Repealed by the Bill* – The bill repeals the following provisions related to annuity sales to senior consumers:

- Requirement to document suitability information on a form promulgated by the DFS that is signed by both the agent and consumer.
- Prior to entering into a contract to replace or exchange an annuity, the agent must provide a written disclosure to the consumer detailing the differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. The information shall include, at a minimum:
  - A comparison of the benefits, terms, and limitations between the annuity contracts;
  - A comparison of any fees and charges between the annuity contracts;
  - A written basis for the recommended exchange, including the overall advantages and disadvantages to the consumer if the recommendation is followed; and
  - Such other information used or considered to be relevant by the insurance agent or the insurer in making recommendations to the consumer regarding the replacement or exchange of an annuity contract.
- Authorization for the OIR to require an insurer to enact rescission of the policy or contract and a full refund of the premiums paid or the accumulation value, whichever is greater, for any senior consumer harmed by a violation of this section by the insurer or the insurer’s insurance agent. The bill does authorize the OIR to require insurers to take “reasonably corrective action” but does not specify whether such action may include ordering rescission of the contract or refunds.
- An annuity contract issued to a senior consumer may not contain a surrender charge or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later. The provision contains exceptions for purchases by accredited investors and contracts used to fund specified benefit plans, personal injury litigation settlements, or prepaid funeral contracts.

**Section 2.** Deletes from s. 626.99, F.S., requirements providing the means by which unconditional refunds to senior consumers related to fixed or variable annuities must be made. Current law requires the refund to be available for 21 days and to be equal to the surrender value of the annuity contract. The bill maintains current law, which requires the policy to authorize an unconditional refund of a fixed or variable annuity to any consumer within 14 days.

**Section 3.** The bill has an effective date of July 1, 2012.

**Other Potential Implications:**

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The consumer protections of s. 627.4554, F.S., will apply to all consumers purchasing annuities. However, certain consumer protections for senior consumers are deleted by the bill.

Agents selling annuities will be required to complete a 4-hour continuing education course in annuities, which will result in agents or their employers paying for such courses.

C. Government Sector Impact:

Representatives from the DFS assert that it will require an additional FTE (Insurance Analyst II) in the Division of Agent and Agency Services to assist in the administration of the bill's requirement that agents selling annuities take a 4-hour continuing education course on the subject.

**VI. Technical Deficiencies:**

Line 363 of the bill should provide the Office of Insurance Regulation and the Department of Financial Services with rulemaking authority to implement the requirements of the bill. The bill only provides such authority to the latter.

**VII. Related Issues:**

None.

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

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 627.4554, Florida Statutes, is amended  
to read:

(Substantial rewording of section. See  
s. 627.4554, F.S., for present text.)  
627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require  
insurers to set forth standards and procedures for making  
recommendations to consumers which result in transactions



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involving annuity products, and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any recommendation made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended.

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

(a) "Agent" has the same meaning as provided in s. 626.015.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(d) "Insurer" has the same meaning as provided in s. 624.03.

(e) "Recommendation" means advice provided by an insurer or its agent to a consumer which results in the purchase, exchange or replacement of an annuity in accordance with that advice.

(f) "Replacement" means a transaction in which a new policy or contract is to be purchased and it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;



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3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:



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71       1. An employee pension or welfare benefit plan that is  
72 covered by the federal Employee Retirement and Income Security  
73 Act;

74       2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.  
75 408(k), or s. 408(p) of the Internal Revenue Code, if  
76 established or maintained by an employer;

77       3. A government or church plan defined in s. 414 of the  
78 Internal Revenue Code, a government or church welfare benefit  
79 plan, or a deferred compensation plan of a state or local  
80 government or tax-exempt organization under s. 457 of the  
81 Internal Revenue Code;

82       4. A nonqualified deferred compensation arrangement  
83 established or maintained by an employer or plan sponsor;

84       5. Settlements or assumptions of liabilities associated  
85 with personal injury litigation or any dispute or claim-  
86 resolution process; or

87       6. Formal prepaid funeral contracts.

88       (5) DUTIES OF INSURERS AND AGENTS.—

89       (a) When recommending the purchase or exchange of an  
90 annuity to a consumer which results in an insurance transaction  
91 or series of insurance transactions, the agent, or the insurer  
92 where no agent is involved, must have reasonable grounds for  
93 believing that the recommendation is suitable for the consumer,  
94 based on the consumer's suitability information, and that there  
95 is a reasonable basis to believe all of the following:

96       1. The consumer has been reasonably informed of various  
97 features of the annuity, such as the potential surrender period  
98 and surrender charge; potential tax penalty if the consumer  
99 sells, exchanges, surrenders, or annuitizes the annuity;



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mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:

a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. Would benefit from product enhancements and improvements; and

c. Has had another annuity exchange or replacement, in particular, an exchange or replacement within the preceding 36 months.

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's





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suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer by the date of delivery of the contract or contracts.

(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not have an obligation to a consumer related to an annuity transaction under paragraph (a) or paragraph (c) if:

1. A recommendation has not been made;
2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;
3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its



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agent.

(e) At the time of sale, the agent or the agent's representative must:

1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer by the date of delivery of the contract or contracts.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents



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of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training;

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found,



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and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(h) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(i) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity



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transactions must satisfy the requirements of this section. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent, the office may order an insurer to take reasonably appropriate corrective action for a consumer



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274 harmed by the insurer's or by its agent's violation of this  
275 section and may impose appropriate penalties and sanctions.

276 (b) The department may order:

277 1. An insurance agent to take reasonably appropriate  
278 corrective action, including monetary restitution of penalties  
279 or fees incurred by the consumer for any consumer harmed by a  
280 violation of this section by the insurance agent and impose  
281 appropriate penalties and sanctions.

282 2. A managing general agency or insurance agency that  
283 employs or contracts with an insurance agent to sell or solicit  
284 the sale of annuities to consumers must take reasonably  
285 appropriate corrective action for a consumer harmed by a  
286 violation of this section by the insurance agent.

287 (c) In addition to any other penalty authorized under  
288 chapter 626, the department shall order an insurance agent to  
289 pay restitution to a consumer who has been deprived of money by  
290 the agent's misappropriation, conversion, or unlawful  
291 withholding of moneys belonging to the senior consumer in the  
292 course of a transaction involving annuities. The amount of  
293 restitution may not exceed the amount misappropriated,  
294 converted, or unlawfully withheld. This paragraph does not limit  
295 or restrict a person's right to seek other remedies as provided  
296 by law.

297 (d) Any applicable penalty under the Florida Insurance Code  
298 for a violation of this section shall be reduced or eliminated  
299 according to a schedule adopted by the office or the department,  
300 as appropriate, if corrective action for the consumer was taken  
301 promptly after a violation was discovered.

302 (e) A violation of this section does not create or imply a



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private cause of action.

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4) (b).

(9) RULES.—The department may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for ~~a period of~~ at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before ~~prior to~~ delivery of the policy.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at



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least 21 ~~14~~ days. For fixed annuities, the buyer's guide must  
~~shall~~ be in the form ~~as~~ provided by the National Association of  
Insurance Commissioners (NAIC) Annuity Disclosure Model  
Regulation, until ~~such time as~~ a buyer's guide is developed by  
the department, at which time the department guide must be used.  
For variable annuities, a policy summary may be used, which may  
be contained in a prospectus, until such time as a buyer's guide  
is developed by NAIC or the department, at which time one of  
those guides must be used. Unconditional refund means ~~if the~~  
~~prospective owner of an annuity contract is 65 years of age or~~  
~~older:~~

1. An unconditional refund of premiums paid for a fixed  
annuity contract, including any contract fees or charges, must  
be available for a period of 21 days; and

2. An unconditional refund for variable or market value  
annuity contracts must be available for a period of 21 days. The  
unconditional refund shall be equal to the cash surrender value  
provided in the annuity contract, plus any fees or charges  
deducted from the premiums or imposed under the contract, or a  
refund of all premiums paid. This subparagraph does not apply if  
the prospective owner is an accredited investor, as defined in  
Regulation D as adopted by the United States Securities and  
Exchange Commission.

(c) The insurer shall attach a cover page to any annuity  
contract ~~policy~~ informing the purchaser of the unconditional  
refund period prescribed in paragraph (b). The cover page must  
also provide contact information for the issuing company and the  
selling agent, and the department's toll-free help line, ~~and any~~  
~~other information required by the department by rule.~~ The cover





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page must also contain the following disclosures in bold print  
and at least 12-point type, if applicable:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY  
CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO  
YOUR FUNDS."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS  
FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR  
FURTHER DETAILS."

3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE  
REFER TO YOUR POLICY FOR FURTHER DETAILS."

4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS  
REQUIRED TO BE GIVEN TO YOU."

The cover page is part of the policy and is subject to  
review by the office pursuant to s. 627.410.

(c)~~(d)~~ The insurer shall provide a buyer's guide and a  
policy summary to a ~~any~~ prospective purchaser upon request.

Section 3. This act shall take effect October 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to annuities; amending s. 627.4554,  
F.S.; providing that recommendations relating to  
annuities made by an insurer or its agents apply to  
all consumers not just to senior consumers; revising  
and providing definitions; revising the duties of



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insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; deleting a provision providing a cap on surrender or deferred sales charges; prohibiting specified charges for annuities issued to persons 65 years of age or older; amending s. 626.99, F.S.; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

By Senator Richter

37-01086-12

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1 A bill to be entitled  
 2 An act relating to annuities; amending s. 627.4554,  
 3 F.S.; providing that recommendations relating to  
 4 annuities made by an insurer or its agents apply to  
 5 all consumers not just to senior consumers; revising  
 6 and providing definitions; revising the duties of  
 7 insurers and agents; providing that recommendations  
 8 must be based on consumer suitability information;  
 9 deleting requirements relating to information that  
 10 must be collected on certain forms adopted by rule of  
 11 the Department of Financial Services; revising the  
 12 information relating to annuities that must be  
 13 provided by the insurer or its agent to the consumer;  
 14 revising the requirements for monitoring contractors  
 15 that are providing certain functions for the insurer  
 16 relating to the insurer's system for supervising  
 17 recommendations; revising provisions relating to the  
 18 relationship between this act and the federal  
 19 Financial Industry Regulatory Authority; providing  
 20 training requirements for agents selling annuities;  
 21 deleting a provision providing a cap on surrender or  
 22 deferred sales charges; amending s. 626.99, F.S.;  
 23 deleting certain annuity policy requirements  
 24 applicable to persons 65 years of age or older;  
 25 providing an effective date.  
 26  
 27 Be It Enacted by the Legislature of the State of Florida:  
 28  
 29 Section 1. Section 627.4554, Florida Statutes, is amended

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

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30 to read:  
 31 (Substantial rewording of section. See  
 32 s. 627.4554, F.S., for present text.)  
 33 627.4554 Annuity investments.-  
 34 (1) PURPOSE.-The purposes of this section are to require  
 35 insurers to set forth standards and procedures for making  
 36 recommendations to consumers which result in transactions  
 37 involving annuity products and to establish a system for  
 38 supervising such recommendations in order to ensure that the  
 39 insurance needs and financial objectives of consumers are  
 40 appropriately addressed at the time of the transaction.  
 41 (2) SCOPE.-This section applies to any recommendation made  
 42 to a consumer to purchase, exchange, or replace an annuity by an  
 43 insurer or its agent, and which results in the purchase,  
 44 exchange, or replacement recommended.  
 45 (3) DEFINITIONS.-As used in this section, the term:  
 46 (a) "Agent" has the same meaning as provided in s. 626.015.  
 47 (b) "Annuity" means an insurance product under state law  
 48 which is individually solicited, whether classified as an  
 49 individual or group annuity.  
 50 (c) "FINRA" means the Financial Industry Regulatory  
 51 Authority or a succeeding agency.  
 52 (d) "Insurer" has the same meaning as provided in s.  
 53 624.03.  
 54 (e) "Recommendation" means advice provided by an insurer or  
 55 its agent to a consumer which results in the purchase, exchange,  
 56 or replacement of an annuity in accordance with that advice.  
 57 (f) "Replacement" means a transaction in which a new policy  
 58 or contract is to be purchased and it is known or should be

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

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known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

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12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations if the recommendation is not based on suitability information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim-resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the insurer or its agent must have reasonable grounds for believing that the

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117 recommendation is suitable for the consumer, based on the  
 118 consumer's suitability information, and that there is a  
 119 reasonable basis to believe all of the following:

120 1. The consumer has been reasonably informed of various  
 121 features of the annuity, such as the potential surrender period  
 122 and surrender charge; potential tax penalty if the consumer  
 123 sells, exchanges, surrenders, or annuitizes the annuity;  
 124 mortality and expense fees; investment advisory fees; potential  
 125 charges for and features of riders; limitations on interest  
 126 returns; insurance and investment components; and market risk.

127 2. The consumer would benefit from certain features of the  
 128 annuity, such as tax-deferred growth, annuitization, or the  
 129 death or living benefit.

130 3. The particular annuity as a whole, the underlying  
 131 subaccounts to which funds are allocated at the time of purchase  
 132 or exchange of the annuity, and riders and similar product  
 133 enhancements, if any, are suitable; and, in the case of an  
 134 exchange or replacement, the transaction as a whole is suitable  
 135 for the particular consumer based on his or her suitability  
 136 information.

137 4. In the case of an exchange or replacement of an annuity,  
 138 the exchange or replacement is suitable after taking into  
 139 consideration whether the consumer:

140 a. Will incur a surrender charge; be subject to the  
 141 commencement of a new surrender period; lose existing benefits,  
 142 such as death, living, or other contractual benefits; or be  
 143 subject to increased fees, investment advisory fees, or charges  
 144 for riders and similar product enhancements;

145 b. Would benefit from product enhancements and

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146 improvements; and

147 c. Has had another annuity exchange or replacement, in  
 148 particular, an exchange or replacement within the preceding 36  
 149 months.

150 (b) Before executing a purchase, exchange, or replacement  
 151 of an annuity resulting from a recommendation, an insurer or its  
 152 agent must make reasonable efforts to obtain the consumer's  
 153 suitability information.

154 (c) Except as provided under paragraph (d), an insurer may  
 155 not issue an annuity recommended to a consumer unless there is a  
 156 reasonable basis to believe the annuity is suitable based on the  
 157 consumer's suitability information.

158 (d) An insurer's issuance of an annuity must be reasonable  
 159 based on all the circumstances actually known to the insurer at  
 160 the time the annuity is issued. However, an insurer or its agent  
 161 does not have an obligation to a consumer related to an annuity  
 162 transaction under paragraph (a) or paragraph (c) if:

163 1. A recommendation has not been made;

164 2. A recommendation was made and is later found to have  
 165 been based on materially inaccurate information provided by the  
 166 consumer;

167 3. A consumer refuses to provide relevant suitability  
 168 information and the annuity transaction is not recommended; or

169 4. A consumer decides to enter into an annuity transaction  
 170 that is not based on a recommendation of an insurer or its  
 171 agent.

172 (e) At the time of sale, the agent or the agent's  
 173 representative must:

174 1. Make a record of any recommendation made to the consumer

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pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training and maintaining reasonable procedures that require its agents to comply with subsection (7);

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to

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require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that

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the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(g) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(h) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions must satisfy the requirements of this section. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make

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available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(7) AGENT TRAINING.—

(a) An agent may not solicit the sale of an annuity product unless the agent has sufficient knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials in order to comply with this paragraph.

(b) An agent who engages in the sale of annuity products must complete a one-time annuity training course approved by the department.

1. The minimum length of the training course must be sufficient to qualify for at least 4 hours of continuing education under s. 626.2815, but may be longer.

2. The training must include information on the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How fixed, variable, and indexed annuity contract

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provisions affect consumers.

d. Income taxation of qualified and nonqualified annuities.

e. The primary uses of annuities.

f. Appropriate sales practices, replacement, and disclosure requirements.

3. The training course may be conducted and completed by classroom or a self-study program in accordance with s. 626.2815.

(c) A provider of an annuity training course must comply with s. 626.2816 and the rules applicable to continuing education courses adopted under that section.

1. Providers must cover all topics listed in subparagraph (b)2. and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with the required topics.

2. Providers must comply with the reporting requirements and issue certificates of completion in accordance with s. 626.2815.

(d) An insurer shall verify that its agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy this requirement by obtaining certificates of completion of the training course or obtaining reports provided by office-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(e) Agents that hold a life insurance line of authority on

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July 1, 2012, and that desire to sell annuities must complete the annuity training course within 6 months after that date.

Individuals who obtain a life insurance line of authority on or after July 1, 2012, may not engage in the sale of annuities until the annuity training course has been completed.

(f) Satisfaction of the training requirements of another state which are substantially similar to this subsection satisfy the training requirements of this subsection.

(8) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent, the office may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's or by its agent's violation of this section and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer for any consumer harmed by a violation of this section by the insurance agent and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to consumers must take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by



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the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the senior consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(9) RULES.—The department may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for a period of at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before prior to delivery of the policy.

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(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 14 days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. ~~If the prospective owner of an annuity contract is 65 years of age or older:~~

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. ~~An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.~~

~~(c) The insurer shall attach a cover page to any annuity policy informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent, the department's toll-free help line, and any other information required by the department by rule. The cover~~

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407 ~~page is part of the policy and is subject to review by the~~  
408 ~~office pursuant to s. 627.410.~~

409 (c) ~~(d)~~ The insurer shall provide a buyer's guide and a  
410 policy summary to a ~~any~~ prospective purchaser upon request.

411 Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

Feb 7/2012

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

Meeting Date

Topic

For Amendment i Bill

Bill Number

1476

(if applicable)

Name

Tim Meenan

Amendment Barcode

(if applicable)

Job Title

Address

204 S. Monroe St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone

681-6710

E-mail

Tim@blawtan.com

Speaking:

☐

For

☐

Against

☐

Information

Representing

National Association of Insurance & Financial Advisors

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 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/7/12  
Meeting Date

Topic ANNUITIES

Bill Number 1476  
(if applicable)

Name JACK MCRAE

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

Address 200 W. COLLEGE ST., # 304  
Street

Phone 850-577-5127

TLH FL 32301  
City State Zip

E-mail jmcrae@aarp.org

Speaking: ☒ For ☐ Against ☐ Information

Representing AARP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/9/12

Meeting Date

Topic Annuities

Bill Number SB 1426  
(if applicable)

Name Brian Deffenbaugh

Amendment Barcode 443654  
(if applicable)

Job Title Sr. Counsel

Address CC-22 Capitol  
Street

Phone 413-5923

City

State

Zip

Speaking: ☒ For <sup>amendment</sup> ☐ Against ☐ Information

E-mail Brian.Deffenbaugh@myfloridacfo.com

Representing Office of Insurance Consumer Advocate

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 7 / 2012

Meeting Date

Topic \_\_\_\_\_

Bill Number 1476  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
*Street*

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-7-12  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1476  
(if applicable)

Name Paul Sanford

Amendment Barcode \_\_\_\_\_  
(if applicable)

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

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

Phone 222-7202

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/20/11)

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

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

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

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BILL: SB 458

INTRODUCER: Senator Bennett

SUBJECT: Uniform Fraudulent Transfer Act

DATE: February 2, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

The Florida Uniform Fraudulent Transfer Act, ch. 726, F.S., provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation. Under the act, “clawback” actions provide a remedy for creditors who are victims of fraud, by allowing for the fraudulently transferred property to be surrendered or the transfer to be voided. The act provides that a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee. However, the act does not provide an exception for conveyances accepted by charitable organizations in good faith.

The Federal Bankruptcy Code provides that a trustee may avoid any transfer of property or any obligation by the debtor, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation. The code provides that a charitable contribution transferred to a qualified religious or charitable entity or organization is not considered to be a transfer in any case in which the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or if the contribution made by a debtor exceeded the 15 percent of gross annual income, if the transfer was consistent with the practices of the debtor in making charitable contributions.

The bill amends the Florida Uniform Fraudulent Transfer Act by defining an exempt organization as an organization exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. The bill provides that an exempt organization is deemed to have



exchanged a reasonably equivalent value for a charitable contribution that was accepted in good faith.

This bill substantially amends the following sections of the Florida Statutes: 718.704, 721.05, 726.102, and 726.109.

## **II. Present Situation:**

### **Florida Uniform Fraudulent Transfer Act**

The Florida Uniform Fraudulent Transfer Act (act), ch. 726, F.S., provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
  - Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.<sup>1</sup>

The act provides a statutory remedy for creditors who are victims of fraud by allowing for the fraudulently transferred property to be surrendered or the transfer to be voided, which is commonly referred to as a “clawback” action. The act provides for a 4 year statute of limitations on clawback actions. Under the act, a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.<sup>2</sup> The act provides that value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied.<sup>3</sup> The act does not provide an exception for conveyances accepted by charitable organizations in good faith. The seventh Circuit Court of Appeal has ruled that a similar Illinois law, that did not specifically exclude charities, would not prevent a clawback action by a creditor to recover from a charity, even though the charity took the donation in good faith.<sup>4</sup>

### **Federal Bankruptcy Code**

The Federal Bankruptcy Code (code) provides that a trustee may avoid any transfer of property or any obligation by the debtor, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation. The debtor must have been insolvent on the date the transfer was made or obligation was incurred, or became insolvent as a result of such transfer or obligation, engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an

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<sup>1</sup> Section 726.105, F.S.

<sup>2</sup> Section 726.109(1), F.S.

<sup>3</sup> Section 726. 104(1), F.S.

<sup>4</sup> *Scholes v. Lehmann*, 56 F.3d 750, 761 (7<sup>th</sup> Cir. 1995).

unreasonably small capital, intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as the debts matured; or made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.<sup>5</sup> The code provides that a charitable contribution transferred to a qualified religious or charitable entity or organization is not considered to be a transfer in any case in which the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or if the contribution made by a debtor exceeded the 15 percent of gross annual income, if the transfer was consistent with the practices of the debtor in making charitable contributions.<sup>6</sup> The code provides for a two year statute of limitation.

The code uses the Internal Revenue Code's (IRC) definition for a charitable contribution to a qualified religious or charitable entity or organization. Under the IRC, a charitable contribution to a qualified religious or charitable entity includes a contribution or gift to or for the use of a corporation, trust, or foundation created or organized in the United States, operating exclusively for certain purposes including religious and charitable, no part of the net earnings of which inures to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under s. 501(c)(3), I.R.C., by reason of attempting to influence legislation.<sup>7</sup>

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

Senate bill 458 amends s. 726.102, F.S., of the Florida Uniform Fraudulent Transfer Act, by defining an exempt organization as an organization that is exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. The bill amends s. 726.109(1), F.S., by providing that an exempt organization is deemed to have exchanged a reasonably equivalent value for a charitable contribution that was accepted in good faith. Therefore, an organization exempt from federal income taxation under s. 501(c)(3) or (4) that accepted a charitable contribution in good faith would not be subject to clawback actions.

The bill corrects cross-references and provides that the act shall take effect upon becoming a law.

#### **Other Potential Implications:**

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

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<sup>5</sup> 11 U.S.C.A. §548(a)(1).

<sup>6</sup> 11 U.S.C.A. §548(a)(2).

<sup>7</sup> Section 170(c), I.R.C.

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Under the bill, creditors would not be able to void fraudulent transfers to organizations exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. This would result in a disproportionate balance of protections against fraudulent transfers for the exempt organizations and the victim creditors.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Implementation of this bill may raise issues relating to uniformity between state and federal law and balance of protections for charitable organizations and creditors. Due to the discrepancy between the state and federal law, a different result may be obtained depending on which forum an action is brought, resulting in a potential for forum shopping. Under the bill charitable organizations would receive more protections from fraudulent transfers than creditors.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (3), (4), (5), (6), (7), (8), (9),  
(10), (11), (12), and (13) of section 726.102, Florida Statutes,  
are renumbered as subsections (4), (5), (6), (7), (8), (9),  
(10), (11), (13), (14), and (15), respectively, and new  
subsections (3) and (12) are added to that section, to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) "Charitable contribution" means a charitable  
contribution as that term is defined in s. 170(c) of the



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Internal Revenue Code of 1986, if that contribution:

(a) Is made by a natural person or a qualified religious or charitable entity or organization; and

(b) Consists of:

1. A financial instrument as that term is defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

2. Cash.

(12) "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

Section 2. Subsection (7) is added to section 726.109, Florida Statutes, to read:

726.109 Defenses, liability, and protection of transferee.—

(7) (a) Except as provided in paragraph (b), a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a transfer that is covered by this chapter.

(b) A transfer of a charitable contribution that was received on or within 2 years before the date of commencement of an action under this chapter or the commencement of proceedings under any state or federal law, including the appointment of an assignee for the benefit of creditors, appointment of a trustee or receiver, or the filing of a petition under the Federal Bankruptcy Code, is not entitled to the protection of paragraph (a) unless the transfer was received in good faith, and:

1. The amount of the contribution does not exceed 15



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percent of the gross annual income of the transferor for the  
year in which the transfer of the contribution is made; or

2. The contribution made by the transferor exceeded the  
percentage amount of gross annual income specified in  
subparagraph 1., if the transfer was consistent with the  
practices of the transferor in making charitable contributions.

Section 3. This act shall take effect July 1, 2012, but  
does not apply to transfers that are avoided by the entry of a  
judgment prior to July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to the Uniform Fraudulent Transfer  
Act; amending s. 726.102, F.S.; defining the terms  
"charitable contribution" and "qualified religious or  
charitable entity or organization"; amending s.  
726.109, F.S.; exempting certain transfers of  
charitable contributions from the provisions of ch.  
726, F.S.; providing for application of the act;  
providing an effective date.

By Senator Bennett

21-00302-12

2012458

1 A bill to be entitled  
 2 An act relating to the Uniform Fraudulent Transfer  
 3 Act; amending s. 726.102, F.S.; defining the term  
 4 "exempt organization"; amending s. 726.109, F.S.;  
 5 providing that a charitable contribution that was  
 6 accepted in good faith by an exempt organization is  
 7 not voidable; amending ss. 718.704 and 721.05, F.S.;  
 8 conforming cross-references; providing legislative  
 9 intent to clarify existing law; providing an effective  
 10 date.  
 11  
 12 WHEREAS, the Uniform Fraudulent Transfer Act may  
 13 potentially be construed to require an exempt organization to  
 14 return a charitable contribution that was accepted in good  
 15 faith, and  
 16 WHEREAS, the application of the Uniform Fraudulent Transfer  
 17 Act to an exempt organization has the potential to harm an  
 18 exempt organization that accepts, in good faith, a charitable  
 19 contribution for charitable purposes, and  
 20 WHEREAS, this act clarifies that the Legislature does not  
 21 intend for the Uniform Fraudulent Transfer Act to apply to  
 22 certain innocent charitable organizations and nonprofit  
 23 corporations that accept charitable contributions in good faith,  
 24 NOW, THEREFORE,  
 25  
 26 Be It Enacted by the Legislature of the State of Florida:  
 27  
 28 Section 1. Section 726.102, Florida Statutes, is amended to  
 29 read:

Page 1 of 8

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

21-00302-12

2012458

30 726.102 Definitions.—As used in ss. 726.101-726.112, the  
 31 term:  
 32 (1) "Affiliate" means:  
 33 (a) A person who directly or indirectly owns, controls, or  
 34 holds with power to vote, 20 percent or more of the outstanding  
 35 voting securities of the debtor, other than a person who holds  
 36 the securities:  
 37 1. As a fiduciary or agent without sole discretionary power  
 38 to vote the securities; or  
 39 2. Solely to secure a debt, if the person has not exercised  
 40 the power to vote.  
 41 (b) A corporation 20 percent or more of whose outstanding  
 42 voting securities are directly or indirectly owned, controlled,  
 43 or held with power to vote, by the debtor or a person who  
 44 directly or indirectly owns, controls, or holds, with power to  
 45 vote, 20 percent or more of the outstanding voting securities of  
 46 the debtor, other than a person who holds the securities:  
 47 1. As a fiduciary or agent without sole power to vote the  
 48 securities; or  
 49 2. Solely to secure a debt, if the person has not in fact  
 50 exercised the power to vote.  
 51 (c) A person whose business is operated by the debtor under  
 52 a lease or other agreement, or a person substantially all of  
 53 whose assets are controlled by the debtor; or  
 54 (d) A person who operates the debtor's business under a  
 55 lease or other agreement or controls substantially all of the  
 56 debtor's assets.  
 57 (2) "Asset" means property of a debtor, but the term does  
 58 not include:

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

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- 59 (a) Property to the extent it is encumbered by a valid  
 60 lien;  
 61 (b) Property to the extent it is generally exempt under  
 62 nonbankruptcy law; or  
 63 (c) An interest in property held in tenancy by the  
 64 entireties to the extent it is not subject to process by a  
 65 creditor holding a claim against only one tenant.  
 66 (3) "Claim" means a right to payment, whether or not the  
 67 right is reduced to judgment, liquidated, unliquidated, fixed,  
 68 contingent, matured, unmatured, disputed, undisputed, legal,  
 69 equitable, secured, or unsecured.  
 70 (4) "Creditor" means a person who has a claim.  
 71 (5) "Debt" means liability on a claim.  
 72 (6) "Debtor" means a person who is liable on a claim.  
 73 (7) "Exempt organization" means an organization that is  
 74 exempt from federal income taxation under s. 501(c)(3) or (4) of  
 75 the Internal Revenue Code.  
 76 (8)(7) "Insider" includes:  
 77 (a) If the debtor is an individual:  
 78 1. A relative of the debtor or of a general partner of the  
 79 debtor;  
 80 2. A partnership in which the debtor is a general partner;  
 81 3. A general partner in a partnership described in  
 82 subparagraph 2.; or  
 83 4. A corporation of which the debtor is a director,  
 84 officer, or person in control.  
 85 (b) If the debtor is a corporation:  
 86 1. A director of the debtor;  
 87 2. An officer of the debtor;

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

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- 88 3. A person in control of the debtor;  
 89 4. A partnership in which the debtor is a general partner;  
 90 5. A general partner in a partnership described in  
 91 subparagraph 4.; or  
 92 6. A relative of a general partner, director, officer, or  
 93 person in control of the debtor.  
 94 (c) If the debtor is a partnership:  
 95 1. A general partner in the debtor;  
 96 2. A relative of a general partner in, a general partner  
 97 of, or a person in control of the debtor;  
 98 3. Another partnership in which the debtor is a general  
 99 partner;  
 100 4. A general partner in a partnership described in  
 101 subparagraph 3.; or  
 102 5. A person in control of the debtor.  
 103 (d) An affiliate, or an insider of an affiliate as if the  
 104 affiliate were the debtor.  
 105 (e) A managing agent of the debtor.  
 106 (9)(8) "Lien" means a charge against or an interest in  
 107 property to secure payment of a debt or performance of an  
 108 obligation, and includes a security interest created by  
 109 agreement, a judicial lien obtained by legal or equitable  
 110 process or proceedings, a common-law lien, or a statutory lien.  
 111 (10)(9) "Person" means an individual, partnership,  
 112 corporation, association, organization, government or  
 113 governmental subdivision or agency, business trust, estate,  
 114 trust, or any other legal or commercial entity.  
 115 (11)(10) "Property" means anything that may be the subject  
 116 of ownership.

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



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~~(12)-(11)~~ "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

~~(13)-(12)~~ "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

~~(14)-(13)~~ "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 2. Section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee.—

(1) A transfer or obligation is not voidable under s. 726.105(1) (a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee. An exempt organization is deemed to have exchanged a reasonably equivalent value for a charitable contribution that was accepted in good faith.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under s. 726.108(1) (a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) The first transferee of the asset or the person for

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whose benefit the transfer was made; or

(b) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under ss. 726.101-726.112, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any interest in the asset transferred;

(b) Enforcement of any obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1) (b) or s. 726.106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

(6) A transfer is not voidable under s. 726.106(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate

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175 the debtor and the transfer secured present value given for that  
 176 purpose as well as an antecedent debt of the debtor.

177 Section 3. Subsection (4) of section 718.704, Florida  
 178 Statutes, is amended to read:

179 718.704 Assignment and assumption of developer rights by  
 180 bulk assignee; bulk buyer.—

181 (4) An acquirer of condominium parcels is not a bulk  
 182 assignee or a bulk buyer if the transfer to such acquirer was  
 183 made:

184 (a) Before the effective date of this part;

185 (b) With the intent to hinder, delay, or defraud any  
 186 purchaser, unit owner, or the association; or

187 (c) By a person who would be considered an insider under s.  
 188 726.102 ~~s. 726.102(7)~~.

189 Section 4. Paragraph (e) of subsection (10) of section  
 190 721.05, Florida Statutes, is amended to read:

191 721.05 Definitions.—As used in this chapter, the term:

192 (10) "Developer" includes:

193 (e) A successor or concurrent developer is ~~shall be~~ exempt  
 194 from any liability inuring to a predecessor or concurrent  
 195 developer of the same timeshare plan, except as provided in s.  
 196 721.15(7), provided that this exemption does ~~shall~~ not apply to  
 197 any of the successor or concurrent developer's responsibilities,  
 198 duties, or liabilities with respect to the timeshare plan that  
 199 accrue after the date the successor or concurrent developer  
 200 became a successor or concurrent developer, and provided that  
 201 such transfer does not constitute a fraudulent transfer. In  
 202 addition to other ~~provisions of~~ law, a transfer by a predecessor  
 203 developer to a successor or concurrent developer is ~~shall be~~

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204 deemed fraudulent if the predecessor developer made the  
 205 transfer:

206 1. With actual intent to hinder, delay, or defraud any  
 207 purchaser or the division; or

208 2. To a person that would constitute an insider under s.  
 209 726.102 ~~s. 726.102(7)~~.

210

211 ~~The provisions of~~ This paragraph does ~~shall not be construed to~~  
 212 relieve any successor or concurrent developer from the  
 213 obligation to comply with the provisions of any applicable  
 214 timeshare instrument.

215 Section 5. The amendment to s. 726.109, Florida Statutes,  
 216 made by this act is intended to clarify existing law.

217 Section 6. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/7/12  
Meeting Date

Topic Fraudulent Transfer Bill Number 438  
Name Stephania Keltz Amendment Barcode \_\_\_\_\_  
Job Title Executive Director - Girls Inc. Sarasota County (if applicable)  
Address 201 S. Tuttle Ave Phone 941-366-6646  
Street City State Zip E-mail Stephania@girlsinc.org  
Speaking: ☒ For ☐ Against ☐ Information  
Representing Girls Inc  
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-7-12

Meeting Date

Topic Fraudulent Transfers - Charities

Bill Number S B 458 (Bennett)  
(if applicable)

Name John Patterson

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address 46 N. Washington Blvd. #1  
Street

Phone 941-365-0550

Sarasota FL 34236  
City State Zip

E-mail jpatterson@lpspa.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Gtrls Incorporated of Sarasota County

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 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-7-12

Meeting Date

Topic UNIFORM FRAUDULENT TRANSFER ACT

Bill Number SB 458  
(if applicable)

Name BILL WILEY

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title ATTORNEY

Address 3647 LETITIA LANE  
Street

Phone 850-545-7438

TALLAHASSEE FL 32312  
City State Zip

E-mail wb.wiley@billwileylaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing BUSINESS LAW SECTION, THE FLORIDA BAR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/7/12

Meeting Date

Topic Uniform Fraudulent Transfer

Bill Number SB 458  
(if applicable)

Name MARY MARX

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title CEO

Address 1 W. Adams  
Street

Phone \_\_\_\_\_

Jax FL 32202  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing PACE Center for Girls

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 (10/20/11)

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

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

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

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BILL: SB 1518

INTRODUCER: Senator Hays

SUBJECT: Property and Casualty Insurance

DATE: January 31, 2012

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Burgess	BI	<b>Favorable</b>
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

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**I. Summary:**

The bill repeals s. 627.3519, F.S., which requires the Financial Services Commission to provide to the Legislature an annual report on probable maximum losses, financing options, and potential assessments for the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

This bill repeals the following section of the Florida Statutes: 627.3519.

**II. Present Situation:**

In 2006<sup>1</sup> the Legislature enacted s. 627.3519, F.S., which requires the Financial Services Commission (FSC) to provide the Legislature, by February 1<sup>st</sup> each year, a report on the probable maximum losses for the Florida Hurricane Catastrophe Fund (Fund) and Citizens Property Insurance Corporation (Citizens), resulting from a 50-year, 100-year, and 250-year storm. The report must lay out financing options for the Fund and Citizens, including the need for assessments. Additionally, the report is to include analysis of all reasonable financing strategies for each such event, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each event.

The Office of Insurance Regulation (OIR) prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information

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<sup>1</sup> s. 20, ch. 2006-12 L.O.F.

needed in the report is already computed by the Fund and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the Fund and Citizens. Thus, the information contained in the report is readily available from other resources.

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

**Section 1:** Repeals s. 627.3519, F.S., relating to an annual report of aggregate net probable maximum losses, financing options, and potential assessments.

**Section 2:** Provides an effective date of July 1, 2012.

#### **Other Potential Implications:**

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

The Office of Insurance Regulation staff will no longer have to compile a duplicative report that is currently available through other sources.

### **VI. Technical Deficiencies:**

None.



**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Hays

20-01456-12

20121518\_\_

A bill to be entitled

An act relating to property and casualty insurance;  
repealing s. 627.3519, F.S.; deleting a requirement  
that the Financial Services Commission provide an  
annual report to the Legislature consisting of  
specified data and analysis related to the aggregate  
net probable maximum losses, financing options, and  
potential assessments of the Florida Hurricane  
Catastrophe Fund and Citizens Property Insurance  
Corporation; providing an effective date.

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

Section 1. Section 627.3519, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-7-12

*Meeting Date*

Topic PML REPORT

Bill Number 1518  
*(if applicable)*

Name Monte Stevens

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Government Affairs Director

Address 200 E. Gaines St., Ste. 121  
*Street*  
Tallahassee FL 32399  
*City State Zip*

Phone (850) 413-5042

E-mail monte.stevens@flair.com

Speaking: ☐ For ☐ Against ☐ Information

Representing OIR

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 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 7 / 2012

Meeting Date

Topic \_\_\_\_\_

Bill Number 1518  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

**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 Banking and Insurance Committee

---

BILL: SB 1794

INTRODUCER: Senator Hays

SUBJECT: Continuing Education Advisory Board

DATE: February 3, 2012

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Burgess	BI	<b>Favorable</b>
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

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**I. Summary:**

The bill repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents. The purpose of the Board was to advise the Department of Insurance (DOI)<sup>1</sup> on establishing a continuing education program for insurance agents. The Board has not been active in over 10 years, and with the breakup of DOI, the Insurance Commissioner and the Chief Financial Officer (CFO) have not appointed any members. The bill simply repeals this section of the Florida Statutes to conform to current practice.

This bill repeals the following section of the Florida Statutes: 626.2815(6).

**II. Present Situation:**

In 1989<sup>2</sup>, the Florida Legislature enacted s. 626.2815(6), F.S., creating the Continuing Education Advisory Board (Board). The purpose of the Board was to advise the Department of Insurance (DOI) on establishing a continuing education program for insurance agents. The Board was originally intended to sunset on June 30, 1992.

In 1996<sup>3</sup>, the Legislature reestablished the Board so its members could assist the DOI in creating evaluation standards by which continuing education courses could be categorized (basic, intermediate, or advanced). As a result, administrative rules establishing new education standards

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<sup>1</sup> DOI was replaced by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS).

<sup>2</sup> ss. 1, 2, ch. 89-210 L.O.F.

<sup>3</sup> s. 1, ch. 96-377 L.O.F.

were promulgated by the DOI in 2001.<sup>4</sup> Since the adoption of the new standards back in 2001, the Board has no longer been active.

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

**Section 1:** Repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents.

**Section 2:** Provides an effective date of July 1, 2012.

### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

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<sup>4</sup> 69B-228, F.A.C.

**VIII. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Hays

20-01211-12

20121794\_\_

A bill to be entitled

An act relating to the continuing education advisory board; repealing s. 626.2815(6), F.S.; deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board; providing an effective date.

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

Section 1. Subsection (6) of section 626.2815, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 7 / 2012

Meeting Date

Topic \_\_\_\_\_

Bill Number 1794  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☒ Against ☒ Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/7/12

*Meeting Date*

Topic SB 1794

Bill Number 1794  
*(if applicable)*

Name Logan McFaddin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address Capitol LL 26  
*Street*

Phone 850-413-2890

Tallahassee FL 32399  
*City State Zip*

E-mail logan.mcfaddin@  
myfloridazcfo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Dept. of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

**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 Banking and Insurance Committee

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BILL: SB 1796

INTRODUCER: Senator Hays

SUBJECT: Preferred Worker Program

DATE: February 1, 2012

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Burgess	BI	<b>Favorable</b>
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

---

**I. Summary:**

The bill repeals the Preferred Worker Program (PWP) which was created by the Legislature in 1993.<sup>1</sup> The PWP provided a reimbursement of workers' compensation insurance premiums to employers who hired employees that had suffered a past workplace injury and were unable to return to work for their previous employer.

In 1997<sup>2</sup> the legislature amended the program to only allow employees injured prior to January 1, 1998 to apply. Furthermore, injured employees had to file for the program within 2 years of their date of injury<sup>3</sup> and employers were only afforded the reimbursement for up to 3 years.<sup>4</sup> As a result the program could no longer accept applicants by January 1, 2001, and no employers are currently allowed by statute to continue to receive the reimbursement.

This bill repeals the following section of the Florida Statutes: 440.49(8) and amends 440.50, 624.4626.

**II. Present Situation:**

The Preferred Worker Program (PWP) was approved by the Legislature and became effective January 1, 1994.<sup>5</sup> The program provides financial incentives for employers to hire employees

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<sup>1</sup> S. 43, ch.93-415 L.O.F.

<sup>2</sup> S. 1, ch.97-262 L.O.F

<sup>3</sup> 69L-11.006, F.A.C.

<sup>4</sup> S. 440.49(8), F.S.

<sup>5</sup> S. 43, ch.93-415 L.O.F.

who suffered a workplace injury resulting in permanent physical disability and are unable to return to work for their previous employer. The PWP incentivizes the hiring of such injured workers by reimbursing the workers' compensation insurance premiums the employer was required to pay to cover the preferred worker. This reimbursement of insurance premiums was paid from the Special Disability Trust Fund (SDTF) through the Office of the Chief Financial Officer.<sup>6</sup> The PWP also provides that the Department of Financial Services and the Department of Education have rulemaking authority to implement the program.

In 1997<sup>7</sup> the Legislature amended s. 440.49, F.S., to provide that the SDTF could not disperse funds for accidents that occurred after January 1, 1998. In addition, rule 69L-11.006, F.A.C., requires that an application for PWP benefits must be filed within 2 years of the employee's workplace accident. Therefore, claims filed after January 1, 2000, could not be accepted. This limitation effectively created an end point to the program. Lastly, s. 440.49(8), F.S., permits employer reimbursement for only 3 years, as a result no employers are currently allowed to continue to receive the reimbursement.

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

The bill repeals the Preferred Worker Program. The Program can no longer accept applicants nor reimburse employers for premiums paid on workers compensation insurance. The Preferred Worker Program has become statutorily dormant and there is no effect to its repeal from statute.

The act shall take effect July 1, 2012.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>6</sup> s. 440.49(8), F.S.

<sup>7</sup> s. 1, ch.97-262 L.O.F.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Hays

20-01209-12

20121796

A bill to be entitled

An act relating to the preferred worker program;  
amending s. 440.49, F.S.; deleting a preferred worker  
program for permanently impaired workers who are  
unable to return to work; conforming cross-references;  
amending ss. 440.50 and 624.4626, F.S.; conforming  
cross-references; providing an effective date.

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

Section 1. Present subsections (9) through (12) of section  
440.49, Florida Statutes, are renumbered as subsections (8)  
through (11), respectfully, and subsections (4) and (5),  
paragraphs (c) and (d) of subsection (7), and present  
subsection (8) and (11) of that section are amended to read:

440.49 Limitation of liability for subsequent injury  
through Special Disability Trust Fund.—

(4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,  
TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER  
OTHER PHYSICAL IMPAIRMENT.—

(a) *Permanent impairment.*—If an employee who has a  
preexisting permanent physical impairment incurs a subsequent  
permanent impairment from injury or occupational disease arising  
out of, and in the course of, her or his employment which merges  
with the preexisting permanent physical impairment to cause a  
permanent impairment, the employer shall, in the first instance,  
pay all benefits provided by this chapter; but, subject to the  
limitations specified in subsection (6), such employer shall be  
reimbursed from the Special Disability Trust Fund ~~created by~~

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~~subsection (9)~~ for 50 percent of all impairment benefits which  
the employer has been required to provide pursuant to s.  
440.15(3) as a result of the subsequent accident or occupational  
disease.

(b) *Permanent total disability.*—If an employee who has a  
preexisting permanent physical impairment incurs a subsequent  
permanent impairment from injury or occupational disease arising  
out of, and in the course of, her or his employment which merges  
with the preexisting permanent physical impairment to cause  
permanent total disability, the employer shall, in the first  
instance, pay all benefits provided by this chapter; but,  
subject to the limitations specified in subsection (6), such  
employer shall be reimbursed from the Special Disability Trust  
Fund ~~created by subsection (9)~~ for 50 percent of all  
compensation for permanent total disability.

(c) *Temporary compensation and medical benefits;*  
*aggravation or acceleration of preexisting condition or*  
*circumstantial causation.*—If an employee who has a preexisting  
permanent physical impairment experiences an aggravation or  
acceleration of the preexisting permanent physical impairment as  
a result of an injury or occupational disease arising out of and  
in the course of her or his employment, or suffers an injury as  
a result of a merger as defined in paragraph (2)(c), the  
employer shall provide all benefits provided by this chapter,  
but, subject to the limitations specified in subsection (7), the  
employer shall be reimbursed by the Special Disability Trust  
Fund ~~created by subsection (9)~~ for 50 percent of its payments  
for temporary, medical, and attendant care benefits.

(5) WHEN DEATH RESULTS.—If death results from the

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 59 subsequent permanent impairment contemplated in subsection (4)  
 60 within 1 year after the subsequent injury, or within 5 years  
 61 after the subsequent injury when disability has been continuous  
 62 since the subsequent injury, and it is determined that the death  
 63 resulted from a merger, the employer shall, in the first  
 64 instance, pay the funeral expenses and the death benefits  
 65 prescribed by this chapter; but, subject to the limitations  
 66 specified in subsection (6), she or he shall be reimbursed from  
 67 the Special Disability Trust Fund ~~created by subsection (9)~~ for  
 68 the last 50 percent of all compensation allowable and paid for  
 69 such death and for 50 percent of the amount paid as funeral  
 70 expenses.

71 (7) REIMBURSEMENT OF EMPLOYER.—

72 (c) A proof of claim must be filed on each notice of claim  
 73 on file as of June 30, 1997, within 1 year after July 1, 1997,  
 74 or the right to reimbursement of the claim shall be barred. A  
 75 notice of claim on file on or before June 30, 1997, may be  
 76 withdrawn and refiled if, at the time refiled, the notice of  
 77 claim remains within the limitation period specified in  
 78 paragraph (a). Such refiling shall not toll, extend, or  
 79 otherwise alter in any way the limitation period applicable to  
 80 the withdrawn and subsequently refiled notice of claim. Each  
 81 proof of claim filed shall be accompanied by a proof-of-claim  
 82 fee as provided in paragraph (8) (d) ~~(9) (d)~~. The Special  
 83 Disability Trust Fund shall, within 120 days after receipt of  
 84 the proof of claim, serve notice of the acceptance of the claim  
 85 for reimbursement. This paragraph shall apply to all claims  
 86 notwithstanding the provisions of subsection (11) ~~(12)~~.

87 (d) Each notice of claim filed or refiled on or after July

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 88 1, 1997, must be accompanied by a notification fee as provided  
 89 in paragraph (8) (d) ~~(9) (d)~~. A proof of claim must be filed  
 90 within 1 year after the date the notice of claim is filed or  
 91 refiled, accompanied by a proof-of-claim fee as provided in  
 92 paragraph (8) (d) ~~(9) (d)~~, or the claim shall be barred. The  
 93 notification fee shall be waived if both the notice of claim and  
 94 proof of claim are submitted together as a single filing. The  
 95 Special Disability Trust Fund shall, within 180 days after  
 96 receipt of the proof of claim, serve notice of the acceptance of  
 97 the claim for reimbursement. This paragraph shall apply to all  
 98 claims notwithstanding the provisions of subsection (11) ~~(12)~~.

99 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~  
 100 ~~or administrator shall issue identity cards to preferred workers~~  
 101 ~~upon request by qualified employees and the Department of~~  
 102 ~~Financial Services shall reimburse an employer, from the Special~~  
 103 ~~Disability Trust Fund, for the cost of workers' compensation~~  
 104 ~~premium related to the preferred workers payroll for up to 3~~  
 105 ~~years of continuous employment upon satisfactory evidence of~~  
 106 ~~placement and issuance of payroll and classification records and~~  
 107 ~~upon the employee's certification of employment. The Department~~  
 108 ~~of Financial Services and the Department of Education may by~~  
 109 ~~rule prescribe definitions, forms, and procedures for the~~  
 110 ~~administration of the preferred worker program. The Department~~  
 111 ~~of Education may by rule prescribe the schedule for submission~~  
 112 ~~of forms for participation in the program.~~

113 (10) (11) EFFECTIVE DATES.—This section does not apply to  
 114 any case in which the accident causing the subsequent injury or  
 115 death or the disablement or death from a subsequent occupational  
 116 disease occurred prior to July 1, 1955, or on or after January

20-01209-12 20121796\_\_  
 1, 1998. In no event shall the Special Disability Trust Fund be  
 liable for, or reimburse employers or carriers for, any case in  
 which the accident causing the subsequent injury or death or the  
 disablement or death from a subsequent occupational disease  
 occurred on or after January 1, 1998. The Special Disability  
 Trust Fund shall continue to reimburse employers or carriers for  
 subsequent injuries occurring prior to January 1, 1998, and the  
 department shall continue to assess for and the department or  
 administrator shall fund reimbursements as provided in  
 subsection (8) ~~(9)~~ for this purpose.

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

440.50 Workers' Compensation Administration Trust Fund.—

(1)

(b) The department is authorized to transfer as a loan an  
 amount not in excess of \$250,000 from such special fund to the  
 Special Disability Trust Fund established by s. 440.49(8)  
~~440.49(9)~~, which amount shall be repaid to said special fund in  
 annual payments equal to not less than 10 percent of moneys  
 received for such Special Disability Trust Fund.

Section 3. Subsection (2) of section 624.4626, Florida  
 Statutes, is amended to read:

624.4626 Electric cooperative self-insurance fund.—

(2) A self-insurance fund that meets the requirements of  
 this section is subject to the assessments set forth in ss.  
440.49(8) ~~440.49(9)~~, 440.51(1), and 624.4621(7), but is not  
 subject to any other provision of s. 624.4621 and is not  
 required to file any report with the department under s.  
 440.38(2)(b) which is uniquely required of group self-insurer

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146 funds qualified under s. 624.4621.

147 Section 4. This act shall take effect July 1, 2012.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.7.12

Meeting Date

Topic Deferred Worker Repeal

Bill Number 1794  
(if applicable)

Name Ashley Mayer

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Dr. Policy / Ly. Affairs

Address Capitol - PC-11

Phone 413-2863

Tallahassee FL  
City State Zip

E-mail ashley.mayer@nyflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Geo. Kwater

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 (10/20/11)

# CourtSmart Tag Report

**Room:** KN 412

**Case:**

**Caption:** Senate Banking and Insurance Committee - 412kb 1:30pm

**Type:**

**Judge:**

**Started:** 2/7/2012 1:34:46 PM

**Ends:** 2/7/2012 3:00:41 PM **Length:** 01:25:56

1:34:57 PM Meeting called to order by Chair Richter  
1:35:10 PM Roll call --quorum present  
1:35:52 PM TAB 1 - SB 1586 by Sen. Thrasher - Money Services Businesses.  
1:36:14 PM Amd. 133150 by Sen. Gaetz -- explanation of amendment by Sen. Thrasher  
1:40:31 PM Brian Pitts, Justice - 2-Jesus  
1:41:41 PM Sen. Sobel motion for CS -- adopted  
1:41:52 PM Roll call -- passed  
1:42:21 PM TAB 2 - SB 1584 by Sen. thrasher - Money Srvs. Business  
1:42:40 PM Explanation of bill by Sen. Thrasher  
1:43:16 PM Roll Call on SB 1584 -- adopted  
1:44:20 PM TAB 5 --SB 1476 by Sen. Richter  
1:44:56 PM Explanation of bill by Sen. Richter's delete all amendment  
1:45:13 PM Amend. 443654 -delete all -- without objection -- adopted  
1:46:46 PM Amend. 443654 -delete all -- without objection -- adopted  
1:47:30 PM Question by Senator Fasano to sponsor  
1:48:49 PM Paul Sanford --providing information on bill  
1:50:40 PM Brian Pitts, Justice-2-Jesus  
1:56:10 PM Brian Deffenbaugh, Office of Insurance Consumer Advocate  
1:57:10 PM Robin Westcott, Insurance Consumer Advocate  
1:57:40 PM Jack McRay representing AARP  
2:00:28 PM Tim Meenam - National Assoc. of Insur. and Financial Advisors  
2:01:45 PM Motion for CS by Sen. Gaetz  
2:01:56 PM Roll call vote on SB 1476 -- passed  
2:02:47 PM TAB 3 - SB 1050 by Sen. Bogdanoff --Mortgages  
2:03:17 PM Explanation of bill by Sen. Bogdanoff  
2:05:19 PM Delete all amendment 536194 -- without objection -- adopted  
2:06:20 PM Sen. Negron moves a CS  
2:06:39 PM Roll Call on SB 1050 -- passed  
2:07:07 PM TAB 4 - CS/SB 1052 by Sen. Ring - Newborn Screening for Critical Congenital Heart Disease  
2:07:52 PM Explanation of bill by Senator Ring  
2:11:39 PM Question by Sen. Oelrich  
2:13:46 PM Brian Pitts, Justice-2-Jesus  
2:15:00 PM Karen Thurston Chavez - Broken Hearts of Florida  
2:16:09 PM Jason Haesezer - March of Dimes  
2:17:33 PM Sen. Negron recognized for a question  
2:18:42 PM Sen. Sobel recognized for debate  
2:20:03 PM Sen. Sobel recognized for debate  
2:20:04 PM Sen. Oelrich questions costs of program  
2:20:47 PM Sen. Hays for question on bill  
2:21:30 PM Sen. Bennett for comments on bill  
2:21:57 PM Senator Ring closes on bill  
2:23:14 PM Senator Ring closes on bill  
2:23:17 PM roll call on CS/SB 1052 --passed  
2:25:54 PM TAB 6 by Sen. Bennett --Uniform Fraudulent Transfer Act  
2:26:17 PM Explanation of bill by Sen. Bennett  
2:28:52 PM Amd. 130000 - delete all amendment--Sen. Bennett explains delete all amendment  
2:29:54 PM Amd. 130000 -- without objection -- adopted  
2:30:47 PM Senator Fasano recognized for question  
2:31:48 PM Sen. Margolis recognized for question  
2:34:00 PM Sen. Sobel recognized for question  
2:36:57 PM Stephanie Feltz, Executive Dir., Girls Inc.  
2:49:29 PM John Patterson, Attorney, Girls Incorp. of Sarasota County

<b>2:51:38 PM</b>	Sen. Bennett recogized to close on bill
<b>2:52:38 PM</b>	Sen. Oelrich moves CS
<b>2:52:44 PM</b>	Roll call on SB 458 --passed
<b>2:53:33 PM</b>	TAB 7 -- SB 1518 by Senator Hays --Property and Casualty Insurance
<b>2:54:02 PM</b>	Sen. Hays explains the bill
<b>2:54:47 PM</b>	Brian Pitts, Justice-2-Jesus
<b>2:55:58 PM</b>	Roll call on SB 1518 --passed
<b>2:56:35 PM</b>	Tab 8 - SB 1794 by Sen. Hays -Continuing Edu. Advisory BD.
<b>2:57:37 PM</b>	Brian Pitts
<b>2:58:38 PM</b>	Roll call on SB 1794 --passed
<b>2:58:53 PM</b>	TAB 9 --SB 1790 by Sen. Hays--Preferred Worker Program
<b>2:59:40 PM</b>	Explanation of bill by Sen. Hays
<b>3:00:02 PM</b>	Roll call on SB 1796 -- passed
<b>3:00:15 PM</b>	Meeting Adjourned



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Budget, *Chair*  
Rules, *Vice Chair*  
Agriculture  
Banking and Insurance  
Budget - Subcommittee on Finance and Tax  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Education Pre-K - 12  
Rules - Subcommittee on Ethics and Elections

### JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

### SENATOR JD ALEXANDER

17th District

February 6, 2012

Senator Garrett S. Richter, Chair  
Committee on Banking & Insurance  
322 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, tomorrow, February 7, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "JD Alexander".

JD Alexander  
Senator, District 17

Xc: Steve Burgess

### REPLY TO:

- ☐ 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- ☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

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

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore