**Tab 1** **SB 358** by **Stargel**; (Identical to H 00539) Health Insurance Coverage for Enteral Formulas

**Tab 2** **SB 572** by **Baxley (CO-INTRODUCERS) Perry, Hooper, Book, Diaz, Braynon, Broxson**; (Similar to H 00531) Insurance Coverage for Hearing Aids for Children

**Tab 3** **SB 862** by **Stargel**; (Compare to CS/CS/H 00355) Insurance Coverage for Vehicle Leases

| | | | | | | |
|---|---|---|---|---|---|---|
| 887958 | D | S | RCS | BI, Stargel | Delete everything after | 03/18 06:32 PM |
| ~~569634~~ | AA | S | WD | BI, Rouson | Delete L.27: | 03/18 06:32 PM |
| 619438 | AA | S | RCS | BI, Stargel | Delete L.33 - 38: | 03/18 06:32 PM |
| ~~433288~~ | AA | S | WD | BI, Rouson | Delete L.35 - 36: | 03/18 06:32 PM |
| ~~321874~~ | AA | S | WD | BI, Rouson | Delete L.37: | 03/18 06:32 PM |
| 590316 | A | S | OO | BI, Rouson | Delete L.32: | 03/18 06:32 PM |
| 700904 | A | S | OO | BI, Rouson | Delete L.43 - 44: | 03/18 06:32 PM |
| 328242 | A | S | OO | BI, Rouson | Delete L.45: | 03/18 06:32 PM |

**Tab 4** **SB 874** by **Rouson**; (Similar to H 00469) Consumer Finance Loans

| | | | | | |
|---|---|---|---|---|---|
| 402070 | A | S | | BI, Rouson | Delete L.146 - 245: | 03/15 12:11 PM |
| 431878 | AA | S | | BI, Rouson | Delete L.114: | 03/15 04:16 PM |
| 153120 | SA | S | | BI, Rouson | Delete L.146 - 672: | 03/18 12:16 PM |

**Tab 5** **SB 908** by **Hooper**; (Similar to H 00723) Firesafety Systems

| | | | | | | |
|---|---|---|---|---|---|---|
| 532288 | D | S | RCS | BI, Hooper | Delete everything after | 03/18 06:32 PM |
| 431804 | AA | S | RCS | BI, Perry | btw L.4 - 5: | 03/18 06:32 PM |

**Tab 6** **SB 1024** by **Gruters**; (Similar to H 00735) Blockchain Technology

**Tab 7** **SB 1034** by **Gruters**; (Identical to H 01039) Assignment of Consumer Debts

| | | | | | | |
|---|---|---|---|---|---|---|
| 671276 | D | S | | BI, Gruters | Delete everything after | 03/15 11:35 AM |
| 805758 | SD | S | | BI, Gruters | Delete everything after | 03/18 01:49 PM |

**Tab 8** **SB 1180** by **Mayfield**; (Identical to H 01363) Consumer Protection from Nonmedical Changes to Prescription Drug Formularies

| | | | | | | |
|---|---|---|---|---|---|---|
| ~~675178~~ | D | S | WD | BI, Gruters | Delete everything after | 03/18 06:32 PM |
| 287190 | A | S | RCS | BI, Mayfield | Delete L.30 - 140: | 03/18 06:32 PM |

**Tab 9** **SB 1422** by **Gruters**; (Similar to CS/H 00997) Health Plans

**Tab 10** **SB 1464** by **Brandes**; Fair Settlement Act

**Tab 11** **SB 1520** by **Bean**; (Similar to CS/H 00007) Direct Health Care Agreements

| | | | | | | |
|---|---|---|---|---|---|---|
| 240842 | A | S | RCS | BI, Bean | Delete L.23: | 03/18 06:32 PM |

**Tab 12** **SB 1690** by **Broxson**; (Similar to CS/H 00925) Warranty Associations

| | | | | | | |
|---|---|---|---|---|---|---|
| 229342 | D | S | | BI, Broxson | Delete everything after | 03/15 11:47 AM |

**The Florida Senate**

# COMMITTEE MEETING EXPANDED AGENDA

**BANKING AND INSURANCE**
**Senator Broxson, Chair**
**Senator Rouson, Vice Chair**

**MEETING DATE:** Monday, March 18, 2019
**TIME:** 4:00—6:00 p.m.
**PLACE:** *Pat Thomas Committee Room,* 412 Knott Building

**MEMBERS:** Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 1 | **SB 358**<br>Stargel<br>(Identical H 539) | Health Insurance Coverage for Enteral Formulas; Revising criteria for the required coverage of enteral formulas under specified health insurance policies; requiring the state group insurance program to provide coverage for certain enteral formulas and amino-acid-based elemental formulas, etc.<br><br>BI 03/18/2019 Favorable<br>GO<br>AP | Favorable<br>Yeas 6 Nays 0 |
| 2 | **SB 572**<br>Baxley<br>(Similar H 531) | Insurance Coverage for Hearing Aids for Children; Requiring certain health insurance policies to provide hearing aid coverage for insured children, etc.<br><br>BI 03/18/2019 Favorable<br>HP<br>AP | Favorable<br>Yeas 7 Nays 0 |
| 3 | **SB 862**<br>Stargel<br>(Compare CS/CS/H 355) | Insurance Coverage for Vehicle Leases; Providing that a lessor of special mobile equipment is not liable for acts of the lessee or the lessee's agent or employee in connection with the rental or lease if the lease agreement requires specified insurance coverages, etc.<br><br>BI 03/18/2019 Fav/CS<br>JU<br>RC | Fav/CS<br>Yeas 5 Nays 1 |
| 4 | **SB 874**<br>Rouson<br>(Similar H 469) | Consumer Finance Loans; Creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; requiring the office to examine program licensees at certain intervals, beginning on a specified date, etc.<br><br>BI 03/18/2019 Not Considered<br>FT<br>RC | Not Considered |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 5 | **SB 908**<br>Hooper<br>(Similar H 723, Compare H 647, H 1393, S 1152, S 1732) | Firesafety Systems; Revising the definition of the term "qualifying improvement" to include improvements to retrofit existing high-rise residential condominiums with certain fire sprinkler systems; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; specifying the date before which a local authority having jurisdiction may not require completion of installation of an engineered life safety system; authorizing condominium associations, under certain circumstances, to elect to be assessed certain taxes and assessments upon the condominium property as a whole, etc.<br><br>BI 03/18/2019 Fav/CS<br>CA<br>RC | Fav/CS<br>Yeas 7 Nays 0 |
| 6 | **SB 1024**<br>Gruters<br>(Similar H 735) | Blockchain Technology; Establishing the Florida Blockchain Working Group in the Agency for State Technology; providing for membership and duties of the working group; requiring the working group to submit a report to the Governor and the Legislature and make presentations, etc.<br><br>BI 03/18/2019 Favorable<br>IT<br>RC | Favorable<br>Yeas 7 Nays 0 |
| 7 | **SB 1034**<br>Gruters<br>(Identical H 1039) | Assignment of Consumer Debts; Clarifying that an assignee must give a debtor certain notice within a specified timeframe before the assignee brings legal action to collect the debt, etc.<br><br>BI 03/18/2019 Not Considered<br>JU<br>RC | Not Considered |
| 8 | **SB 1180**<br>Mayfield<br>(Identical H 1363) | Consumer Protection from Nonmedical Changes to Prescription Drug Formularies; Prohibiting specified changes to certain insurance policy prescription drug formularies, except under certain circumstances; requiring small employer carriers to limit specified changes to prescription drug formularies under certain health benefit plans; prohibiting certain health maintenance organizations from making specified changes to health maintenance contract prescription drug formularies, except under certain circumstances, etc.<br><br>BI 03/18/2019 Fav/CS<br>HP<br>RC | Fav/CS<br>Yeas 6 Nays 0 |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 9 | **SB 1422**<br>Gruters<br>(Similar CS/H 997) | Health Plans; Revising eligibility requirements for multiple-employer welfare arrangements; revising applicability of requirements relating to preexisting conditions; providing disclosure requirements for short-term individual, group, blanket, and franchise health insurance policies; revising requirements for, and applicability relating to, association and small employer policies, etc.<br><br>BI 03/18/2019 Favorable<br>CM<br>RC | Favorable<br>Yeas 5 Nays 2 |
| 10 | **SB 1464**<br>Brandes<br>(Compare S 896) | Fair Settlement Act; Citing this act as the "Fair Settlement Act"; revising circumstances under which the Department of Financial Services and an authorized insurer must be given a certain presuit notice; requiring insureds, claimants, or any person acting on their behalf to provide insurers with written notices of loss as a condition precedent to bad faith actions; providing a limitation on an insurer's liability to third-party claimants, under certain circumstances, if it files an interpleader action within a certain timeframe, etc.<br><br>BI 03/18/2019 Not Considered<br>JU<br>RC | Not Considered |
| 11 | **SB 1520**<br>Bean<br>(Similar CS/H 7) | Direct Health Care Agreements; Expanding the applicability of provisions relating to direct primary care agreements exempt from the Florida Insurance Code to direct health care agreements, etc.<br><br>BI 03/18/2019 Fav/CS<br>HP<br>RC | Fav/CS<br>Yeas 5 Nays 0 |
| 12 | **SB 1690**<br>Broxson<br>(Similar CS/H 925) | Warranty Associations; Revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account; prohibiting home warranties from excluding coverage solely because of the presence of rust or corrosion, except under certain circumstances; revising the basis for calculating the required assets in a service warranty association's premium reserve account, etc.<br><br>BI 03/18/2019 Not Considered<br>CM<br>RC | Not Considered |

Other Related Meeting Documents

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 358 |
| INTRODUCER: | Senator Stargel |
| SUBJECT: | Health Insurance Coverage for Enteral Formulas |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Favorable** |
| 2. | | | GO | |
| 3. | | | AP | |

## I. Summary:


SB 358 requires the state group insurance program to cover prescription and nonprescription enteral formulas and amino-acid-based elemental formulas, regardless of the method of delivery or intake, for home use when ordered or prescribed by a licensed physician as medically necessary for the treatment of eosinophilic disorders, food protein-induced enterocolitis syndrome, inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism as well as malabsorption originating from congenital defects present at birth or acquired during the neonatal period. There are no annual dollar limits or age restrictions on such coverage.

Currently, Florida law requires coverage for the treatment of inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism, as well as malabsorption originating from congenital defects present at birth or acquired during the neonatal period. Coverage for inherited diseases of amino acids and organic acids must include food products modified to be low-protein in an amount not to exceed $2,500 annually for any insured individual, through the age of 24.

Enteral formula can be a life-saving and life sustaining food for individuals that are unable to obtain adequate nutrition due to certain disorders. Enteral feeding can be achieved by oral intake or by tube. The costs of such formula can be significant and present a real financial hardship for families if they need to cover the expense of medical foods, and there can be medical consequences for children who require a specialized formula if that formula is no longer available to them for financial reasons.

The fiscal impact on the State Group Insurance program is estimated to be $2,862,925.

## II. Present Situation:

### Enteral Formulas

Enteral formulas are medical foods[1] used to replace or supplement the nutrition of patients unable to consume sufficient nutrients through a normal oral diet. Enteral feeding can be achieved by oral intake or by tube. Enteral feeding by tube refers to a tube or catheter that delivers nutrients beyond the oral cavity directly into the stomach or small intestine. These enteral feedings should not be confused with parenteral (or intravenous) nutrient formulations.[2]

Amino-acid-based formulas or elemental formulas are made of the simplest compositional units, and are easily digestible. Amino-acid-based formulas provide nutrition to those who suffer from malabsorptive and maldigestive medical conditions ranging from food protein allergies or gastroesophageal reflux to cerebral palsy or cystic fibrosis. The National Institute of Allergy and Infectious Diseases estimates 6 to 8 percent of children under the age of three suffer from general food allergies.[3]

### Enteral Formulas for the Treatment of Specific Diseases

Many conditions are associated with digestive deficiency or malabsorption, such as patients who rely on tube feeding for nutrition. Nutrition support therapy using enteral formulas and medical foods plays an important role in treating a host of conditions. Formulas are used for oral or tube feedings. Physicians typically order these formulas only as a treatment of last resort after attempting other specialized formulas

#### *Eosinophilic Disorders*

These disorders are the result of a disorder of the immune system. Eosinophilic gastrointestinal disorders (EGIDs) are rare chronic diseases in which white blood cells, known as eosinophils, infiltrate the gastrointestinal tract and increase in number in the blood in reaction to food.[4] Eosinophil-associated diseases are chronic and require long-term management. The symptoms may be debilitating, and may greatly impact a patient's quality of life. Treatment varies by the type of EGID and can include enteral formulas.[5] Eosinophilic esophagitis (EE) is a chronic disorder of the digestive system in which large numbers of a particular type of white blood cell (called eosinophils) are present in the esophagus Some children who have eosinophilic

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[1] A medical food, as defined in section 5(b)(3) of the Orphan Drug Act (21 U.S.C. 360ee(b)(3)), is "a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation."

[2] U.S. Department of Health and Human Services Food and Drug Administration, *Food Guidance*, (May 2016) https://www.fda.gov/downloads/food/guidanceregulation/guidancedocumentsregulatoryinformation/ucm500094.pdf (last viewed Mar. 13, 2019).

[3] *See* "Food Allergy, An Overview," National Institute of Allergy and Infectious Diseases, Publication No. 07-5518 (July 2007), available at http://www.niaid.nih.gov/publications/pdf/foodallergy.pdf (last visited on April 9, 2008).

[4] International Foundation for Functional Gastrointestinal Disorders (IFFGD). Eosinophilic Gastroenteritis. Updated 17 January 2013; accessed 8 March 2016: http://www.iffgd.org/site/gi-disorders/other/gastroenteritis (last viewed Mar. 13, 2019)

[5] International Foundation for Gastrointestinal Disorders (IFGD), available at https://iffgd.org/other-disorders/eosinophilic-gastroenteritis.html (last viewed Mar. 13, 2019).

esophagitis (EE) or EGID are highly allergic to certain foods and susceptible to recurrent episodes of the disorders.[6] The nutritional quality of the foods they are permitted to eat is too limited to meet the needs for normal growth. As such, they remain dependent on specialized formulas to meet their nutritional requirements. For eosinophilic colitis, elemental diets and enteral formulas have been found to provide symptomatic relief for many patients.

***Amino Acid and Organic Acid Metabolism Disorders and Other Disorders***

Amino acid and organic acid metabolism disorders are genetic diseases that affect a body's metabolism, or ability to change food into energy. These disorders result from the body's inability to break down or use specific amino acids, ketones, proteins, vitamins, or carbohydrates, leading to a buildup of toxic chemicals and a shortage of other vital chemicals essential to normal body functioning. Phenylketonuria (PKU) is a disorder of amino acid metabolism that causes a clinical syndrome of intellectual disability with cognitive and behavioral abnormalities caused by elevated serum phenylalanine. The primary cause is deficient phenylalanine hydroxylase activity and treatment is lifelong dietary phenylalanine restriction.[7] Untreated, these disorders may lead to brain, heart, liver or kidney damage, eye problems or vision loss, osteoporosis, intellectual or developmental disabilities, coma, seizures, or death. Infants are most often diagnosed with these disorders, through prenatal[8] or newborn screenings; early diagnosis is essential to prevent damage caused by these disorders, and most patients will require lifelong management of their condition.[9] Patients must eliminate and avoid certain foods, often including those high in protein, and many rely on enteral elemental or disease-specific formulas to meet their nutritional needs.

Food protein-induced enterocolitis syndrome is a rare type of food allergy that affects the gastrointestinal tract. It is a non-immunoglobulin E (IgE)-mediated gastrointestinal food hypersensitivity that manifests as profuse, repetitive vomiting, leading to dehydration and lethargy in the acute setting, or weight loss and failure to thrive in a chronic form. This disease primarily affects infants.[10] Reactions typically occur 2 or more hours after ingesting certain foods.[11]

Because of a lack of adequate pancreatic digestive enzymes, patients with exocrine pancreatic insufficiency have clinical symptoms related to malabsorption of fat. Exocrine pancreatic insufficiency is associated with diseases and conditions that affect the pancreas, including

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[6] OLR Research Report, Insurance Coverage for Specialized Formula, 2012, available at https://www.cga.ct.gov/2012/rpt/2012-R-0304.htm (last viewed Mar. 13, 2019).
[7] Merck Manual, PKU, available at https://www.merckmanuals.com/professional/pediatrics/inherited-disorders-of-metabolism/phenylketonuria-pku (last viewed Mar. 13, 2019). Incidence rate is about 1/10,000 births among Caucasians.
[8] For example, phenylketonuria (PKU) and lipidoses. See Merck Manual, Consumer Version available at https://www.merckmanuals.com/home/children-s-health-issues/hereditary-metabolic-disorders/disorders-of-amino-acidmetabolism (last viewed Mar. 13, 2019).
[9]Merck Manual, Phenylketonuria (PKU), available at https://www.merckmanuals.com/home/children-s-health-issues/hereditary-metabolic-disorders/phenylketonuria-pku (last viewed Mar. 13, 2019).
[10] UpToDate, Food protein-induced enterocolitis syndrome, available at https://www.uptodate.com/contents/food-protein-induced (last viewed Mar. 13, 2019).
[11] *Id.*

hereditary conditions, such as cystic fibrosis, or acquired conditions, such as chronic pancreatitis. For many of these patients, enteral nutrition is necessary to avoid malnourishment.[12]

**Insurance Coverage, Costs, and Demand for Enteral Formulas**

In 2013, an estimated 189,036 pediatric patients and 248,846 adult patients were receiving home enteral nutrition.[13] One study in the United States reported the cost of home enteral nutrition, including feeds, supplies, and care, and one hospitalization stay range from $5,000 to $50,000.This cost is likely to have increased in recent years, although it is generally difficult to obtain expenditure information due to differences in insurance coverage and reimbursement.[14]

In the United States, approximately 11 percent of patients with cystic fibrosis (approximately 3300 individuals) required supplemental enteral nutrition in 2014.[15] The direct costs of a new treatment for cystic fibrosis associated with enteral nutrition can range from $80 to $200 daily, considering the cost of the formula, tube-feeding supplies, and oral pancreatic enzymes. The costs of formula to sustain a patient with phenylketonuria (PKU) is approximately $86 per can and the can may only last for 4 days. Some of these formulas are required during an individual's entire lifespan.[16]

The availability and amount of insurance coverage, however, varies greatly among the states. In the United States, some studies estimate that 21 states mandate coverage for some type of elemental formula or coverage for specific conditions.[17] Another study indicated that 38 states have enacted legislation that requires insurers to provide coverage for medical foods for at least PKU; over a third of these states require coverage for all inborn errors of metabolism.[18] States generally provide coverage beyond age 18.[19]

**Regulation of Insurance in Florida**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[20] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[21]

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[12] American Health and Drug Benefits, Is adequate nutrition cost-effective? (Mar. 15, 2019) available at http://www.ahdbonline.com/issues/2018/may-2018-vol-11-no-3/2574-is-adequate-nutrition-cost-effective (last viewed Mar. 13, 2019).
[13] Nutr Clin Pract. 2017 Dec; 32(6):799-805.
[14] Nutrients. 2018 Feb; 10(2): 214.
[15] Cystic Fibrosis Foundation. Patient Registry: 2014 Annual Data Report. www.cff.org/2014_CFF_Annual_Data_Report_to_the_Center_Directors.pdf/. Accessed April 27, 2018.
[16] Correspondence from Department of Health, September 7, 2017 (on file with Senate Banking and Insurance Committee).
[17] Approximately 20 states have enacted legislation mandating coverage for elemental formula, which is used to treat eosinophilic associated disorders, available at https://apfed.org/ (last viewed Mar. 12, 2019).
[18] Mol Genet Meta. 2012 September; 107(1-2):3-9.
[19] *Id.*
[20] Section 20.121(3)(a), F.S.
[21] Section 641.21(1), F.S.

***Current Insurance coverage for Enteral Formulas***

Florida law currently requires a mandated offering of coverage for prescription and nonprescription enteral formulas. Enteral feeding provides sustenance and nutrition to the patient directly through a tube into the stomach. Amino-acid-based formulas are covered under the current mandate in s. 627.42395, F.S., if delivered through the enteral tube as prescribed by a physician as medically necessary. There is an annual cap of $2,500 to cover a specific list of conditions through the age of 24 for enteral feeding.

**Coverage by the Women, Infants, and Children and Nutrition Program**

The Women, Infants, and Children (WIC) and Nutrition program administered by the Department of Health covers a wide variety of formulas that are available with an approved medical diagnosis and for specific health care conditions. Formula approvals will be considered for one or more of the following qualifying medical conditions:
•Premature birth will be considered a qualifying medical condition for children under 12 months of age (adjusted age) to receive a premature formula.
• Low birth weight will be considered a qualifying medical condition for infants under 6 months of age (adjusted age) to receive a high calorie formula.
• Inborn errors of metabolism and metabolic disorders.
• GER or GERD only with an additional qualifying medical condition.
• Immune system disorders.[22]

**Division of State Group Insurance**

Under the authority of s. 110.123, F.S., the Department of Management Services, through the Division of State Group Insurance (DSGI), administers the state group health insurance program (program) under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, the Department contracts with third party administrators for self-insured health plans, a fully insured health maintenance organization (HMO), and a pharmacy benefits manager (PBM) for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list). Contractually, the PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.

Generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most expensive and have the highest member cost share. Generally, prescriptions written for a brand name drug, preferred or non-preferred, are substituted with a generic drug when available. If the

[22] Florida Department of Health WIC Program Medical Documentation for Formula and Food, available at http://www.floridahealth.gov/programs-and-services/wic/health-providers/_documents/medical-documentation-formula-food.pdf (last viewed Mar. 13, 2019).

prescribing provider states on the prescription that the brand name drug is "medically necessary" over the generic equivalent, the member will pay only the brand name (preferred or non-preferred) cost share. If the member requests the brand name drug over the generic equivalent, then the member will pay the brand name (preferred or non-preferred) cost share plus the difference between the cost of the generic drug and the brand name drug.

The program covers all federal legend drugs (open formulary) for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs. Specialty drugs are high-cost prescription medications used to treat complex, chronic conditions such as cancer, rheumatoid arthritis, and multiple sclerosis. Specialty drugs often require special handling (e.g., refrigeration during shipping) and administration (such as injection or infusion).

## III. Effect of Proposed Changes:

**Section 1** amends s. 627.42395, F.S., to revise the mandatory offer of coverage for prescription and nonprescription enteral formulas. The section clarifies that health insurance policies must make available coverage for prescription and nonprescription enteral formulas that are ordered or prescribed by physicians licensed pursuant to chs. 458 or 459, F.S., and specifies that coverage for inherited diseases of amino acid and organic acid metabolism must include food products modified to be low-protein, in an amount not to exceed $2,500 annually per individual.

The bill requires the state group insurance program to provide the following coverage:

- Prescription and nonprescription enteral formulas and amino-acid-based elemental formulas, regardless of the method of delivery or intake, for home use which are prescribed by a physician licensed under ch. 458 or ch. 459, F.S., as medically necessary for the treatment of:
  - Eosinophilic disorders;
  - Food protein-induced enterocolitis syndrome;
  - Inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism, or
  - Malabsorption originating from congenital defects present at birth, acquired during the neonatal period, or diagnosed later in life.

The coverage requirement for the state group insurance program does not provide an annual dollar cap on benefits or an age cap on insured individuals.

**Section 2** provides that the amendment to s. 627.42395, F.S., apply to health insurance policies and state group health insurance plans beginning on or after January 1, 2020.

**Section 3** provides an effective date of July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who are covered by the state group health insurance program, and who have from severe food allergies, eosinophilic disorders, and other conditions that require amino-acid-or elemental formulas will be subject to lower out of pocket costs for such formulas that are not currently covered or are subject to a $2,500 annual limit or age 24eligibility limit. The reduction in costs and increase in coverage may result in better health outcomes for affected individuals.

C. Government Sector Impact:

The Division of State Group Insurance contacted its pharmacy benefit manager, CVS/caremark, its fully-insured vendor, and its third-party administrators for its self-insured plan. These vendors estimated the following fiscal impact of the bill:

- CVS: $1,409,000 estimated annual average.
- Florida Blue: $360,000 annually.
- Capital Health Plan: indeterminate.
- AvMed: $104,028 annually.
- UnitedHealthCare: $199,904.

The estimated total fiscal impact on the State Group Insurance program is $2,862,925.

The estimated impacts by vendor vary based upon enrollment count and current utilization of enteral formulas.[23]

[23] Department of Management Services, *Analysis of SB 358* (Jan. 23, 2019) (on file with Senate Committee on Banking and Insurance).

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 627.42395 of the Florida Statutes.

## IX. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Stargel

22-00607A-19 2019358__

A bill to be entitled

An act relating to health insurance coverage for enteral formulas; amending s. 627.42395, F.S.; revising criteria for the required coverage of enteral formulas under specified health insurance policies; requiring the state group insurance program to provide coverage for certain enteral formulas and amino-acid-based elemental formulas; making technical changes; providing applicability; providing an effective date.

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

Section 1. Section 627.42395, Florida Statutes, is amended to read:

627.42395 Coverage for certain prescription and nonprescription enteral formulas.—

(1) Notwithstanding any other ~~provision of~~ law, any health insurance policy delivered or issued for delivery~~,~~ to any person in this state or any group, blanket, or franchise health insurance policy delivered or issued for delivery in this state must ~~shall~~ make available to the policyholder as part of the application, for an appropriate additional premium, coverage for prescription and nonprescription enteral formulas for home use which are ordered or ~~physician~~ prescribed by a physician licensed under chapter 458 or chapter 459 as medically necessary for the treatment of inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism as well as malabsorption originating from congenital defects present at birth or acquired during the neonatal period. Coverage for inherited diseases of







22-00607A-19 2019358__

amino acid ~~acids~~ and organic acid metabolism must ~~acids shall~~ include food products modified to be low protein, in an amount not to exceed $2,500 annually for any insured individual, through the age of 24. This subsection ~~section~~ applies to any person or family notwithstanding the existence of any preexisting condition.

(2) Notwithstanding subsection (1), the state group insurance program administered under s. 110.123 must provide coverage for prescription and nonprescription enteral formulas and amino-acid-based elemental formulas, regardless of the method of delivery or intake, for home use which are ordered or prescribed by a physician licensed under chapter 458 or chapter 459 as medically necessary for the treatment of:

(a) Eosinophilic disorders;

(b) Food protein-induced enterocolitis syndrome;

(c) Inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism; or

(d) Malabsorption originating from congenital defects present at birth, acquired during the neonatal period, or diagnosed later in life.

Section 2. The amendment to s. 627.42395, Florida Statutes, made by this act applies to health insurance policies and state group health insurance plans beginning on or after January 1, 2020.

Section 3. This act shall take effect July 1, 2019.

## Green, Sheri

**From:** Johnson, Lisa
**Sent:** Friday, March 15, 2019 8:10 AM
**To:** Green, Sheri
**Subject:** FW: A few additional questions

**From:** Wendel, Bryan P <Bryan.Wendel@flhealth.gov>
**Sent:** Thursday, September 7, 2017 12:43 PM
**To:** Johnson, Lisa <JOHNSON.LISA@flsenate.gov>
**Subject:** FW: A few additional questions

Lisa,

Please see the follow-up info from program staff following our last phone call. Please let me know if you have any questions.

Bryan

After some research and discussion with the nutritionist, it is my assumption that the Eosinophilic Disorders are a subcategory of the Severe Food Protein Allergy Disorders, which I am not familiar with. An allergy is an overactive immune response. Eosinophilic Disorders are the result of a disorder of the immune system. The terminology "Severe Food Protein Allergy Disorders" is not standard classification used, that I am aware of. The formula required for a patient with an Eosinophilic Disorder would be an elemental formula (such as Neocate, Elecare, or Nutramigen AA) which is made from amino-acids. It is completely free of any milk or soy proteins.

Inherited Metabolic Disorders are genetic conditions resulting in metabolism problems. These disorders are caused a genetically-inherited defect in the ability to metabolize a food component or a genetically-inherited sensitivity to a food component that affects some critical metabolic process. Treatment for the these disorders is to reduce or eliminate intake of any food or drug that can't be metabolized properly, replace the enzyme or other chemical that is missing or inactive, to restore metabolism to as close to normal as possible and to remove toxic products of metabolism that accumulate due to the metabolic disorder.

Below is the table of the Inherited Metabolic Disorders that the Florida Newborn Screening Program currently screens for that require formula replacement to prevent severe illness and in some cases death.

| Florida RUSP | | Positives Found 2005-2016 |
|---|---|---|
| HMG | 3-OH 3-CH3 glutaric acuduria | 3 |
| ASA | Arginosuccinic acidemia | 5 |
| CUD | Carnitine uptake defect | 19 |
| CIT | Citrullinemia | 15 |
| GA I | Glutaric acidemia type I | 18 |
| HCY | Homocystinuria | 7 |
| IVA | Isovaleric acidemia | 14 |
| LCHAD | Long-chain L-3-OH acyl-CoA dehydrogenase deficiency | 6 |
| MSUD | Maple syrup urine disease | 13 |
| MCAD | Medium chain acyl-CoA dehydrogenase deficiency | 84 |
| MMA (Cbl | Methylmalonic acidemia | 6 |
| MUT | Methylmalonic acidemia (mutase deficiency) | 0 |
| BKT | Mitochondrial acetoacetyl-CoA thiolase (beta-ketothiolase) deficiency | 1 |
| MCD | Multiple carboxylase deficiency | 0 |
| PKU | Phenylketonuria | 92 |
| PROP | Propionic acidemia | 13 |
| TFP | Trifunctional protein deficiency | 1 |
| TYR I | Tyrosinemia type I | 4 |
| GALT | Galactosemia | 45 |
| | | 346 |

January 9, 2006 – Implementing tandem mass spectrometry added 25 new disorders to the panel including amino acid disorders, organic acid disorders, and fatty acid oxidation disorders

In conclusion, I believe that the terminology Eosinophilic Disorders are a subcategory of the Severe Food Protein Allergy Disorders, which do not include the Inherited Metabolic Disorders. However, both Inherited Metabolic Disorders and Eosiniphilic Disorders require prescribed and medically necessary enteral formula in order to maintain nutritional requirements.

Known issues related to the current language to cover formula for metabolic disorders are:

- A misunderstanding of "Enteral" which just mean through the gut. Enteral formula can be taken by mouth.
- There is a cap on the amount of coverage that does not supply enough formula to sustain a patient's needs (ex: PKU formula is $86/can and the can is for approximately 4 days)
- There are rejections to obtaining formula due to "not medically necessary", when indeed they are medically necessary.
- These formulas are required during the entire lifespan and there is an age cutoff in current legislation.

Let me know if you have any questions.

# 2019 AGENCY LEGISLATIVE BILL ANALYSIS

## AGENCY: Department of Management Services

| BILL INFORMATION | |
|---|---|
| **BILL NUMBER:** | SB 358 |
| **BILL TITLE:** | Health Insurance Coverage for Enteral Formulas |
| **BILL SPONSOR:** | Stargel |
| **EFFECTIVE DATE:** | 7/1/2019 |

| COMMITTEES OF REFERENCE |
|---|
| **1)** Banking and Insurance |
| **2)** Governmental Oversight and Accountability |
| **3)** Appropriations |
| **4)** N/A |
| **5)** N/A |

| CURRENT COMMITTEE |
|---|
| Banking and Insurance |

| SIMILAR BILLS | |
|---|---|
| **BILL NUMBER:** | N/A |
| **SPONSOR:** | N/A |

| PREVIOUS LEGISLATION | |
|---|---|
| **BILL NUMBER:** | SB528 |
| **SPONSOR:** | Stargel |
| **YEAR:** | 2018 |
| **LAST ACTION:** | Died in Banking and Insurance |

| IDENTICAL BILLS | |
|---|---|
| **BILL NUMBER:** | HB539 |
| **SPONSOR:** | Zika |

| Is this bill part of an agency package? |
|---|
| No |

| BILL ANALYSIS INFORMATION | |
|---|---|
| **DATE OF ANALYSIS:** | 1/23/19 |
| **LEAD AGENCY ANALYST:** | Andrew Forst, Deputy Legislative Affairs Director |
| **ADDITIONAL ANALYST(S):** | Tami Fillyaw, Director – State Group Insurance<br>Greg Mauldin, Contract Manager – HMO and Group Life<br>Dee Fort, Contract Manager – PPO and PBM |
| **LEGAL ANALYST:** | Anita Patel, Assistant General Counsel |
| **FISCAL ANALYST:** | Donna Cohea, Senior Management Analyst II |

# POLICY ANALYSIS

## 1. EXECUTIVE SUMMARY

SB 358 amends s. 627.42395, F.S., requiring that any health insurance policy delivered or issued to any person in the state, including group, blanket, or franchise health policies, must make available, for an appropriate additional premium, coverage for prescription and non-prescription enteral formulas for home use ordered or prescribed by a physician licensed under chapter 458 or chapter 459, as medically necessary, to treat certain named medical conditions. Creates subsection (2) requiring the state group insurance program to cover prescribed and nonprescribed enteral formulas and amino-acid-based elemental formulas, regardless of the method of delivery or intake, for home use when ordered or prescribed by a physician licensed under chapter 458 or chapter 459 as medically necessary for the treatment of named conditions. Provides for an effective date of July 1, 2019 and applies to all health policies, including those offered through the state group insurance program, issued on or after January 1, 2020.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

Under the authority of section 110.123, F.S., the Department of Management Services (Department), through the Division of State Group Insurance (Division), administers the state group health insurance program (Program) under a cafeteria plan consistent with section 125, Internal Revenue Code.

To administer the state group health insurance program, the Department contracts with third party administrators for self-insured health plans, a fully insured health maintenance organization (HMO), and a pharmacy benefits manager (PBM) for the state employees' self-insured prescription drug program pursuant to section 110.12315, F.S.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list). Contractually, the PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.

Generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most expensive and have the highest member cost share. Generally, prescriptions written for a brand name drug, preferred or non-preferred, will be substituted with a generic drug when available. If the prescribing provider states on the prescription that the brand name drug is "medically necessary" over the generic equivalent, the member will pay only the brand name (preferred or non-preferred) cost share. If the member requests the brand name drug over the generic equivalent, then the member will pay the brand name (preferred or non-preferred) cost share plus the difference between the cost of the generic drug and the brand name drug.

The program covers all federal legend drugs (open formulary) for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs.

Specialty drugs are high-cost prescription medications used to treat complex, chronic conditions such as cancer, rheumatoid arthritis, and multiple sclerosis. Specialty drugs often require special handling (e.g., refrigeration during shipping) and administration (such as injection or infusion).

The federal out-of-pocket limit applies to members of the state group self-insured health plans and insured HMOs, all of which include prescription drug coverage. Copayments (and coinsurance for high deductible plans) for each drug tier are the same for all members, as follows:

| Drug Tier | Retail – Up to 30-Day Supply | Retail and Mail – Up to 90-Day Supply and Specialty Medications |
|---|---|---|
| Generic | $7 | $14 |
| Preferred Brand | $30 | $60 |
| Non-Preferred Brand | $50 | $100 |

The program typically makes benefits changes on a plan year basis, which is January 1 through December 31.

**2. EFFECT OF THE BILL:**

SB 358 amends section 627.42395, F.S., clarifying that health insurance policies must make available coverage for prescription and nonprescription enteral formulas that are ordered or prescribed by physicians licensed pursuant to chapters 458 or 459, F.S., and specifies that coverage for inherited diseases of amino acid and organic acid metabolism must include food products modified to be low-protein, in an amount not to exceed $2,500 annually per individual.

SB 358 also requires the state group insurance program to provide coverage for prescription and nonprescription enteral formulas and amino-acid-based elemental formulas that are prescribed by a licensed physician as medically necessary for the treatment of eosinophilic disorders, food protein-induced enterocolitis syndrome, inherited diseases of amino acid, organic acid, carbohydrate, or fat metabolism as well as malabsorption originating from congenital defects present at birth or acquired during the neonatal period.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?** Y☐ N☒

| | |
|---|---|
| If yes, explain: | N/A |
| Is the change consistent with the agency's core mission? | Y☐ N☐ |
| Rule(s) impacted (provide references to F.A.C., etc.): | N/A |

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

| | |
|---|---|
| Proponents and summary of position: | Unknown |
| Opponents and summary of position: | Unknown |

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y☐ N☒

| | |
|---|---|
| If yes, provide a description: | N/A |
| Date Due: | N/A |
| Bill Section Number(s): | N/A |

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y☐ N☒

| | |
|---|---|
| Board: | N/A |
| Board Purpose: | N/A |
| Who Appoints: | N/A |

| | |
|---|---|
| Changes: | N/A |
| Bill Section Number(s): | N/A |

## FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y☐ N☒

| | |
|---|---|
| Revenues: | N/A |
| Expenditures: | N/A |
| Does the legislation increase local taxes or fees? If yes, explain. | No |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | N/A |

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y☒ N☐

| | |
|---|---|
| Revenues: | No |
| Expenditures: | The Division contacted its Pharmacy Benefits Manager, CVS/caremark; its fully insured vendor; and its third-party administrators for its self-insured plan. These vendors estimated the following fiscal impacts of the bill:<br>• CVS: $1,409,000 estimated annual average<br>• Florida Blue: $360,000 annually<br>• Capital Health Plan: not determinable<br>• Aetna: $789,993 annually<br>• AvMed: $104,028 annually<br>• United Healthcare: $199,904<br>Estimated impacts by vendor vary based upon vendor enrollment count and current utilization of enteral formulas. |
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | N/A |

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** Y☐ N☒

| | |
|---|---|
| Revenues: | N/A |
| Expenditures: | N/A |
| Other: | N/A |

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?** Y☐ N☒

| | |
|---|---|
| If yes, explain impact. | N/A |
| Bill Section Number: | N/A |

## TECHNOLOGY IMPACT

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☒

| | |
|---|---|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | N/A |

## FEDERAL IMPACT

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

| | |
|---|---|
| If yes, describe the anticipated impact including any fiscal impact. | N/A |

## ADDITIONAL COMMENTS

N/A

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---|---|
| Issues/concerns/comments: | N/A |

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

**JOINT COMMITTEE:**
Joint Select Committee on Collective Bargaining

**SENATOR KELLI STARGEL**
22nd District

January 30, 2019

The Honorable Doug Broxson
Senate Committee Banking and Insurance, Chair
318 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Broxson:

I respectfully request that SB 380, related to *Health Insurance Coverage for Enteral Formulas*, be placed on the Banking and Insurance meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: James Knudson/Staff Director
Sheri Green/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3-18-19
*Meeting Date*

SB 358
*Bill Number (if applicable)*

Topic Elemental formula

*Amendment Barcode (if applicable)*

Name Stephanie + Remington Walls

Job Title

Address 7709 Conrad St.
*Street*

Phone 813-997-2151

Wesley Chapel FL 33544
*City* *State* *Zip*

Email sroosterton@msn.com

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

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

Representing

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

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

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 572 |
| INTRODUCER: | Senator Baxley and others |
| SUBJECT: | Insurance Coverage for Hearing Aids for Children |
| DATE: | March 15, 2019 |
| REVISED: | 3/18/19 |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Billmeier | Knudson | BI | **Favorable** |
| 2. | | | HP | |
| 3. | | | AP | |

## I. Summary:

SB 572 requires an individual market health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist. The bill requires an insurer to provide a minimum coverage amount of $3,500 per ear within a 24-month period.

The bill provides that if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

The bill applies to a policy that is issued or renewed on or after January 1, 2020.

## II. Present Situation:

### Mandated Health Insurance Coverages in Florida

Florida law requires health insurance policies to contain certain required benefits. Examples include:

- Coverage for certain diagnostic and surgical procedures involving bones or joints of the jaw and facial region (s. 627.419(7), F.S.);
- Coverage for bone marrow transplants (s. 627.4236, F.S.);
- Coverage for certain cancer drugs (s. 627.4239, F.S.);
- Coverage for any service performed in an ambulatory surgical center (s. 627.6616, F.S.);
- Diabetes treatment services (s. 627.6408, F.S.);
- Osteoporosis (s. 627.6409, F.S.);

- Certain coverage for newborn children (s. 627.641, F.S.);
- Child health supervision services (s. 627.6416, F.S.);
- Certain coverages related to mastectomies (s. 627.6417, F.S.);
- Mammograms (s. 627.6418, F.S.); and
- Treatment of cleft lip and cleft palate in children (s. 627.64193, F.S.).

Florida law does not require that health insurance policies cover hearing aids for adults or for children.

Federal law may require Florida to assume the costs of additional benefits that it requires of insurance companies.[1]

Section 624.215, F.S., requires 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, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction a report which assesses the social and financial impacts of the proposed coverage. Proponents of this bill provided information to committee staff relating to hearing loss in children, hearing aid insurance requirements in other states, and a projection of the number of children that will benefit from the bill.[2]

**Hearing Loss in Children**

One in eight people in the United States (13 percent, or 30 million) aged 12 years or older has hearing loss in both ears, based on standard hearing examinations.[3] About 2 to 3 out of every 1,000 children in the United States are born with a detectable level of hearing loss in one or both ears.[4] One group estimates that the prevalence of hearing loss among children rises to 5 out of every 1,000 children between the ages of 3 and 17.[5]

**Insurance Coverage for Hearing Aids**

Medicare does not cover hearing aids or hearing exams. Some Medicare Advantage Plans offer hearing coverage.[6]

Florida's Medicaid program covers hearing aids. For recipients who have moderate hearing loss or greater, the program includes the following services:

- One new, complete, (not refurbished) hearing aid device per ear, every 3 years, per recipient;
- Up to three pairs of ear molds per year, per recipient; and

[1] *See* 42 U.S.C. s. 18031(3)(B)(ii).
[2] Information provided by Theresa Bulger is on file with the Committee on Banking and Insurance. No report was provided to the Agency for Health Care Administration (Email from the Agency for Health Care Administration to Committee Staff dated March 14, 2019)(on file with the Committee on Banking and Insurance).
[3] *See* National Institutes for Health, National Institute on Deafness and Other Communication Disorders at https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing (last visited March 13, 2019).
[4] *See* National Institutes for Heath, National Institute on Deafness and Other Communication Disorders at https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing (last visited March 13, 2019).
[5] Facts About Hearing Loss in Children by the Florida Academy of Audiology (on file with the Committee on Banking and Insurance).
[6] *See* https://www.medicare.gov/coverage/hearing-aids (last visited March 13, 2019).

- One fitting and dispensing service per ear, every 3 years, per recipient.[7]

Medicaid also covers repairs and replacement of both Medicaid and non-Medicaid provided hearing aids, up to two hearing aid repairs every 366 days, after the 1 year warranty period has expired.[8]

The Veterans Administration provides hearing aids for veterans in some circumstances.[9,10]

According to the Office of Insurance Regulation, two of the nine carriers in the individual market have forms that cover hearing aids. Four of the fourteen carriers in the small group market have forms that cover hearing aids.[11]

It appears that twenty-four states require health benefits plans to provide coverage for hearing aids for children.[12] Coverage requirements range from requiring a hearing aid every 24 months to every 5 years. Many states include caps on the amount the insurer must pay. These caps range from $1,000 to $4,000.[13]

## III. Effect of Proposed Changes:

This bill requires a health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured to provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.[14] This bill would only apply to individual plans because part VI of ch. 627, F.S., does not apply to group plans.[15] This bill does not impact the state group insurance program.[16]

The bill requires an insurer to provide a minimum coverage amount of $3,500 per ear within a 24-month period. An insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.

The bill provides that if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or

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[7] *See* Rule 54G-4.110, Florida Administrative Code. The hearing services coverage policy from the Agency for Health Care Administration is https://www.flrules.org/Gateway/reference.asp?No=Ref-06744 (last visited March 13, 2019).
[8] *See* Rule 54G-4.110, Florida Administrative Code. The hearing services coverage policy from the Agency for Health Care Administration is https://www.flrules.org/Gateway/reference.asp?No=Ref-06744 (last visited March 13, 2019).
[9] *See* https://www.military.com/benefits/veterans-health-care/va-health-care-hearing-aids.html (last visited March 13, 2019).
[10] *See* https://www.myhealth.va.gov/mhv-portal-web/hearing-aids?_ga=2.237892288.1976680439.1552503778-1097040133.1552503778 (last visited March 13, 2019).
[11] Email from Office of Insurance Regulation staff to Committee staff dated March 18, 2019 (on file with the Committee on Banking and Insurance.
[12] *See* information gathered by the American Speech-Language-Hearing Association at https://www.asha.org/advocacy/state/issues/ha_reimbursement.htm and Florida Coalition for Spoken Languages, *The Florida Hearing Care for Children Act* (on file with the Committee on Banking and Insurance).
[13] *See* https://www.asha.org/advocacy/state/issues/ha_reimbursement.htm (last visited March 14, 2019).
[14] The bill would not cover hearing aids dispensed by hearing aid specialists licensed under ss. 484.0401-484.059, F.S.
[15] *See* 627.601, F.S.
[16] Email from Department of Management Services to Committee Staff dated March 14, 2019 (on file with the Committee on Banking and Insurance).

cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

The bill applies to a policy that is issued or renewed on or after January 1, 2020.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Coalition for Spoken Languages estimated that 1,709 children would obtain hearing aids under the bill. This would cost $11,662,204 in the first year, or $5,831,102 over 2 years. The group did not provide an estimate on how many additional hearing aids would be needed due to significant hearing changes in some children.[17]

C. Government Sector Impact:

Federal law may require Florida to assume the costs of additional benefits that it requires of insurance companies.[18] The Office of Insurance Regulation reports that Florida may be

[17] Florida Coalition for Spoken Languages, *The Florida Hearing Care for Children Act* (on file with the Committee on Banking and Insurance).
[18] *See* 42 U.S.C. s. 18031(3)(B)(ii).

required to defray the cost of any new mandate that raises the cost of subsidies paid by the federal government.[19]

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill creates section 627.6413 of the Florida Statutes.

## IX. Additional Information:

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

None.

B. Amendments:

None.



[19] 2019 Agency Bill Analysis SB 572 by the Office of Insurance Regulation (February 4, 2019)(on file with the Committee on Banking and Insurance).

**By** Senator Baxley

12-01090-19 2019572__

A bill to be entitled

An act relating to insurance coverage for hearing aids for children; creating s. 627.6413, F.S.; requiring certain health insurance policies to provide hearing aid coverage for insured children; providing coverage requirements; providing applicability; providing an effective date.

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

Section 1. Section 627.6413, Florida Statutes, is created to read:

627.6413 Coverage for hearing aids for children.—

(1) A health insurance policy that provides coverage on an expense-incurred basis for a family member of the insured must provide coverage for children from birth through 21 years of age for hearing aids prescribed, fitted, and dispensed by a licensed audiologist.

(2) An insurer must provide a minimum coverage amount of $3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or experiences a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period expires, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.

(3) An insured is responsible for the cost of hearing aids and related services that exceed the coverage provided by his or her policy.







12-01090-19 2019572__

(4) This section applies to a policy that is issued or renewed on or after January 1, 2020.

Section 2. This act shall take effect January 1, 2020.



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

## Green, Sheri

**From:** Billmeier, Michael
**Sent:** Thursday, March 14, 2019 4:32 PM
**To:** Green, Sheri
**Subject:** FW: SB 572

For footnote 2

**From:** Kotas, James <James.Kotas@ahca.myflorida.com>
**Sent:** Thursday, March 14, 2019 9:43 AM
**To:** Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
**Subject:** RE: SB 572

Neither of our divisions have seen this report.

**From:** Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
**Sent:** Wednesday, March 13, 2019 8:14 PM
**To:** Kotas, James <James.Kotas@ahca.myflorida.com>
**Subject:** SB 572

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal which would mandate the offering of a health coverage by an insurer to submit to the AHCA a report detailing the social and financial impact of the proposed coverage. The statute includes guidelines for assessing the impact.

Has anyone submitted a report like that about SB 572 to the AHCA?

- Michael

# The Florida Hearing Care for Children Act

The Florida Hearing Care for Children Act would affect the estimated 8.6m Floridians with private insurance, directly benefiting the 3,013 children whose only access to hearing aids is through private payments.

The proposed legislation would require private insurance companies to provide a *minimum coverage for hearing aids for children ages 0-21 years in the amount of $3,500 per ear within a 24-month period. However, if a child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period has expired, and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin with full benefits and coverage.*

There is no existing law mandating coverage for hearing aids for private insurance. However, for children ages 0-21 years in Florida, hearing aids for children are covered by the Early Steps Program (ages 0-3 years), Medicaid, and the Children's Health Insurance Programs (CHIP). These children have been excluded from this financial evaluation.

**Similar requirements in other states**

Twenty-four states (AK, CT, CO, DE, GA, KY, LA, ME, MD, MN, MD, MA, MN, MS, NH, NJ, NM, NC, OK, OR, RI, TN, TX, WI) require health benefit plans cover hearing aids for children. The proposed Florida requirement has adopted the best parts of those existing in other states and will make Florida a model for pediatric hearing care in the country.

**Florida Newborn Hearing Screening Program**

Landmark research in the 1990s found that early identification and treatment of hearing loss in children mitigated delays in speech, language, and cognitive development, which led to the implementation of the universal newborn hearing screening programs (NHSP) in the United States. The Florida Newborn Hearing Screening Program requires hospitals to screen newborns for hearing loss before discharge.

The most recent data (2016) from the Florida Department of Health showed that 97% (217,997) of live births in Florida had their hearing screened, and of those, 0.09% (267 infants) were diagnosed with permanent hearing loss. These children were then referred to the Florida Early Steps program for management and intervention services. Since 2007, an average of 293 Florida newborn children per year have been identified with permanent hearing loss as a result of the newborn infant screening program.

**Public School Incidence of Hearing Loss**

According to the Florida Department of Education, there are 5,747 children with a diagnosis of hearing loss receiving special education services in Florida. This is not considered to be the total number of children with hearing loss or wearing hearing aids because many children with hearing loss that were identified and treated at a young age do not require special education services and may not be included in this count. Also, the majority of children with hearing loss acquire the loss during their pediatric and adolescent years from many causes including viruses, genetics, and environmental factors such as noise

exposure. These children would benefit from hearing aids but may not be included in the Department of Education data because they do not require special education.

**Prevalence and Incidence of Hearing Loss in children in Florida**

There is no known registry or recent survey data that estimated overall hearing loss in Florida's pediatric population. However, it is possible to estimate the number of children with hearing loss from various sources including data from the National Institute on Deafness and Communication Disorders, the U.S. census, The Kaiser Family Foundation, data from the Florida Department of Health, and data from the Florida Department of Education.

According to the U.S. Census, there are an estimated 5,165,100 children between the ages of 0-21 in Florida, representing 25% of the population of Florida. The healthcare of these children is covered as follows:

- Medicaid children in Florida 2,214,221 (43.1%)
- Children's Health Insurance Program (CHIP) 340,000 (6.6%)
- Uninsured children in Florida 320,236 (6.3%)
- Covered by private health insurance 2,290,643 (44%)
- Total children 0-21 years 5,165,100 (100%)

The incidence of hearing loss in the 0-21 population is 2.5/1000; therefore, the estimated number of children 0-21 years of age in Florida with hearing loss is as follows:

- Children in Florida with hearing loss..... 12,913 (0.25%)
- Children with private insurance and hearing loss*..... 2,640
- Children with cochlear implant..... 931
- Total children benefiting from Florida Hearing Care for Children... 1,709

*Note: Does not include Early Steps, Medicaid, CHIP, Uninsured
**Note: Children with cochlear implant(s) will not need a hearing aid in the implanted ear(s)

**Costs**

Hearing aids and the services to properly prescribe, evaluate, fit, and manage children with hearing loss generally cost an average of $3,500 per ear depending on the technology and enhancements selected by the audiologist based on the individual needs of the child. The associated costs to families of children with hearing loss include, for example, services for frequent adjustments; fittings of new ear molds necessary to accommodate the child's growth—up to 4 times per year for children until at least age 10 years; and, the on-going management required for children to assure their hearing aids are working optimally to maximize their ability to acquire communication and educational skills.

Today's hearing aids are complex computer programmed digital technology that must be individually fit to every child. They not only restore audibility based on individual needs but offer beneficial features such as noise and feedback management and various programs based on the listening environment. The hearing aids also feature wireless streaming permitting the child to audio-stream directly to the hearing aids as well as communicate with classroom and large group amplification systems, e.g., theaters, classrooms, churches.

The fitting process is validated by the audiologist using probe tube measurements of the child's ear canal and verification that the child is being properly amplified based on their individual needs and the individual anatomical and physiologic measurements of the child's auditory system. For young children, they must return to the audiologist at least monthly while adolescents may return to the audiologist quarterly.

**Effectiveness of Hearing Aids:**

There is a preponderance of evidence supporting the positive effects and benefits of hearing aids and the Florida Hearing Care for Children Act. There is clear evidence in the literature demonstrating that fitting children with hearing aids is associated with greater gains in their development of speech and language. In particular, risk for language delays in children with hearing loss may be mitigated from early age of fitting and consistent use of hearing aids. The Florida Hearing Care for Children Act will benefit the families of children with hearing loss while assuring children will be provided with hearing aid technology that meets their educational and communication needs.

**Premium expenditures and PMPM amounts per category of payer**

Increases in insurance premiums resulting from The Florida Hearing Care for Children Act are estimated to be $0.056 PMPM and $0.68 per year for private insurance policies.

- Children benefiting from the FL Hearing Care for Children Act 1,709
- Total estimated number hearing aids:
  - Binaural (2) hearing aids: 1,623
  - Monaural (unilateral hearing loss) hearing aids 85
- Costs at $3500 per ear
  - Binaural $11,363,173
  - Monaural $ 299,031
  - Total costs $11,662,204
  - 2-year benefit $ 5,831,102
- Costs for Private Insurance Policies (based on 8,602,700 private insured)
  - Per member per month (PMPM) $0.056
  - Annual cost to policies $0.68

# FACTS ABOUT HEARING LOSS IN CHILDREN

FLORIDA ACADEMY OF AUDIOLOGY

2019

# PREVALENCE

- Nationally, 2-3 of every 1,000 infants born in the United States are diagnosed with hearing loss.
- According to the Florida Department of Health, Division of Children's Medical Services, 293 babies per year between 2007-2016 were born with hearing loss in Florida.[1]
  - **Hearing loss is the most common sensory disorder at birth in the United States.**
- More than 90% of children with hearing loss are born to hearing parents. These parents often undergo an emotional journey since they have no experience in managing a baby with hearing loss.
- It is estimated that the prevalence of hearing loss rises to 5 out of 1,000 children from ages 3-17[3] since many hearing losses are acquired post-nataly.
  - In 2012, the U.S. Department of Education reported that 9,325 pre-school children ages 3-5 years were receiving hearing loss services under IDEA. Remove "citation"
  - The World Health Organization estimated that "nearly half of all teenagers and young adults (12-35) are exposed to unsafe levels of sound from the use of personal audio devices and some 40% of them are exposed to potentially damaging sound levels from recreational activities."

# HEARING LOSS IN FLORIDA

- According to the Florida Department of Education, there are 5,747 children with a diagnosis of hearing loss receiving special education services in Florida.
- This is not considered to be the total number of children with hearing loss or wearing hearing aids because many children with hearing loss that were identified and treated at a young age do not require special education services and may not be included in this count.
- Also, the majority of children with hearing loss acquire the loss during their pediatric and adolescent years from many causes including viruses, genetics, and environmental factors such as noise exposure. They all would benefit from hearing aids but may not be included in the Department of Education data because they do not require special education.

# CAUSES OF HEARING LOSS IN CHILDREN

- An estimated 50% of children with hearing loss have a genetic cause.
- About 25% of cases of childhood hearing loss are due to complications during/after pregnancy, like prematurity, exposure to certain medicines, or exposure to an infection.
- About 25% of children with hearing loss are born weighing less than 2500g (> 5.5 lbs) which represents approximately 9% of the births in Florida, the sixth highest in the U.S.
- It is estimated that the prevalence of hearing loss rises to about 15% of children from ages 6-19 according to the Centers for Disease Control (CDC).

# IMPORTANCE OF EARLY INTERVENTION WITH HEARING AIDS

- Hearing loss can have a lasting impact on a child's speech, language, academic, social, cognitive and overall development.
- Research shows early intervention services can greatly improve a child's development. It is recommended that children born with hearing loss begin intervention services by 6 months of age.[3]
  - Research has demonstrated that children whose hearing losses were identified and treated by 6 months of age demonstrated significantly better language scores than children identified after 6 months of age.[4]
- Studies have also shown that hearing loss has significant effects on the growth and connectivity of the developing brain. Early intervention with hearing aids makes it possible to avoid these negative effects and promotes the acquisition of normal language and academic development.
- Whether a child is born with hearing loss or the hearing loss is acquired after birth, if properly managed and treated, these children can remain in normal education classes, thus reducing the need and costs associated with special education and, therefore, maximizing the child's vocational and economic potential into and throughout adulthood.

# AUDIOLOGY AND HEARING AIDS

- Hearing aids for children are prescription devices that are programmed by an audiologist to meet the individual needs of each child.
- Today's hearing aids have wireless streaming capabilities permitting children to stream media and educational content directly to their hearing aids.

# AUDIOLOGISTS IN FLORIDA

- Audiologists are licensed by the State of Florida to provide diagnostic, management, prevention, and treatment services for adults and children with hearing and balance disorders.
- Audiologists have 8 years of education culminating in the Doctor of Audiology.
- Many are graduates of one of the three Doctor of Audiology academic programs in Florida at University of Florida, University of South Florida, and Nova Southeastern University.

# SB572/HB531
# INSURANCE COVERAGE FOR HEARING AIDS FOR CHILDREN

- Introduced in Florida
- Requires private insurance companies to offer a hearing aid benefit for children ages 0-21.
  - Benefit: $3,500 per hearing impaired ear every 2 years

# INSURANCE IN OTHER STATES

- Twenty-four states (AK, CT, CO, DE, GA, KY, LA, ME, MD, MN, MD, MA, MN, MS, NH, NJ, NM, NC, OK, OR, RI, TN, TX, WI) require health benefit plans cover hearing aids for children.
- SB572/HB531 have adopted the best parts of the existing laws in other states and will make Florida a model for pediatric hearing care in the country.

# COST BENEFIT OF LAW

- This act would benefit the estimated 1,700 children and their families in Florida whose only access to hearing aids is through private payments.
- There is no existing law providing coverage for children's hearing aids for private insurance in Florida.
- However, for children ages 0-21 years in Florida, hearing aids for children are covered by the Early Steps Program (ages 0-3 years), Medicaid, and the Children's Health Insurance Programs (CHIP). The Law would not cover these children since they already have benefits for hearing aids.
- The estimated additional costs for private insurance policies in Florida
  - Per member per month = $0.06 (6 cents per month)
  - Annual cost per private insurance policy in Florida = $0.68 (68 cents per year)

## Green, Sheri

**From:** Billmeier, Michael
**Sent:** Thursday, March 14, 2019 4:34 PM
**To:** Green, Sheri
**Subject:** FW: SB572

Footnote 15

**From:** Valley, Joe <Joseph.Valley@dms.myflorida.com>
**Sent:** Thursday, March 14, 2019 9:43 AM
**To:** Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
**Cc:** Forst, Andrew <Andrew.Forst@dms.myflorida.com>
**Subject:** SB572

Good morning Michael,

Per our conversation, SB 572, as it is currently written, does not impact the State Employees' Health Insurance Program.

Thank you,

**Joseph Valley** | Legislative Analyst
*Office of the Secretary*
850-488-6285 (office) | 850-408-1351 (cell)
Florida Department of Management Services
We Serve Those Who Serve Florida

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# 2019 AGENCY LEGISLATIVE BILL ANALYSIS
## Office of Insurance Regulation

| BILL INFORMATION | |
|---|---|
| **BILL NUMBER:** | SB 572 |
| **BILL TITLE:** | Insurance Coverage for Hearing Aids for Children |
| **BILL SPONSOR:** | Baxley |
| **EFFECTIVE DATE:** | 1/1/2020 |

| COMMITTEES OF REFERENCE |
|---|
| **1) N/A** |
| **2)** |
| **3)** |
| **4)** |
| **5)** |

| CURRENT COMMITTEE |
|---|
| N/A |

| SIMILAR BILLS | |
|---|---|
| **BILL NUMBER:** | HB 531 |
| **SPONSOR:** | Brannan III |

| PREVIOUS LEGISLATION | |
|---|---|
| **BILL NUMBER:** | SB 890 |
| **SPONSOR:** | Baxley |
| **YEAR:** | 2018 |
| **LAST ACTION:** | Died in Banking and Insurance . |

| IDENTICAL BILLS | |
|---|---|
| **BILL NUMBER:** | |
| **SPONSOR:** | |

| Is this bill part of an agency package? |
|---|
| No |

| BILL ANALYSIS INFORMATION | |
|---|---|
| **DATE OF ANALYSIS:** | February 4, 2019 |
| **LEAD AGENCY ANALYST:** | Chris Struk |
| **ADDITIONAL ANALYST(S):** | James Dunn, Derek Silver |
| **LEGAL ANALYST:** | Tracy Sumner |
| **FISCAL ANALYST:** | |

# POLICY ANALYSIS

## 1. EXECUTIVE SUMMARY

This bill creates Section 627.6413, Florida Statutes, to require individual health insurance policies to provide coverage for hearing aids for children from birth through 21 years of age. The minimum coverage is $3,500 per ear within a 24-month period. The effective date is January 1, 2020.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

Florida Statutes do not require health insurance policies to provide coverage for hearing aids.

### 2. EFFECT OF THE BILL:

This bill creates Section 627.6413, Florida Statutes, to require individual health insurance policies to provide coverage for hearing aids prescribed, fitted, and dispensed by a licensed audiologist for children from birth through 21 years of age. The minimum coverage is $3,500 per ear within a 24-month period. However, if a covered child experiences a significant and unexpected change in his or her hearing or a medical condition requiring an unexpected change in the hearing aid before the existing 24-month period has expired and alterations to the existing hearing aid do not or cannot meet the needs of the child, a new 24-month period shall begin.

### 3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? YES

| | |
|---|---|
| If yes, explain: | The Office of Insurance Regulation would need to amend its form review procedures to incorporate this new requirement. |
| What is the expected impact to the agency's core mission? | |
| Rule(s) impacted (provide references to F.A.C., etc.): | |

### 4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

| | |
|---|---|
| List any known proponents and opponents: | |
| Provide a summary of the proponents' and opponents' positions: | |

### 5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? NO

| | |
|---|---|
| If yes, provide a description: | |
| Date Due: | |
| Bill Section Number(s): | |

### 6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? NO

| | |
|---|---|
| Board: | |
| Board Purpose: | |

| | |
|---|---|
| Who Appointments: | |
| Appointee Term: | |
| Changes: | |
| Bill Section Number(s): | |

## FISCAL ANALYSIS

### 1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT? NONE

| | |
|---|---|
| Revenues: | |
| Expenditures: | |
| Does the legislation increase local taxes or fees? | |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | |

### 2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

| | |
|---|---|
| Revenues: | |
| Expenditures: | In accordance with federal law, Florida may be required to defray the cost of any new coverage mandate that raises the cost of subsidies paid by the federal government. |
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | |

### 3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

| | |
|---|---|
| Revenues: | |
| Expenditures: | Adding an additional mandated benefit will likely result in an increase in health insurance premium costs. |
| Other: | |

### 4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? NO

| | |
|---|---|
| Does the bill increase taxes, fees or fines? | |

| | |
|---|---|
| Does the bill decrease taxes, fees or fines? | |
| What is the impact of the increase or decrease? | |
| Bill Section Number: | |

## TECHNOLOGY IMPACT

| | |
|---|---|
| Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)? | No |
| If yes, describe the anticipated impact to the agency including any fiscal impact. | |

## FEDERAL IMPACT

| | |
|---|---|
| Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)? | Yes |
| If yes, describe the anticipated impact including any fiscal impact. | Under federal law, Florida may be required to defray the cost of any new coverage mandate that raises the cost of subsidies paid by the federal government. |

## ADDITIONAL COMMENTS

As written, the provisions of this bill would not apply to group health insurance policies nor health maintenance organization (HMO) contracts.

Health insurance policies are typically for one year. Therefore, it would be difficult to implement a coverage requirement that lasts two years.

The bill does not provide definitions for "significant and unexpected change" in hearing, nor does it specify who may determine whether the existing hearing aid meets the child's needs, what criteria will be used to make that determination, and whether the determination is subject to appeal. It may be necessary to provide clarification in the bill or to provide the Office of Insurance Regulation with rulemaking authority.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---|---|
| Issues/concerns/comments and recommended action: | |

## Billmeier, Michael

**From:** Silver, Derek <Derek.Silver@floir.com>
**Sent:** Monday, March 18, 2019 11:09 AM
**To:** Billmeier, Michael
**Cc:** Murray, Caitlin
**Subject:** Inquiry

Hey Michael,

How are you? You asked about the number of health insurance carriers that offer policies which cover hearing aids. 2 of the 9 carriers in the individual market have forms that cover hearing aids. 4 of the 14 carriers in the small group market have forms that cover hearing aids.

Best wishes,

Derek Silver
Deputy Director of Government Affairs
Florida Office of Insurance Regulation
200 East Gaines Street, Suite 121
Tallahassee, Florida 32399
Office phone: (850) 413-2429
Cell phone: (407) 666-1627

FLORIDA OFFICE OF INSURANCE REGULATION

# THE FLORIDA SENATE

**COMMITTEES:**
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

**JOINT COMMITTEE:**
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**
12th District

March 8, 2019

The Honorable Doug Broxson
318 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Broxson,

I would like to request SB 572 Insurance Coverage for Hearing Aids for Children be heard in your next Banking and Insurance Committee Meetings.

This bill requires an individual health insurance policy to provide coverage for hearing aids for children from birth through 21 years of age. The minimum coverage is $3,500 per ear within a 24 month period.

I appreciate your favorable consideration,

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: James Knudson, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 ● (850) 487-5012
Email: baxley.dennis@flsenate.gov

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing aid coverage

Name Knox Fisk

Job Title child with hearing loss

Address 601 Grand Parke Pr
*Street*

Saint Johns FL 32259
*City* *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing children with hearing loss

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing aid Coverage

Name mary campbell fisk

Job Title sister of a child with hearing loss.

Address 601 grand park drive
*Street*

Phone

saint johns FL 32259
*City* *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families of children with hearing loss.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing aid Coverage

Name Carter Fisk

Job Title Brother of Child with Hearing loss

Address 601 Grand Parke Dr
*Street*

Saint Johns FL 32259
*City* *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families of children with Hearing loss

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Theresa Giralt

Job Title Audiology Student

Address 7217 Anhinga Farms Rd
*Street*

Tallahassee FL 32309
*City* *State* *Zip*

Phone (850) 567-9250

Email tgiralt@deafkidscan.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Friend with deaf children

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

(1) First

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

512
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Susan Nowlin

Job Title Audiologist

Address 1405 Centerville Rd, Suite 5400
*Street*

Tallahassee FL 32308
*City* *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Academy of Audiology

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

Speaking Second (2)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

1/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Garrett Campbell

Job Title student

Address 120 Ivy Lakes Dr. *Street*

Phone 904-293-6890

St. Johns *City* Florida *State* 32259 *Zip*

Email gkcampbell0620@gmail.com

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

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

Representing Self / children who are deaf or hard of hearing.

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

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

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

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

S-001 (10/14/14)

Speaking Last (3)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

1/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Courtesy

Name Theresa Bulger

Job Title Lobbyist

Address 253 Hayden #104
*Street*
Tallahassee, FL
*City* *State* *Zip*

Phone 904 880 9063

Email tb@deafKidsCan.org

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

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

Representing Florida Coalition for Spoken Language Options & Florida Academy of Audiologists

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

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

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

5/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

Topic Hearing Aid Access

*Amendment Barcode (if applicable)*

Name Christine Moleski

Job Title Parent Advisor

Address 2109 Waters Meet Drive
*Street*

Phone 850-445-5979

Tallahassee FL 32312
*City* *State* *Zip*

Email msmoose32@aol.com

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

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

Representing

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

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

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Michelle Campbell

Job Title Paraprofessional

Address 120 Ivy Lakes Dr.
*Street*

St. Johns FL 32259
*City* *State* *Zip*

Phone 904-704-7388

Email mmcampbell0511@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing parents of children with hearing loss

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid coverage

Name Melissa Corson

Job Title Community Relations

Address 2696 Wharton Circle
*Street*
Tallahassee FL 32312
*City* *State* *Zip*

Phone 850-509-8251

Email Corson-melissa@gmail.com

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

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

Representing

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

Topic Hearing Aid Coverage

*Amendment Barcode (if applicable)*

Name Terri Fisk

Job Title Parent President of Florida Coalition for Spoken Language Options

Address 601 Grand Parke Dr
*Street*

Phone

Saint Johns Fl 32259
*City* *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Coalition for Spoken Language Options

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

18 MAR 2019
*Meeting Date*

*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic HEARING AID COVERAGE

Name ARCHIE D. CAMPBELL JR

Job Title PROJECT MANAGER

Address 120 IVY LAKES DR
*Street*
SAINT JOHNS, FL 32259
*City* *State* *Zip*

Phone (904) 703-1512

Email archiecampbelljr@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PARENTS OF CHILDREN WITH HEARING LOSS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3-18-19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Addison Campbell

Job Title Student

Address 120 Ivy Lakes drive
*Street*

Phone 904-439-9606

St. Johns FL 32259
*City* *State* *Zip*

Email agcampbell0828@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing My brother with hearing loss

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name Weston Campbell

Job Title Student

Address 120 Ivy Lakes Drive
*Street*

Phone 904 703 1020

St. Johns FL 32259
*City* *State* *Zip*

Email WCampbell0109@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Kids With Hearing Loss

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/18/'19
*Meeting Date*

SB 572
*Bill Number (if applicable)*

Topic Insurance for Childrens Hearing Aides

*Amendment Barcode (if applicable)*

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.
*Street*

Sarasota FL. 34243
*City* *State* *Zip*

Phone 941-928-0278

Email acchildren@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Advocacy Institute For Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

Topic Hearing Aids for Children

*Amendment Barcode (if applicable)*

Name Angie Gallo

Job Title VP of Education

Address _____ Phone _____
*Street*

_____ Email _____
*City* *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

572

*Meeting Date* | *Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing A-Z Bill

Name Debbie Gelinski

Job Title President | CEO Sertoma

Address 6333 Ruby Rd. Phone 727-312-3881

*Street*

NPR FL 34652 Email debbie@familyhealthhelp.org

*City* *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

| Meeting Date | Bill Number (if applicable) |
|---|---|
| | 572 |

Amendment Barcode (if applicable)

Topic Hearing Aid Bill

Name Risa Barnett

Job Title Sertoma Audiologist

Address 6333 River Rd Phone 727-312-3881
*Street*

New Port Richey, FL 34652 Email rbarnett@familyhearing.org
*City* *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/2019
*Meeting Date*

572
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Hearing Aid Coverage

Name June E. Finnegan

Job Title Retired

Address 3909 Reserve Drive #731
*Street*

Tallahassee, FL 32312
*City* *State* *Zip*

Phone 850-933-3380

Email jeeyestone@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families with deaf children

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/2019
*Meeting Date*

572
*Bill Number (if applicable)*

Topic Hearing Aid Coverage

*Amendment Barcode (if applicable)*

Name ~~Z~~ Cynthia Giralt

Job Title Registered Nurse

Address 7217 Anhinga farms Rd
*Street*

Tallahassee FL 32309
*City* *State* *Zip*

Phone (850) 443-4445

Email cindigiralt@i

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Mothers of Children who are deaf

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

572
*Bill Number (if applicable)*

Topic Hearing Aids for Children

*Amendment Barcode (if applicable)*

Name Doug Bell

Job Title

Address 119 S. Monroe St.
*Street*

Phone 205-9000

TLH
*City* *State* *Zip*

Email dbg doug.bell@ymlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

03/18/2019
*Meeting Date*

572
*Bill Number (if applicable)*

Topic _____

*Amendment Barcode (if applicable)*

Name Paul Sanford

Job Title _____

Address 106 South Monroe Street
*Street*

Phone 850-222-7200

Tallahassee FL 32301
*City* *State* *Zip*

Email _____

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Insurance Council and Florida Blue

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 862 |
| INTRODUCER: | Banking and Insurance Committee and Senator Stargel |
| SUBJECT: | Insurance Coverage for Vehicle Leases |
| DATE: | March 19, 2019 REVISED: |

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 862 provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent or employee if the lease agreement requires documented proof of insurance coverage with limits of at least $100,000/$300,000 for bodily injury liability and $50,000 for property damage liability, or at least $500,000 for combined property damage liability and bodily injury liability. The bill provides that the failure of the lessee to obtain or maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

Special mobile equipment are vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway. Examples include ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes and earthmoving equipment.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation,* which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine.[1] The dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."[2]

[1] 253 So.3d 1054 (Fla. 2018).
[2] *Aurback v. Gallina*, 753 So.2d 60, 62 (Fla. 2000).

## II. Present Situation:

### Dangerous Instrumentality Doctrine

Florida's dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."[3] Liability is applied because a motor vehicle is a potent source of danger that is dangerous in its operation.[4] Vicarious liability is a form of indirect liability in which a party, who may not have been negligent, can be held liable for the acts of another party.[5] Courts apply the doctrine not only to motor vehicles primarily designed to be used on the roads and highways of the state, but also to certain dangerous vehicles that are frequently operated near the public, such as farm tractors and tow motors.[6]

The Legislature has prohibited application of the dangerous instrumentality doctrine to lessors of motor vehicles designed and required to be licensed to be used on the highways of this state if the lease agreement requires the lessee to obtain bodily injury liability insurance coverage with limits of at least $100,000 per person injured and $300,000 per accident.[7] State law also prohibits application of the doctrine to owners of vessels (boats) unless the owner is the operator or present in the vessel,[8] and powered shopping carts provided gratis for use on the premises of the owner.[9] Federal law preempts application of the dangerous instrumentality doctrine to rental car companies that rent or lease a motor vehicle in compliance with state financial responsibility laws.[10] Federal preemption only applies to motor vehicles that are manufactured primarily for use on public streets, roads, and highways.[11]

### *Newton v. Caterpillar Financial Services Corporation*

In *Newton v. Caterpillar Financial Services Corporation*, the Florida Supreme Court held that loaders are dangerous instrumentalities.[12] A loader is a mobile, motorized piece of equipment with a large shovel that is used to transfer material to different areas of a job site.

According to the Florida Supreme Court's recitation of the facts in this case, Caterpillar Financial Services Corporation (Caterpillar) leased a loader to Charles Cram, an agent of C & J Bobcat and Hauling, LLC., tasked with clearing debris from a private lot in a residential area.[13] Anthony Newton, the plaintiff in the lawsuit, is an independent contractor hired by C&J Bobcat and Hauling, LLC, to assist its agent, Charles Cram in accomplishing the job. The loader was used to dump debris into a box trailer for disposal.[14] At the direction of Mr. Cram, Mr. Newton stepped into the disposal box trailer to pack down the debris when a tree stump was released

[3] *Aurback*, 753 So.2d at 62.
[4] *Rippy v. Shepard*, 80 So.3d 305, 306-307 (Fla 2012); *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 631 (Fla. 1920).
[5] *Pembroke Lakes Mall Ltd. V. McGruder*, 137 So.3d 418 at 431 (Fla. 4th DCA).
[6] See *Rippy*, 80 So.3d at 307-308.
[7] Section 324.021(9), F.S.
[8] Section 327.32, F.S.
[9] Section 768.093, F.S.
[10] 49 USC s. 30106.
[11] 49 USC s. 30102(a)(7).
[12] *Newton v. Caterpillar Financial Services Corporation*, 253 So.3d 1054 (Fla. 2018).
[13] *Newton*, 253 So.3d at 1055.
[14] *Newton*, 253 So.3d at 1055.

from the loader Mr. Cram was operating into the disposal trailer, severing Mr. Newton's middle finger.[15] Anthony Newton sued Caterpillar, alleging Caterpillar is liable for the injuries he sustained due to Cram's negligent operation of the loader because the loader was a dangerous instrumentality.[16] The trial court found the loader was not a dangerous instrumentality and thus granted summary judgment for Caterpillar[17], and the Second District Court of Appeals (2nd DCA) affirmed the trial court decision.[18] Mr. Newton appealed and the Supreme Court accepted jurisdiction and reversed the lower courts.[19]

The court stated that in applying the dangerous instrumentality doctrine, Florida courts consider:

- Whether the instrumentality is a motor vehicle;
- Whether the instrumentality is frequently operated near the public, through the injury need not occur on public property;
- The instrumentality's peculiar dangers relative to other objects found to be dangerous instrumentalities; and
- How extensively the Legislature has regulated the instrumentality.[20]

The Florida Supreme Court first determined that a loader is a motor vehicle, finding that they meet the definition of a motor vehicle under Black's Law Dictionary, analogizing loaders to farm tractors and forklifts as motor vehicles for purposes of the dangerous instrumentality doctrine.[21] The court then determined loaders are frequently operated near the public, finding that they are often used in construction settings and on public rights of way.[22] The court found that loaders are similar to farm tractors, another dangerous instrumentality under Florida law, and that loaders are machines that, due to their size and speed, can be dangerous to others.[23] Based on the foregoing, the court determined that a loader is a dangerous instrumentality as a matter of law, quashed the lower court's decision, and directed that summary judgment be granted in favor of Anthony Newton. Three justices dissented on the basis that the Florida Supreme Court did not have jurisdiction because the 2nd DCA, in determining a loader is not a dangerous instrumentality, had not issued a decision that conflict with another DCA or the state supreme court.[24]

## III. Effect of Proposed Changes:

**Section 1** creates s. 627.749, F.S., which provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent if the lease agreement requires documented proof of insurance coverage with limits of at least $100,000/$300,000 for bodily injury liability and $50,000 for property damage liability, or at least $500,000 for combined property damage liability and bodily

[15] *Newton*, 253 So.3d at 1056.
[16] *Newton*, 253 So.3d at 1056.
[17] *Newton*, 253 So.3d at 1056.
[18] *Newton v. Caterpillar Financial Services Corp.*, 209 So.3d 612 (Fla. 2nd DCA 2016).
[19] *Newton*, 253 So.3d at 1057.
[20] *Newton*, 253 So.3d at 1056; *Rippy*, 80 So.3d at 308-309; *Meister v. Fisher*, 462 So.2d 1071, at 1072-7073 (Fla. 1984).
[21] *Newton*, 253 So.3d at 1056-1057.
[22] *Newton*, 253 So.3d at 1057.
[23] *Newton*, 253 So.3d at 1057.
[24] *Newton*, 253 So.3d at 1063-1064.

injury liability. The bill provides that the failure of the lessee to obtain or maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

The bill defines the terms "lease agreement," "lessee," "lessor," and "special mobile equipment." "Special mobile equipment" has the same meaning as provided in s. 316.003, F.S., which is:

> Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation,* which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine.[25] The dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."[26]

**Section 2** provides that the bill is effective July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[25] 253 So.3d 1054 (Fla. 2018).
[26] *Aurback*, 753 So.2d at 62.

## 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. Statutes Affected:

This bill creates section 627.749 of the Florida Statutes.

## IX. Additional Information:

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

**CS by Banking and Insurance on March 19, 2019:**
The CS removes provisions of the bill stating the lessor is only liable if the lessor is grossly negligent, committed criminal wrongdoing, or the injury occurred while the lessor's employee or contractor was operating, maintaining, or using the special mobile equipment.

B. Amendments:

None.

887958

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 768.092, Florida Statutes, is created to read:

768.092 Special mobile equipment; liability of lessors.—

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

(a) "Lease agreement" means a written agreement for the rental or lease of special mobile equipment, regardless of

887958

whether the lease is for a fixed term or with an option to purchase.

(b) "Lessee" means a person who rents or leases special mobile equipment from the lessor pursuant to a lease agreement.

(c) "Lessor" means a person who, pursuant to a lease agreement, offers or arranges for the rental or lease of special mobile equipment by the lessee.

(d) "Special mobile equipment" has the same meaning as in s. 316.003.

(2) The lessor of any special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for acts of the lessee or the lessee's agent or employee in connection with the rental or lease, including any bodily injury, death, or damage resulting from the operation, maintenance, or use of the special mobile equipment, if the lease agreement requires documented proof of insurance coverage containing limits of at least $100,000 per person and up to $300,000 per incident for bodily injury liability and up to $50,000 for property damage liability, or at least $500,000 for combined property damage liability and bodily injury liability. The failure of the lessee to obtain or maintain insurance coverage required by the lease agreement does not impose liability on the lessor. However, the lessor of the special mobile equipment may be liable for damages that:

(a) Occurred while the lessor's employee or contractor was operating, maintaining, or using the equipment; or

(b) Resulted from the lessor's gross negligence or criminal wrongdoing.

Section 2. This act shall take effect July 1, 2019.

887958

40
41 ================ T I T L E  A M E N D M E N T ================
42 And the title is amended as follows:
43 Delete everything before the enacting clause
44 and insert:
45 A bill to be entitled
46 An act relating to lessor liability under special
47 mobile equipment leases; creating s. 768.092, F.S.;
48 defining terms; providing that a lessor of special
49 mobile equipment that causes injury, death, or damage
50 is not liable for certain acts of the lessee or
51 lessee’s agent if the lease agreement requires
52 documented proof of specified insurance coverage;
53 providing that a lessee’s failure to obtain or
54 maintain the required coverage does not impose
55 liability on the lessor; providing that the lessor may
56 be liable for damages under certain circumstances;
57 providing an effective date.

569634

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: WD | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment to Amendment (887958)**

Delete line 27
and insert:
containing limits of at least $300,000 per person and up to

619438

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment to Amendment (887958) (with title amendment)**

Delete lines 33 - 38
and insert:
liability on the lessor.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 55 - 56

619438

and insert:

liability on the lessor;

433288

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: WD | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment to Amendment (887958)**

Delete lines 35 - 36
and insert:
(a) Occurred as a result of the lessor's employee or contractor operating, maintaining, or using the special mobile equipment; or

321874

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: WD | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment to Amendment (887958)**

Delete line 37
and insert:
(b) Resulted from the lessor's negligence or criminal

590316

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: OO | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete line 32
and insert:
limits of at least $300,000/$300,000 for bodily injury liability

700904

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: OO | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete lines 43 - 44
and insert:
(a) Occurred as a result of the lessor's employee or contractor operating, maintaining, or using the special mobile equipment; or

328242

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: OO | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete line 45
and insert:
(b) Resulted from the lessor's negligence or criminal

**By** Senator Stargel

22-00843-19 2019862__

A bill to be entitled

An act relating to insurance coverage for vehicle leases; creating s. 627.749, F.S.; defining terms; providing that a lessor of special mobile equipment is not liable for acts of the lessee or the lessee's agent or employee in connection with the rental or lease if the lease agreement requires specified insurance coverages; providing construction; providing an exception; providing an effective date.

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

Section 1. Section 627.749, Florida Statutes, is created to read:

627.749 Limitation of liability for rental or lease of special mobile equipment.—

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

(a) "Lease agreement" means a written agreement for the rental or lease of special mobile equipment, regardless of whether the lease is for a fixed term or with an option to purchase.

(b) "Lessee" means a person who rents or leases special mobile equipment from a lessor pursuant to a lease agreement.

(c) "Lessor" means a person who offers or arranges for the rental or lease of special mobile equipment by a lessee pursuant to a lease agreement.

(d) "Special mobile equipment" has the same meaning as provided in s. 316.003.

(2) Notwithstanding any other law, a lessor, under a lease







22-00843-19 2019862__

agreement for the rental or lease of special mobile equipment which requires the lessee to maintain insurance coverage with limits of at least $100,000/$300,000 for bodily injury liability and $50,000 for property damage liability, or at least $500,000 for combined property damage liability and bodily injury liability, is not liable for acts of the lessee or the lessee's agent or employee in connection with the rental or lease, including any bodily injury, death, or property damage resulting from operation, maintenance, or use of the special mobile equipment. The failure of the lessee to obtain or maintain insurance coverage required by the lease agreement does not impose liability on the lessor. However, the lessor may be liable if the bodily injury, death, or property damage:

(a) Occurred while the lessor's employee or contractor was operating, maintaining, or using the special mobile equipment.

(b) Resulted from the lessor's gross negligence or criminal wrongdoing.

Section 2. This act shall take effect July 1, 2019.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

**JOINT COMMITTEE:**
Joint Select Committee on Collective Bargaining

**SENATOR KELLI STARGEL**
22nd District

February 21, 2019

The Honorable Doug Broxson
Senate Committee on Banking and Insurance, Chair
318 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Broxson:

I respectfully request that SB 862, related to *Insurance Coverage for Vehicle Leases,* be placed on the Banking and Insurance meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: James Knudson/Staff Director
Sheri Green/AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 662

Meeting Date

Bill Number (if applicable)
887958

Topic Pensions: Instrumentality

Amendment Barcode (if applicable)

Name William Cottrell

Job Title

Address 218 S Monroe
Street

Phone

Tallahassee FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

8/27
*Meeting Date* *Bill Number (if applicable)*

Topic DANGEROUS INSTRUMENTALITY *Amendment Barcode (if applicable)* 423288

Name GEORGE MIERS 504 634 3816 94

Job Title ATTY

Address 315 S CALHOUN Phone AGAINST

*Street*

TALL Email

*City* *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing US CHAMBER

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 862
*Bill Number (if applicable)*

Topic Insurance Coverage for Vehicle Leases

*Amendment Barcode (if applicable*

Name Brewster Bevis

Job Title Senior VP

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee FL 32301
*City* *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

862
*Bill Number (if applicable)*

Topic Dangerous Instrumentality

*Amendment Barcode (if applicable)*

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St
*Street*

Phone 521-1200

Tallahassee FL 32301
*City* *State* *Zip*

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

03.18.19
*Meeting Date*

862
*Bill Number (if applicable)*

Topic Insurance Coverage for Vehicle Leases
*Amendment Barcode (if applicable)*

Name William Large

Job Title President

Address 210 South Monroe Street
*Street*
Tallahassee FL 32301
*City* *State* *Zip*

Phone 850-222-0170

Email William@fljustice.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

862
*Bill Number (if applicable)*

569634
*Amendment Barcode (if applicable)*

Topic Dangerous Instrumentality

Name William Cotterall

Job Title

Address 218 S Monroe
*Street*

Phone

Tallahassee FL 32301
*City* *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

862
*Bill Number (if applicable)*

433288
*Amendment Barcode (if applicable)*

Topic Dangerous Instrumentality

Name William Cotterall

Job Title

Address 218 S Monroe
*Street*

Phone

Tallahassee FL 32301
*City* *State* *Zip*

Email

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

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

Representing Florida Justice Assoc.

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

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

862
*Bill Number (if applicable)*

321874
*Amendment Barcode (if applicable)*

Topic Dangerous Instrumentality

Name William Cottrell

Job Title

Address 218 S Monroe St
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone

Email

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

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

Representing Florida Justice Assoc.

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

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

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 874 |
| INTRODUCER: | Senator Rouson |
| SUBJECT: | Consumer Finance Loans |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Knudson | BI | **Pre-meeting** |
| 2. | | | FT | |
| 3. | | | RC | |

## I. Summary:

SB 874 establishes the Access to Responsible Credit Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation (OFR) is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans of at least $300 and no more than $10,000, at a maximum fixed interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of 6 percent of the principal amount of the program loan exclusive of the origination fee or $90, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a minimum term of 120 days and a maximum term of 60 months depending on the amount borrowed and may not impose a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 50 percent of the borrower's gross monthly income when borrowing less than $3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.
- The OFR is required to examine licensees at least once every 24 months beginning after January 1, 2022.
- A program licensee may use an access partner to perform marketing, servicing, and other services on behalf of the program licensee.
- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., not be subject of any insolvency proceedings and not be subject to any enforcement action by a state or federal regulatory agency.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.

The pilot program would increase these maximum allowed percentages by 6 percent per tier.

## II. Present Situation:

### Federal Truth in Lending Act (TILA)

The purpose of TILA,[1] is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[2] Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.[3] Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.[4]

### State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities. The Division of Financial Institutions of the OFR charters regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes). [5] The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.[6]

### Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in

[1] 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.
[2] 15 U.S.C. s. 1601(a).
[3] 15 U.S.C. s. 1604-1606.
[4] 12 C.F.R. s. 1026.4.
[5] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[6] These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum."[7] The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal between $3,001 to $4,000; and
- 18 percent a year on that part of principal between $4,001 to $25,000.[8]

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.[9] The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.[10] Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:[11]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to $20.

Lastly, the act requires all consumer finance loans must be repaid in equal monthly installments, except for repayment on lines of credit.[12]

**California Small Dollar Loan Pilot Programs**

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[13] The pilot program covers consumer loans of $250-$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[14] The new pilot program covers consumer loans of $300-$2,500 and allows the use of "finders" to connect borrowers with lenders. Finders

[7] Section 516.01(2), F.S.
[8] Section 516.031(1), F.S.
[9] Section 516.031(2), F.S.
[10] *Id.*
[11] Section 516.031(3), F.S.
[12] Section 516.36, F.S.
[13] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 10, 2019).
[14] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 10, 2019).

cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[15]

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans ($300-$499) decreased by 42.3 percent, while larger loans ($500-$999) increased by 106 percent.
- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans ($1,500-$2,499) saw a more even APR distribution.
- *Delinquency rates*: In 2014, 22.5 percent were delinquent for 7 days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores*: The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the 4-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.
- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than 10. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.[16]

## III. Effect of Proposed Changes:

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least $300 and up to a maximum of $10,000 at an interest rate not to exceed 36 percent per annum. Under

[15] Id.
[16] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited March 10, 2019).

current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

**Access to Responsible Credit Pilot Program (Section 1)**

Creates s. 516.405, F.S., which states that the Access to Responsible Credit Pilot Program is created within the OFR to allow more Floridians to obtain responsible consumer finance loans with principal amounts of at least $300 but not more than $10,000.

**Definitions (Section 2)**

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Access partner
- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program
- Pilot program license
- Program branch office license
- Program licensee
- Program loan
- Refinance program loan

**Regulation of Program Licensees (Lenders) and Access Partners (Sections 3 and 5)**

***Program Licensees* (Section 3)**

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S., not be subject of any insolvency proceedings, and not be the subject of an enforcement action by the OFR or any state or federal regulatory agency. Application forms are to be adopted by rule. Each branch office of a program licensee must be included in the program application to the OFR.

The bill requires applicants to be accepted as a "data furnisher" with a consumer-reporting agency[17] before the OFR may approve an applicant as a program licensee.

***Access Partners* (Section 5)**

The bill allows a program licensee to engage in arrangements with access partners. All such arrangements must be in writing; must contain a provision that the access partner agrees to comply with s. 516.44, F.S., and must contain a provision allowing the OFR access to the access

[17] The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

partner's books and records related to the access partner's operations under the agreement with the program licensee.

An access partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact the program licensee to determine the status of a program loan application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system;
- Obtain a borrower's signature on documents prepared by the program licensee and deliver final copies of the documents to the borrower;
- Disburse program loan proceeds to a borrower, and receive program loan payments from a borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

Any program payments received by an access partner must be applied to the program loan and be deemed received by the program licensee at the time the access partner receives the payment. When payment is made, an access partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if an access partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. An access partner must maintain records related to disbursements and payments for 2 years.

Access partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and access partner. The bill requires an access partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where an access partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate an access partner. Compensation paid to an access partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must not be paid to an access partner until the program loan is consummated.

The bill prohibits an access partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;

- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee;
- Negotiate a loan term between a program licensee and a prospective borrower;
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower; and
- Requiring a borrower to pay any fees other than those permitted under the bill.

The program licensee is responsible for any violations of ch. 516, F.S., committed by an access partner.

**Terms and Conditions of the Small Dollar Loans (Section 4)**

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

**Unsecured Loan Term, Repayment Schedule, and Right of Rescission**

- A program loan must be unsecured.
- A program loan must have a minimum term of 120 days for a loan amount that is at least $300 but no more than $3,000; the minimum term is 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than $3,000. All loans may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every 2 weeks, semimonthly or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.

***Interest Rates***

A program loan must apply an interest rate which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day. The maximum per annum interest rate various with the portion of the unpaid principal on the loan, as follows:

- For the portion of the principal up to and including $3,000, the maximum annual interest rate is 36 percent.
- For the portion of the principal over $3,000, and up to and including $4,000, the maximum annual interest rate is 30 percent.
- For the portion of the principal over $4,000 and up to and including $10,000, the maximum interest rate is 24 percent.

If multiple interest rates are applied to the loan principal, the lender may charge interest at the single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total of interest as would result from the application of multiple interest rates, based on the assumption that all payments are made as agreed.

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least 1 percent up to 6 percent if all the following conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan;
- The prior program loan was outstanding for at least one half of its original term before its repayment.

***Prohibition Against Multiple, Contemporaneous Program Loans from the Same Licensee***

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

***Refinancing***

The bill allows the refinancing of program loan under specified circumstances if the new loan in underwritten in accordance with the underwriting requirements created by the bill. A program licensee may refinance a program loan only if all of the following conditions are met at the time the borrower submits an application to refinance:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;
- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on the program loan;
- The borrower is current on his or her outstanding program loan.

***Consumer Disclosures and Receipts***

The bill requires a program licensee must provide the same disclosures as required in s. 516.15, F.S.,[18] however the bill does allow the disclosures to be provided disclosures in other languages the loans were negotiated in.

The bill requires a program licensee or approved access partner to provide the borrower an electronic or physical receipt of payment at the time the borrower makes a payment. The receipt must include specified information that includes the borrower's name, the amount paid, the date of payment, the program loan balance before and after payment, they type of payment made, and a statement informing the borrower how to contact the lender to ask questions regarding the loan. The program licensee must maintain an electronic record of each receipt, which must include a copy of the receipt and the date and time the receipt was made.

[18] Section. 516.15(1), F.S., deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity; the nature of the security, if any, for the loan; the name and address of the borrower and of the licensee; and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

***Fees***

The bill allows a program licensee to contract for and receive an origination fee, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or $90, whichever is less. A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

The bill caps the fee for insufficient funds at $20, and any delinquency charge is capped at $15 for each calendar month for payments in default for at least 10 days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

***Credit Education***

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

***Program Loan Underwriting***

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceeds 50 percent of the borrower's gross monthly income when borrowing less than $3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:

- Electronic means or services that provide reliable evidence of the borrower's actual income; or
- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

***Waiver of Borrower's Rights***

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

**Examination of Program Licensees (Section 6)**

The legislation requires the OFR to examine program licensees at least once every 24 months beginning after January 1, 2022. The scope of any investigation or examination of a program licensee or access partner is to be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with the program. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. Any such disciplinary action is subject to s. 120.60, F.S. The program licensee is also subject to disciplinary action for a violations of s. 516.44, F.S., committed by any of its access partners.

The office may take any of the following actions against an access partner:
- Bar the access partner from performing services under the program.
- Bar the access partner from performing services at one or more of its specific locations.

The bill authorizes the OFR to waive branch examinations if the OFR finds such examination are unnecessary for the protection of the public due to the centralized operation of the program licensee or other factors acceptable to the office.

The bill provides the OFR rulemaking authority to implement the examination requirements.

**Reporting Requirements (Sections 4, 5, and 7)**

***Credit Reporting (Section 4)***

The bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history.

***Notice to the OFR (Section 5)***

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with an access partner. Such information includes the access partner's identifying information, and a provision that allows the OFR to request any other information.

The program licensee must conduct due diligence with respect to the access partner and confirm to the OFR that the access partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the access partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the access partner has committed a criminal act and that there has not been notification that the access partner is under criminal investigation. The access partner must report changes in this information to the program licensee.

***OFR Program Report (Section 7)***

A program licensee is required to file, on or before March 15 of each year beginning in year 2021, a report with the OFR in a manner prescribed by rule.

The bill directs the OFR to post a report on its website by January 1, 2022, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of applicants approved for program licensure.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses:
    - Pay medical expenses.
    - Pay for vehicle repair or a vehicle purchase.
    - Pay bills.
    - Consolidate debt.
    - Build or repair credit history.
    - Pay other expenses.
- The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.

The bill provides rulemaking authority for the OFR to implement the reporting requirements.

**Section 8** provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2027, unless reenacted or superseded by another enacted law before that date.

**Section 9** provides the act shall take effect January 1, 2020.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill may need a companion public records exemption bill as information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Without a companion public records exemption bill this information could be subject to public inspection.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, access partners, and borrowers who would participate in this pilot program is unknown at this time. The intent of the program

is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by 6 percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least 1 percent up to 6 percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

Office of Financial Regulation resources will be required to process applications; process access partner notices; process complaints; examine records of program licensees and access partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. Additionally, the bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) system internal system and website. The bill will also require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost an estimated $380,000 non-recurring and $501,776.96 annually recurring cost to the OFR.[19]

The bill also provides that the program loan contracts, written disclosures, and statements may be provided to the borrower in English or in the language in which the loan is negotiated; however, the bill does not authorize the OFR to collect fees for translating the contracts as part of its examination requirement.

It is unclear if criminal history information is intended to be obtained through state or state and national criminal history record checks, accessible through FDLE. Section 943.051, F.S., established FDLE as the central repository of criminal history information for the state of Florida. Both FDLE and the FBI (when FDLE begins participation in the federal program) retain the fingerprints, search the fingerprints against incoming arrests, and FDLE will notify the agency if the retained fingerprints match an incoming arrest. The cost for such background checks is $37.25 and typically borne by the applicant. The bill does not address the cost for background checks and it is presumed this cost would be borne by FDLE who conducts the check. If this is the case the fiscal impact to FDLE would be significant, however, indeterminate depending on the number of applicants.

## VI. Technical Deficiencies:

Lines 245-247: A program loan between $300 and $3000 has a minimum term of 120 days, but does not prescribe a maximum term. A program loan more than $3000 and up to the maximum $10,000 must have a term between 12 and 60 months. There may be a need for a cap on the term of a loan between $300 and $3000.

Lines 146 and 227: Provides that a program loan applicant must not be the subject of an insolvency proceeding to meet the requirements of licensure. This provision fails to

[19] Office of Financial Regulation, *Bill Analysis of SB 874*, March 4, 2019 (on file with the Banking and Insurance committee).

define the term ‘insolvency,’ which could prove problematic when enforcing the provision.

Lines 228-229: Provides that the OFR may deny an initial or renewal program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant’s business is the subject of a pending criminal prosecution. The provision allows the Office to deny in all circumstances involving a pending criminal prosecution; however, the provision prevents denial in situations where an applicant or person with the power to direct the management or policies of the applicant’s business was convicted, pled guilty, or pled nolo contendere, resulting in less protection for borrowers. Similarly, the provision does not allow the Office to deny the application if there is a pending administrative enforcement action.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.405, 516.41, 516.42, 516.43, 516.44, 516.45, and 516.46.

## IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

**Senate Amendment**

Delete lines 146 - 245
and insert:
(c) Demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.
(d) Not be subject to the issuance of a cease and desist

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order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application in a form and manner prescribed by commission rule which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant's main address.

3. The applicant's telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant's contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person of the applicant.

(b) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to



s. 516.05 must concurrently submit the following digital applications in a form and manner specified in this chapter to the office:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form. The application for a program branch office


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license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

(a) Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(b) Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was

402070

withheld.

(c) Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days, but not more than 60 months, for a loan with a principal

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

**Senate Amendment to Amendment (402070)**

Delete line 114

and insert:

1. A term of at least 120 days, but not more than 36

153120

LEGISLATIVE ACTION

Senate . House

. . . . .

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

**Senate Substitute for Amendment (402070) (with title amendment)**

Delete lines 146 - 672
and insert:
(c) Demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

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(d) Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application in a form and manner prescribed by commission rule which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant’s main address.

3. The applicant’s telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant’s contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person of the applicant.

(b) A person who desires to participate in the program but

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who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications in a form and manner specified in this chapter to the office:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed

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application form. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

(a) Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(b) Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any

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act of moral turpitude, regardless of whether adjudication was withheld.

(c) Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days, but not more than 36 months, for a loan with a principal balance upon origination of at least $300, but not more than $3,000.

2. A term of at least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than $3,000.

(c) A program loan must not impose a prepayment penalty. A program loan must be repayable by the borrower in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due either every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower's right to

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rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and returning the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest rate charged on a program loan to the borrower, which must be fixed for the duration of the program loan, is 36 percent on that portion of the unpaid principal balance up to and including $3,000; 30 percent on that portion of the unpaid principal balance exceeding $3,000 and up to and including $4,000; and 24 percent on that portion of the unpaid principal balance exceeding $4,000 and up to and including $10,000. The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum annual interest rates in this paragraph, the computations used must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the program licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

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(g) The program licensee shall reduce the interest rates specified in paragraph (e) on each subsequent program loan to the same borrower by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:

1. The subsequent program loan is originated within 180 days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-half of its original term before its repayment.

(h) The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan pursuant to s. 516.031(5).

2. For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan.

3. For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.

4. The borrower is current on payments for his or her

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existing program loan.

5. The program licensee must underwrite the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, the program licensee or, if applicable, its approved access partner shall make available to the borrower by electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, the program licensee must maintain an electronic record for each receipt made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt made available to the borrower must show all of the following:

1. The name of the borrower.

2. The name of the access partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

8. The following statement, prominently displayed in a type size equal to or larger than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

(2) WRITTEN DISCLOSURES AND STATEMENTS.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided by a program licensee to a borrower in English or in the language in which the loan is negotiated.

(b) The program licensee shall provide to a borrower all the statements required of licensees under s. 516.15.

(3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program licensee may:

(a) Contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $90.

(b) Not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A program licensee may:

(a) Notwithstanding s. 516.031, require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 in a calendar month for one or more payments that are in default for at least 10

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days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or seminar to the borrower. The borrower is not required to participate in such education program or seminar. A credit education program or seminar offered pursuant to this paragraph must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency.

(b) The office may not approve an applicant for the program license before the applicant has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee must underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program

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licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income for a loan of not more than $3,000, or exceed 36 percent of the borrower's gross monthly income for a loan of more than $3,000.

(b)1. The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee must verify the borrower's income to determine the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. The Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) WAIVERS.—

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(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, a court, or any other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower's or applicant's refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise communicate with, the office, a court, or any other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the

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contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Access partners.—

(1) ACCESS PARTNER AGREEMENT.—All arrangements between a program licensee and an access partner must be specified in a written access partner agreement between the parties. The agreement must contain the following provisions:

(a) The access partner agrees to comply with this section and all rules adopted under this section regarding the activities of access partners.

(b) The office has access to the access partner's books and records pertaining to the access partner's operations under the agreement with the program licensee in accordance with s. 516.45(3) and may examine the access partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more access partners as provided in this section. An access partner may perform one or more of the following services for the program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program

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licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information needed in order to complete a program loan application.

(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by an access partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a

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prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to an access partner under paragraph (2)(j) must be applied to the borrower's program loan and deemed received by the program licensee as of the date on which the payment is received by the access partner.

(b) An access partner that receives a loan payment from a borrower must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to an access partner under this subsection is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

(d) An access partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for at least 2 years.

(4) PROHIBITED ACTIVITIES.—An access partner may not:

(a) Provide counseling or advice to a borrower or prospective borrower with respect to any loan term.

(b) Provide loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiate a loan term between a program licensee and a prospective borrower.

(d) Offer information pertaining to a single prospective

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borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program licensee with whom it has an access partner agreement.

(e) Require a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

(5) DISCLOSURE STATEMENTS.—

(a) At the time that the access partner receives or processes an application for a program loan, the access partner shall provide the following statement to the applicant on behalf of the program licensee, in at least 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

Your loan application has been referred to us by ...(name of access partner).... We may pay a fee to ...(name of access partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of access

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partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate an access partner in accordance with a written agreement and a compensation schedule that is agreed to by the program licensee and the access partner, subject to the requirements in paragraph (b).

(b) The compensation of an access partner by a program licensee is subject to the following requirements:

1. Compensation may not be paid to an access partner in connection with a loan application unless the program loan is consummated.

2. The access partner’s location for services and other information required in subsection (7) must be reported to the office.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of an access partner must notify the office, in a form and manner prescribed by commission rule, within 15 days after entering into a contract with an access partner regarding all of the following:

(a) The name, business address, and licensing details of the access partner and all locations at which the access partner will perform services under this section.

(b) The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority to execute, the access partner agreement.

(c) The name and contact information of one or more employees of the access partner who are responsible for that access partner's referring activities on behalf of the program licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following apply:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner.

2. The commencement of an administrative or a judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the access partner or an affiliated party.

4. The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the

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access partner.

6. Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation, including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of an access partner; or a person who has a controlling interest in an access partner.

(e) Any other information requested by the office, subject to the limitations specified in s. 516.45(3).

(8) NOTICE OF CHANGES.—An access partner must provide the program licensee with a written notice sent by registered mail within 30 days after any change is made to the information specified in paragraphs (7)(a)-(c) and within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d).

(9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program licensee is responsible for any act of its access partner if such act is a violation of this chapter.

(10) RULEMAKING.—The commission shall adopt rules to implement this section.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations, investigations, and grounds for

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disciplinary action.—

(1) Notwithstanding any other law, the office may examine each program licensee that is accepted into the program and each branch office of the program licensee in accordance with this chapter.

(2) Notwithstanding any other law, the office may examine each access partner that is accepted into the program in accordance with this chapter.

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

And the title is amended as follows:

Delete lines 53 - 55

and insert:

creating s. 516.45, F.S.; authorizing the office to examine each program licensee, branch office, and access partner;

**By** Senator Rouson

19-01218A-19 2019874__

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.405, F.S.; creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative intent; creating s. 516.41, F.S.; providing definitions; creating s. 516.42, F.S.; requiring persons to obtain a program license from the office before making program loans; providing licensure requirements; requiring a program licensee's program branch offices to be licensed; providing program branch office license and license renewal requirements; providing circumstances under which the office may deny initial and renewal applications; requiring the Financial Services Commission to adopt rules; creating s. 516.43, F.S.; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; requiring program licensees to provide certain credit education information to borrowers and to report payment performance of borrowers to a consumer reporting agency; prohibiting the office from approving a program licensee applicant before the applicant has been accepted as a data furnisher by a consumer reporting agency; requiring program licensees to underwrite program loans; prohibiting program licensees from making program loans under certain







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circumstances; requiring program licensees to seek certain information and documentation; prohibiting program licensees from requiring certain waivers from borrowers; providing applicability; creating s. 516.44, F.S.; requiring all arrangements between program licensees and access partners to be specified in written access partner agreements; providing requirements for such agreements; specifying access partner services that may be used by program licensees; specifying procedures for borrowers' payment receipts or access partners' disbursement of program loans; providing recordkeeping requirements; prohibiting certain activities by access partners; providing disclosure statement requirements; providing requirements and prohibitions relating to compensation paid to access partners; requiring program licensees to provide the office with a specified notice after contracting with access partners; defining the term "affiliated party"; requiring access partners to provide program licensees with a certain written notice within a specified time; providing that program licensees are responsible for acts of their access partners; requiring the commission to adopt rules; creating s. 516.45, F.S.; requiring the office to examine program licensees at certain intervals, beginning on a specified date; providing an exception; limiting the scope of certain examinations and investigations; authorizing the office to take certain disciplinary action against program licensees and

access partners; requiring the commission to adopt rules; creating s. 516.46, F.S.; requiring program licensees to file an annual report with the office beginning on a specified date; requiring the office to post an annual report on its website by a specified date; specifying information to be contained in the reports; requiring the commission to adopt rules; providing for future repeal of the pilot program; providing an effective date.

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

Section 1. Section 516.405, Florida Statutes, is created to read:

516.405 Access to Responsible Credit Pilot Program.—

(1) The Access to Responsible Credit Pilot Program is created within the Office of Financial Regulation to allow more Floridians to obtain responsible consumer finance loans in principal amounts of at least $300 but not more than $10,000.

(2) The pilot program is intended to assist consumers in building their credit and to provide additional consumer protections for these loans that exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions.—As used in ss. 516.405-516.46, the term:

(1) "Access partner" means an entity that, at the entity's physical business location or through online access, cellular





telephone, or other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. The term does not include a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(2) "Consumer reporting agency" has the same meaning as the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" in the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(3) "Credit score" has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(4) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. s. 1022.41(c).

(5) "Pilot program" or "program" means the Access to Responsible Credit Pilot Program.

(6) "Pilot program license" or "program license" means a license issued under ss. 516.405-516.46 authorizing a program licensee to make and collect program loans.

(7) "Program branch office license" means a license issued under the program for each location, other than a program licensee's or access partner's principal place of business:

(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee's name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced by the program licensee; or

(c) At which program loans are originated, negotiated, funded, or serviced by the program licensee.

(8) "Program licensee" means a person who is licensed to make and collect loans under this chapter and who is approved by the office to participate in the program.

(9) "Program loan" means a consumer finance loan with a principal amount of at least $300, but not more than $10,000, originated pursuant to ss. 516.405-516.46, excluding the amount of the origination fee authorized under s. 516.43(3).

(10) "Refinance program loan" means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements.—

(1) A person may not advertise, offer, or make a program loan, or impose any charges or fees pursuant to s. 516.43, unless the person obtains a pilot program license from the office.

(2) In order to obtain a pilot program license, a person must:

(a)1. Be licensed to make and collect consumer finance loans under s. 516.05; or

2. Submit the application for the license required in s. 516.05 concurrently with the application for the program license.

(b) Be accepted as a data furnisher by a consumer reporting agency.





(c) Not be the subject of any insolvency proceeding or a pending criminal prosecution.

(d) Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application, in a form and manner prescribed by commission rule, which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant's main address.

3. The applicant's telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant's contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person

of the applicant.

(b) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications to the office, in a form and manner specified in this chapter:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that





maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business is:

(a) The subject of any insolvency proceeding;

(b) The subject of a pending criminal prosecution in any jurisdiction until conclusion of such criminal prosecution; or

(c) Subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the

authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days for a loan with a principal balance upon origination of at least $300, but not more than $3,000.

2. A term of at least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than $3,000.

(c) A program loan must not impose a prepayment penalty. A program loan must be repayable by the borrower in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due either every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and returning the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest







rate charged on a program loan to the borrower, which must be fixed for the duration of the program loan, is 36 percent on that portion of the unpaid principal balance up to and including $3,000; 30 percent on that portion of the unpaid principal balance exceeding $3,000 and up to and including $4,000; and 24 percent on that portion of the unpaid principal balance exceeding $4,000 and up to and including $10,000. The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum annual interest rates in this paragraph, the computations used must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the program licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(g) The program licensee shall reduce the interest rates specified in paragraph (e) on each subsequent program loan to the same borrower by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:

1. The subsequent program loan is originated within 180

days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-half of its original term before its repayment.

(h) The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan pursuant to s. 516.031(5).

2. For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan.

3. For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.

4. The borrower is current on payments for his or her existing program loan.

5. The program licensee must underwrite the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, the program licensee or, if applicable, its approved access partner shall





make available to the borrower by electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, the program licensee must maintain an electronic record for each receipt made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt made available to the borrower must show all of the following:

1. The name of the borrower.

2. The name of the access partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

8. The following statement, prominently displayed in a type size equal to or larger than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

(2) WRITTEN DISCLOSURES AND STATEMENTS.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided by a program licensee to a borrower in English or in the language in which the loan is negotiated.

(b) The program licensee shall provide to a borrower all the statements required of licensees under s. 516.15.

(3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program licensee may:

(a) Contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $90.

(b) Not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A program licensee may:

(a) Notwithstanding s. 516.031, require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 in a calendar month for one or more payments that are in default for at least 10 days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an





independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or seminar to the borrower. The borrower is not required to participate in such education program or seminar. A credit education program or seminar offered pursuant to this paragraph must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency.

(b) The office may not approve an applicant for the program license before the applicant has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee must underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50

percent of the borrower's gross monthly income for a loan of not more than $3,000, or exceed 36 percent of the borrower's gross monthly income for a loan of more than $3,000.

(b)1. The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee must verify the borrower's income to determine the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. The Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) WAIVERS.—

(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a





complaint with or otherwise communicate with the office, a court, or any other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower's or applicant's refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise communicate with, the office, a court, or any other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Access partners.—

(1) ACCESS PARTNER AGREEMENT.—All arrangements between a

program licensee and an access partner must be specified in a written access partner agreement between the parties. The agreement must contain the following provisions:

(a) The access partner agrees to comply with this section and all rules adopted under this section regarding the activities of access partners.

(b) The office has access to the access partner's books and records pertaining to the access partner's operations under the agreement with the program licensee in accordance with s. 516.45(3) and may examine the access partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more access partners as provided in this section. An access partner may perform one or more of the following services for the program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information needed in order to complete a program loan application.





(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by an access partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to an access partner under paragraph (2)(j) must be applied to the borrower's program

loan and deemed received by the program licensee as of the date on which the payment is received by the access partner.

(b) An access partner that receives a loan payment from a borrower must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to an access partner under this subsection is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

(d) An access partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for at least 2 years.

(4) PROHIBITED ACTIVITIES.—An access partner may not:

(a) Provide counseling or advice to a borrower or prospective borrower with respect to any loan term.

(b) Provide loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiate a loan term between a program licensee and a prospective borrower.

(d) Offer information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program





licensee with whom it has an access partner agreement.

(e) Require a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

(5) DISCLOSURE STATEMENTS.—

(a) At the time that the access partner receives or processes an application for a program loan, the access partner shall provide the following statement to the applicant on behalf of the program licensee, in at least 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

Your loan application has been referred to us by ...(name of access partner).... We may pay a fee to ...(name of access partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of access partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate an access partner in accordance with a written agreement and a compensation schedule that is agreed to by the program licensee and the access partner, subject to the requirements in paragraph (b).

(b) The compensation of an access partner by a program licensee is subject to the following requirements:

1. Compensation may not be paid to an access partner in connection with a loan application unless the program loan is consummated.

2. The access partner's location for services and other information required in subsection (7) must be reported to the office.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of an access partner must notify the office, in a form and manner prescribed by commission rule, within 15 days after entering into a contract with an access partner regarding all of the following:

(a) The name, business address, and licensing details of the access partner and all locations at which the access partner will perform services under this section.

(b) The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority





to execute, the access partner agreement.

(c) The name and contact information of one or more employees of the access partner who are responsible for that access partner's referring activities on behalf of the program licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following apply:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner.

2. The commencement of an administrative or a judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the access partner or an affiliated party.

4. The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the access partner.

6. Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation, including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent

jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of an access partner; or a person who has a controlling interest in an access partner.

(e) Any other information requested by the office, subject to the limitations specified in s. 516.45(3).

(8) NOTICE OF CHANGES.—An access partner must provide the program licensee with a written notice sent by registered mail within 30 days after any change is made to the information specified in paragraphs (7)(a)-(c) and within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d).

(9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program licensee is responsible for any act of its access partner if such act is a violation of this chapter.

(10) RULEMAKING.—The commission shall adopt rules to implement this section.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations, investigations, and grounds for disciplinary action.—

(1) Notwithstanding any other law, commencing on January 1, 2022, the office shall examine each program licensee that is accepted into the program in accordance with this chapter at least once every 24 months.





(2) Notwithstanding subsection (1), the office may waive one or more branch office examinations if the office finds that such examinations are not necessary for the protection of the public due to the centralized operations of the program licensee or other factors acceptable to the office.

(3) The scope of any investigation or examination of a program licensee or access partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

(4) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. The program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its access partners.

(5) The office may take any of the following actions against an access partner who violates s. 516.44:

(a) Bar the access partner from performing services under this chapter.

(b) Bar the access partner from performing services at one or more of its specific locations.

(6) The commission shall adopt rules to implement this section.

Section 7. Section 516.46, Florida Statutes, is created to read:

516.46 Annual reports by program licensees and the office.—

(1) By March 15, 2021, and each year thereafter, a program licensee shall file a report with the office on a form and in a manner prescribed by commission rule. The report must include

each of the items specified in subsection (2) for the preceding year using aggregated or anonymized data without reference to any borrower's nonpublic personal information or any program licensee's or access partner's proprietary or trade secret information.

(2) By January 1, 2022, and each year thereafter, the office shall post a report on its website summarizing the use of the program based on the information contained in the reports filed in the preceding year by program licensees under subsection (1). The office's report must publish the information in the aggregate so as not to identify data by any specific program licensee. The report must specify the period to which the report corresponds and must include, but is not limited to, the following for that period:

(a) The number of applicants approved for a program license by the office.

(b) The number of program loan applications received by program licensees, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(c) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(d) Of those borrowers who obtained more than one program loan and had a credit score by the time of their subsequent loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at



least one major credit bureau, and the average size of the increase. In each case, the report must include the name of the credit score, such as FICO or VantageScore, which the program licensee is required to disclose.

(e) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(f) The number of borrowers who obtained program loans for the following purposes, based on the borrowers' responses at the time of their loan applications indicating the primary purpose for which the program loans were obtained:

1. To pay medical expenses.

2. To pay for vehicle repair or a vehicle purchase.

3. To pay bills.

4. To consolidate debt.

5. To build or repair credit history.

6. To finance a small business.

7. To pay other expenses.

(g) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(h) For refinance program loans:

1. The number and percentage of borrowers who applied for a refinance program loan.

2. Of those borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a

refinance program loan.

(i) The performance of program loans as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days and the distribution of principal loan amounts corresponding to those delinquencies.

2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more and the distribution of principal loan amounts corresponding to those delinquencies.

(3) The commission shall adopt rules to implement this section.

Section 8. Sections 516.405-516.46, Florida Statutes, are repealed on January 1, 2027, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. This act shall take effect January 1, 2020.

# 2019 AGENCY LEGISLATIVE BILL ANALYSIS
# Florida Office of Financial Regulation

| BILL INFORMATION | |
|---|---|
| **BILL NUMBER:** | SB 874 |
| **BILL TITLE:** | Consumer Finance Loans |
| **BILL SPONSOR:** | Senator Rouson |
| **EFFECTIVE DATE:** | 1/1/2020 |

| COMMITTEES OF REFERENCE |
|---|
| **1)** Banking and Insurance |
| **2)** Finance and Tax |
| **3)** Rules |
| **4)** |
| **5)** |

| CURRENT COMMITTEE |
|---|
| Insurance and Banking Subcommittee |

| SIMILAR BILLS | |
|---|---|
| **BILL NUMBER:** | |
| **SPONSOR:** | |

| PREVIOUS LEGISLATION | |
|---|---|
| **BILL NUMBER:** | HB 747 |
| **SPONSOR:** | Representative David Santiago |
| **YEAR:** | 2018 |
| **LAST ACTION:** | Died in Insurance and Banking Subcommittee |

| IDENTICAL BILLS | |
|---|---|
| **BILL NUMBER:** | |
| **SPONSOR:** | |

| Is this bill part of an agency package? |
|---|
| No |

| BILL ANALYSIS INFORMATION | |
|---|---|
| **DATE OF ANALYSIS:** | February 8, 2019 |
| **LEAD AGENCY ANALYST:** | Alexander J. Anderson, Director of Legislative Affairs<br>(850) 410-9601 |
| **ADDITIONAL ANALYST(S):** | Gregory C. Oaks, Director, Division of Consumer Finance<br>(850) 410-9601 |
| **LEGAL ANALYST:** | Tony Cammarata, General Counsel<br>(850) 410-9601 |
| **FISCAL ANALYST:** | Mark Hammett, Budget Director<br>(850) 410-9601 |

# POLICY ANALYSIS

## 1. EXECUTIVE SUMMARY

This legislation seeks to create ss. 516.405-516.46, F.S. The new provisions within that statute would establish a pilot program entitled Access to Responsible Credit Pilot Program. The pilot program would begin January 1, 2020 and would expire five years after the date the Office of Financial Regulation (OFR) posts its first report summarizing the use of the program. The OFR is required to post its first report by January 1, 2022.

The pilot program would create a new license type under chapter 516, F.S., requiring persons wishing to obtain a program license to submit a program license application and either hold a consumer finance license issued under s. 516.05, F.S., or submit a consumer finance license application concurrently with the program license application.

In addition, the bill would allow for the creation of branch offices. Each branch office would hold a program license.

Additionally, the pilot program would allow a program licensee to utilize access partners to perform certain program loan services on behalf of the program licensee. An access partner would not receive compensation from a program licensee in connection with a program loan application unless the program loan is consummated.

The pilot program would allow consumers to enter into an unsecured program loan with a principal amount of at least $300 up to a maximum of $10,000. For loans of at least $300, but not more than $3,000, the loan would be for a term of at least 120 days. For loans over $3,000, the loan would be for a term of at least 12 months, but no more than 60 months. The maximum allowable interest rate that can be charged to a borrower for a loan up to and including $3,000 is 36%, for a loan over $3,000 and up to and including $4,000 is 30%, for a loan over $4,000 and up to and including $10,000 is 24%. Additionally, the interest rate must accrue on a simple-interest basis and must be fixed for the life of the program loan. The borrower has a right to rescind the loan and return the principal amount by the end of the business day after consummation of the loan. A loan must have a minimum term of 120 days; must be paid in substantially equal periodic payments which are due every two weeks, semimonthly, or monthly; and may not have a prepayment penalty. A program licensee may also charge the borrower an origination fee of six percent (6%) of the principal amount of the loan or $90, whichever is less. A program licensee must not make a program loan if the borrower's total monthly debt service payments at the time of origination, including the program loan, and all outstanding forms of credit exceed 50 percent (50%) of the borrower's gross monthly income for a loan of $3,000 or less or exceed 36 percent (36%) of the borrower's gross monthly income for a loan more than $3,000.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

Under the current provisions of Chapter 516, F.S., in order to lend any amount up to $25,000 and charge an interest greater than 18% per annum, a person must be licensed as a consumer finance company. The maximum interest rates on a consumer finance loan are incremental: 30% per annum, computed on the first $3,000 of the principal amount; 24% per annum computed on the part of the principal amount exceeding $3,000 and up to $4,000; and 18% per annum on the part of the principal exceeding $4,000 and up to $25,000.

In addition to interest charges, current law allows a consumer finance company licensee to charge the following: an amount up to $25 for costs related to investigating the character and credit of the borrower; an annual fee of $25 on each line-of-credit account; charges paid for the brokerage fee on a loan or line of credit of more than $10,000; a delinquency charge of up to $15 for each payment in default for at least 10 days if the charge is agreed upon, in writing, between the parties before imposing the charge; and certain other allowable ancillary fees and charges related to the loan. See S. 516.031(3), F.S.

If all or part of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the new loan contract may include not more than 60 days' unpaid interest accrued on the prior loan.

There is no minimum or maximum loan term. However, every loan made pursuant to Chapter 516, F.S., except for lines of credit, are to be repaid in monthly installment as nearly equal as mathematically practicable.

Each location of a consumer finance company is required to hold a consumer finance license.

Current law does not require reports to be issued by the OFR regarding consumer finance loans.

**2. EFFECT OF THE BILL:**

The legislation would establish a pilot program entitled Access to Responsible Credit Pilot Program ("program"). The program would allow consumers to enter into an unsecured program loan with a principal amount of at least $300 up to a maximum of $10,000. For loans of at least $300, but not more than $3,000, the loan would be for a term of at least 120 days. For loans over $3,000, the loan would be for a term of at least 12 months, but no more than 60 months. The maximum allowable interest rate charged to a borrower for a loan up to and including $3,000 is 36%, for a loan over $3,000 and up to and including $4,000 is 30%, for a loan over $4,000 and up to and including $10,000 is 24%. The interest rate would accrue on a simple-interest basis and would be fixed for the duration of the program loan. The program permits charging a borrower an origination fee of 6% of the principal amount of the loan or $90, whichever is less.

The law would require those persons seeking participation under the program as a lender ("program licensees") to apply for and obtain a license pursuant to SS. 516.05.

- Program license applicants must meet the following criteria:
  - Be licensed to make consumer finance loans under s. 516.05, F.S. or submit an application under s. 516.05 concurrently with a program license application;
  - Be accepted as a data furnisher by a consumer reporting agency;
  - Not be the subject of any insolvency proceeding or pending criminal prosecution; and
  - Not be subject to a cease and desist order, removal order, denial, suspension, revocation of license, or any other action within the authority of the Office, any financial regulatory agency in the state, or any other state or federal regulatory agency that affects the ability of the applicant to participate in the program;

- Program license applicants must file an application with the Office disclosing the following information:
  - Legal business name and any other name the applicant operates under;
  - Applicant's main address;
  - Telephone number and email address of applicant;
  - Address of program branch office;
  - Name, title, address, telephone number, and e-mail address of applicant's contact person;
  - Applicant's consumer finance license number; if applicable;
  - Statement as to whether applicant intends to use access partners;
  - Statement that applicant has been accepted as a data furnisher and will report borrower's payment performance to a consumer reporting agency; and
  - Signature and certification of an authorized person of applicant.

- Program license applicants who do not currently hold a consumer finance license pursuant to s. 516.05, F.S., must concurrently submit a consumer finance application pursuant to s. 516.03 and an application for a program license.
- Only one pilot program license is required regardless of whether the person offers program loans to prospective borrowers at its own physical business locations, through access partners, or through an electronic access point through which a prospective borrower may directly access the website of the program licensee.
- Each branch office must hold a program license. To obtain a program branch office license, an applicant must submit an electronic application to the Office.

- Program branch office license applications must contain:
  - Legal business name and any other name the applicant operates under;
  - Applicant's main address;
  - Telephone number and email address of applicant;
  - Address of each program branch office;
  - Name, title, address, telephone number, and e-mail address of applicant's contact person;
  - Applicant's license number under chapter 516, F.S., if applicable; and
  - Signature and certification of an authorized person of applicant.

- Program branch office licenses must be renewed biennially at the time of renewing the program license.
- The Office may deny the initial or renewal application of a program branch office license if the applicant or any person with the power to direct the management or policies of the applicant's business is:
    - The subject of any insolvency proceeding
    - The subject of a pending criminal prosecution; and
    - The subject of a cease and desist order, removal order, denial, suspension, revocation of license, or any other action within the authority of the Office, any financial regulatory agency in the state, or any other state or federal regulatory agency that affects the ability of the applicant to participate in the program;

A program licensee must comply with the following general requirements in making program loans:

- A program loan must be unsecured.
- Program loans of at least $300, but not more than $3,000 must have a minimum term of 120 days.
- Program loans over $3,000 must have a minimum term of 12 months and a maximum term of 60 months.
- Program loans must not have a prepayment penalty.
- Program loans must be repayable in substantially equal periodic installments and due either every two weeks, semimonthly or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the day the program loan was consummated.
- The maximum allowable interest rate that can be charged on a program loan to the borrower on that portion of the unpaid principal balance for a loan of $300 and up to and including $3,000 is 36%, for a loan over $3,000 and up to and including $4,000 is 30%, for a loan over $4,000 and up to and including $10,000 is 24%.
- The interest rate must be fixed for the life of the program loan.
- The original principal amount is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.
- Computations must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.
- If two or more interest rates are applied to the principal amount of a program loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

- The program licensee shall reduce the interest rate on each subsequent program loan to the same borrower by a minimum of 1%, up to a maximum of 6%, if all of the following conditions are met:
    - The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
    - The borrower was never more than 15 days delinquent on the prior program loan; and
    - The prior program loan was outstanding for at least half of its original term before repayment.
- A program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.
- A program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:
    - The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan;
    - For program loans with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan;
    - For program loans with an original term of more than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan;
    - The borrower is current on payments for his or her outstanding program loan; and
    - The program licensee must underwrite the new program loan in accordance with s. 516.43(7).
- In lieu of provisions of 687.08, a program licensee or access partner shall make available to the borrower by electronic or physical means, at the time that a payment is made by the borrower, a plain and complete receipt of payment.

- For audit purposes, a program licensee must maintain an electronic record for each receipt made available to a borrower, must include a copy of the receipt and the date and time that the receipt was generated.

- Each receipt of payment must show:
    - The name of the borrower;
    - The name of the access partner, if applicable;
    - The total payment amount received;
    - The date of payment;
    - The program loan balance before and after application of the payment;
    - The amount of the payment that was applied to principal, interest, and fees;
    - The type of payment made by the borrower; and
    - A statement regarding where questions should be directed.

A program licensee must provide the following written disclosures in making program loans:

- Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided in English or in the language in which the loan is negotiated.
- A program licensee must provide all disclosures required by s. 516.15, F.S.

A program licensee must comply with the following origination fee requirements in making program loans:

- Notwithstanding s. 516.031, a program licensee may contract for and receive a nonrefundable origination fee from a borrower on a program loan. The program licensee may deduct the origination fee from the principal amount of the disbursed loan or capitalize the origination fee into the principal balance of the loan.
- The origination fee is fully earned immediately and nonrefundable upon making the program loan in an amount not to exceed 6% of the principal amount exclusive of the origination fee, or $90, whichever is less.
- A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

In making program loans, a program licensee must comply with the following requirements related to insufficient fund fees and delinquency charges:

- Notwithstanding s. 516.031:
    - A program licensee may require payment from a borrower of no more than $20 for insufficient fund fees.
    - A program licensee may contract for and receive a delinquency charge of up to $15 for each calendar month for one or more payments in default for at least 10 days, if agreed upon in writing before imposing the charge.
- A program licensee, or a wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt for collection purposes unless the debt has been delinquent for at least 30 days.

In making program loans, a program licensee must comply with the following requirements related to credit education:

- Before disbursement of the program loan, the program licensee must:
    - Direct the borrower to consumer credit counseling services offered by an independent third party, or;
    - Provide a credit education program or seminar to the borrower.
    - The borrower is not required to participate in a credit education program or seminar.
    - Credit education programs or seminars must be provided at no cost to the borrower.

In making program loans, a program licensee is required to comply with the following requirements related to credit reporting:

- A program licensee must report each borrower's payment performance to at least one consumer reporting agency.
- The OFR may not approve an applicant for the program before the applicant has been accepted as a data furnisher by a consumer reporting agency.
- The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

In making program loans, a program licensee must comply with the following requirements related to program loan underwriting:

- The program licensee shall underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms.

- The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered an all outstanding forms of credit that can be independently verified by the program licensee, if the borrower's monthly debt service obligation exceeds 50 percent of the borrower's gross monthly income for a loan $3,000 or below or exceeds 36% of the borrower's gross monthly income for loans above $3,000.
- The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify the information using a credit report from at least one consumer reporting or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.
- The program licensee is not required to consider a borrower's loans from friends or family in determining the borrower's debt-to-income ratio.
- The program license shall also verify the borrower's income to determine the debt-to-income ratio using information from either:
    - Electronic means or services that provide reliable evidence of the borrower's actual income; or
    - Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

In making program loans, a program licensee must comply with the following requirements related to waivers:

- A program licensee may not require, as a condition of the program loan, that the borrower:
    - Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, any court, or other governmental entity.
    - Agree to the application of laws other than those of this state.
    - Agree to resolve disputes in a jurisdiction outside of this state.
- A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.
- A program licensee may not refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum or procedure, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, any court, or other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.
- The provisions on waivers do not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including an agreement to arbitrate a claim or dispute, after a claim or dispute has arisen.
- The provisions on waivers do not affect the enforceability or validity of any other provision of the contract.

The legislation allows a program licensee to engage in arrangements with access partners. All arrangements between a program licensee and an access partner must be specified in a written access partner agreement. The agreement must contain a provision that the access partner agrees to comply with s. 516.44 and all rules adopted under s. 516.44 regarding the activities of access partners, and that the Office has access to the access partner's books and records pertaining to the access partner's operations under the written access partner agreement in accordance with s. 516.45(3) and that the Office may examine the access partner pursuant to s. 516.45.

The legislation permits a program licensee to use an access partner for the following services:

- Distribute, circulate, use, or publish printed brochures, flyers, fact sheets or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.
- Provide written factual information about the program loan terms, conditions, or qualification requirements to a prospective borrower which has either been prepared by the program licensee or reviewed and approved in writing by the licensee. An access partner may discuss the information with a prospective borrower in general terms.
- Notify a prospective borrower of the information needed to complete a program loan application.
- Enter information provided by the prospective borrower on a preprinted or electronic application form or in a preformatted computer database.
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.
- Contact the program licensee to determine the status of the program loan application.
- Communicate a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

- Obtain a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.
- Disbursing loan proceeds to a borrower if the method of disbursement is acceptable to the borrower, subject to the requirements of s. 516.44(3). A loan disbursement made by an access partner is deemed to be made by the program licensee on the date the funds are disbursed or otherwise made available by the access partner to the borrower.
- Receive a program loan payment from the borrower if the method of payment is acceptable to the borrower, subject to the requirements of s. 516.44(3).
- Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

In the receipt or disbursement of program loan payments:

- A loan payment made by a borrower to an access partner must be applied to the borrower's program loan and deemed received by the program licensee as of the date the payment is received by the access partner.
- An access partner must deliver or cause to be delivered to the borrower, at the time that payment is made by the borrower, a plain and complete receipt showing all information specified in s. 516.43(1)(j).
- A borrower who submits a loan payment to an access partner is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee
- An access partner that disburses or receives loan payments must maintain records of all disbursements made and loan payments received for a period of at least 2 years.

An access partner may not engage in any of the following activities:

- Provide counseling or advice to the prospective borrower with respect to any loan term.
- Provide loan-related marketing materials to a borrower or prospective borrower that has not previously been approved by the program licensee.
- Negotiate a loan term between a program licensee and a prospective borrower.
- Offer information pertaining to a single prospective borrower to more than one program licensee, except if a program licensee has declined to offer a program loan to a prospective borrower and has notified that prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program licensee with whom it has an access partner agreement.
- Require a borrower to pay any fees or charges to the access partner or any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

The legislation requires that an access partner provide the following disclosures and communications:

- At the time the access partner receives or processes an application for a program loan, the access partner shall provide a statement to a borrower on behalf of the program licensee in no smaller than 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing. The statement discloses information about the access partners name, name of program licensee, contact information in the event questions arise, and instructions for reporting a complaint.
- If a loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

The legislation allows a program licensee to compensate an access partner, subject to the following requirements:

- The compensation must be in accordance with a written agreement and a compensation schedule must be mutually agreed to by the program licensee and access partner. Additionally, compensation may not be paid to an access partner before the loan is consummated or before the access partner's location for services and other information required by s. 516.44(7) is reported to the Office.

The legislation requires that a program licensee provide certain information to the Office within 15 days after entering into a contract with an access partner. Such information includes:

- The access partner's name, business address, licensing details, and all locations at which the access partner will perform services under 516.44.
- The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority to execute, the access partner agreement.
- The name and contact information of one or more employees of the access partner who are responsible for that access partner's referring activities on behalf of the program licensee.
- A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following applies:

- The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner;
- The commencement of an administrative or judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate;
- A felony indictment involving the access partner or an affiliated party;
- A felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party;
- Any suspected criminal act perpetrated in this state relating to activities regulated under chapter 516 by an access partner;
- Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorizes the search and seizure of any records relating to a business activity regulated under Chapter 516; F.S., and
- Any other information requested by the Office subject to the limitations specified in s. 516.45(3).

The legislation requires an access partner to provide the program licensee with a written notice sent by registered mail within 30 days of any changes to the access partner's information or the occurrence or knowledge of the following actions involving the access partner's bankruptcy filings, administrative or judicial actions, the filing of felony indictments, felony convictions and pleas, any suspected criminal act related to activities under chapter 516, and notification that the access partner is under a criminal investigation.

The legislation sets forth that a program licensee is responsible for any acts of its access partner if the act is a violation of Chapter 516.

The Office, beginning January 1, 2022, is directed to examine a program licensee at least once every 24 months, though the OFR may waive the examination if the Office determines that the examination is not necessary for protection of the public due to the centralized operations of the program licensee or other factors acceptable to the Office.

The scope of an examination of a program licensee or investigation of an access partner must be limited to those books, accounts, records, documents, materials, and matters necessary to determine compliance with chapter 516, F.S.

A program licensee who violates any applicable provision of chapter 516, F.S., is subject to disciplinary action pursuant to s. 516.07(2), F.S. Any such disciplinary action shall be subject to the provisions of s. 120.60. A program licensee is also subject to disciplinary action for a violation of s. 516.44, F.S., committed by any of its access partners.

The legislation sets forth that the Office may take any of the following actions against an access partner for a violation of s. 516.44:

- Bar the access partner from performing services under chapter 516.
- Bar the access partner from performing services at one or more specific locations.

Filing of annual reports:

- By March 15, 2021 and each year thereafter, a program licensee shall file an annual report with the Office. The report must contain aggregated or anonymized data, without reference to any borrower's nonpublic personal information or any proprietary or trade secret information of the program licensee or access partner, on each of the items specified in s. 516.46(2), F.S., which is the same information required by the office to report on its website.

By January 1, 2022 and each year thereafter, the legislation directs the Office of Financial Regulation to post on its website, a report summarizing the use of the program based the reports filed in the preceding year by program licensees. The report must state the information using aggregated data so as not to identify any specific program licensee. The report must specify the period to which the report corresponds and must include, but not limited to the following for each annual period:

(a) The number of applicants approved to participate in the program;
(b) The number of program loan applications received by program licensees, the number of program loans made under program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(c) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.
(d) Of the borrowers who obtained more than one program loan, and had a credit score by the time of their subsequent loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase. In each case, the report must include the name of the credit score, such as FICO or VantageScore, which the program licensee is required to disclose.
(e) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate income census tract at the time of their loan applications.
(f) The number of borrowers who obtained program loans for the following purposes:
1. Pay medical expenses.
2. Pay for vehicle repair or a vehicle purchase.
3. Pay bills.
4. Consolidate debt
5. Build or repair credit history
6. Finance a small business.
7. Pay other expenses.

(g) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that the did not have a bank account at the time of their loan application.
(h) For refinance program loans, the report must include the following information:
1. The number and percentage of borrowers who applied for a refinance program loan.
2. The number and percentage of borrowers who obtained a refinance program loan.

(i) The performance of program loans under the program as reflected by all of the following:
1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days and the distribution of principal loan amounts corresponding to those delinquencies.
2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days and the distribution of principal loan amounts corresponding to those delinquencies.
3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more and the distribution of principal loan amounts corresponding to those delinquencies.

Sections 516.405-516.46 will continue for five years after the date the Office of Financial Regulation posts its first report summarizing the use of the program. The Office is required to post its first report by January 1, 2022.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐**

| | |
|---|---|
| If yes, explain: | The bill directs the Financial Services Commission to adopt rules related to application forms, application denials, notification of access partners, and filing of program licensee reports. Additionally, the bill grants the Office general rulemaking authority to implement s. 516.44, s. 516.45, and Section 7 of s. 516.46. |
| Is the change consistent with the agency's core mission? | Y☐N☒ |
| Rule(s) impacted (provide references to F.A.C., etc.): | The proposed legislation would require the OFR to adopt new rules in Chapter 69V-160, F.A.C., and amend sections 69V-160.001, 032, .036, & .111, F.A.C. |

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

| | |
|---|---|
| Proponents and summary of position: | Unknown |
| Opponents and summary of position: | Unknown |

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y☒ N☐

| | |
|---|---|
| If yes, provide a description: | The OFR must post a comprehensive report on its website summarizing the use of the pilot program. |
| Date Due: | January 1, 2022, and each year thereafter |
| Bill Section Number(s): | Section 7 |

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y☐ N☒

| | |
|---|---|
| Board: | |
| Board Purpose: | |
| Who Appoints: | |
| Changes: | |
| Bill Section Number(s): | |

## FISCAL ANALYSIS

**1. FISCAL IMPACT TO LOCAL GOVERNMENT** Y☐ N☒

| | |
|---|---|
| Revenues: | |
| Expenditures: | |
| Does the legislation increase local taxes or fees? If yes, explain. | |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | |

**2. FISCAL IMPACT TO STATE GOVERNMENT** Y☒ N☐

| | |
|---|---|
| Revenues: | None. The bill does not authorize the agency to charge initial program license application fees, program license biennial renewal fees, initial program branch office application fees, program branch office biennial renewal fees, access partner notification fees, or examination fees. |

| | |
|---|---|
| Expenditures: | OFR resources will be required to process applications; process access partner notices, process complaints; examine records of program licensees and access partners at least once every two years; and, if necessary, initiate enforcement actions for non-compliance or fraud. As of December 31, 2017, the state of California had a total of sixteen program licensees, double the amount from 2015. As of February 2019, the Office has 154 distinct entities licensed as consumer finance companies. Assuming a comparable number of businesses apply to become a program licensee as in California and all existing consumer finance licensees also apply for a program license, the OFR estimates that it would need eight full-time equivalent positions to handle the additional regulatory duties and responsibilities proposed in this bill.<br>The fiscal impact to the Office for salaries and benefits for eight full-time equivalent positions is as follows:<br>Total recurring costs of $501,776.96<br>Total non-recurring costs of $80,000.00<br>The OFR would also incur insignificant costs associated with rulemaking which can be absorbed within its current budget.<br>See also 'Technology Impact' for the fiscal impact associated with technology implementation. |
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | N/A |

**3. FISCAL IMPACT TO THE PRIVATE SECTOR** Y☐ N☒

| | |
|---|---|
| Revenues: | Unknown |
| Expenditures: | Unknown |
| Other: | N/A |

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?** Y☐ N☒

| | | |
|---|---|---|
| If yes, explain impact. | | |
| Bill Section Number: | | |

## TECHNOLOGY IMPACT

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☐

| | |
|---|---|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | The bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) system internal system and website. The bill will also require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes was estimated in 2018 to cost the agency $150,000**.** |

## FEDERAL IMPACT

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☒ N☐

| | |
|---|---|
| If yes, describe the anticipated impact including any fiscal impact. | The Consumer Financial Protection Bureau finalized rules covering small dollar lending on October 7, 2017. Information about the Consumer Financial Protection Bureau's activities can be found at https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps |

## ADDITIONAL COMMENTS

1. The bill does not provide the OFR with the legislative authority to collect fees. Without this grant of legislative authority, the Office will not have the necessary revenue to process initial program license applications, process program license biennial renewals, process initial program branch office applications, process program branch office biennial renewals, process access partner notifications, or conduct mandated examinations.
2. Lines 243-248: A program loan between $300 and $3000 has a minimum term of 120 days, but does not prescribe a maximum term. A program loan more than $3000 and up to the maximum $10,000 must have a term between 12 and 60 months. There may be a need for a cap on the term of a loan between $300 and $3000.
3. Lines 625-626: The language is unclear whether this provision would include the filing of a criminal "Information" in state criminal court involving the referral partner or affiliated party.
4. Lines 343-346: Provides that the program loan contracts, written disclosures, and statements may be provided to the borrower in English or in the language in which the loan is negotiated; however, the bill does not authorize the Office to collect fees for translating the contracts as part of its examination requirement.
5. Lines 144: Provides that a program loan applicant must not be the subject of an insolvency proceeding to meet the requirements of licensure. This provision fails to define the term 'insolvency', which could prove problematic when enforcing the provision.
6. Lines 225: Provides that the Office may deny an initial or renewal program license or program branch office license if the person or any person with power to direct the management or policies of the applicant's business is the subject of an insolvency. This provision fails to define the term 'insolvency', which could prove problematic when enforcing the provision. Additionally, the provision uses the term "any person with power to direct the management or policies of the applicant's business." It is unclear whether this term refers to an authorized person as mentioned in Lines 215-216 and how such person would acquire the power to direct the management or polices of applicant's business.
7. Lines 226-227: Provides that the OFR may deny an initial or renewal program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business is the subject of a pending criminal prosecution. The provision allows the Office to deny in all circumstances involving a *pending* criminal prosecution; however, the provision prevents denial in situations where an applicant or person with the power to direct the management or policies of the applicant's business was *convicted, pled guilty, or pled nolo contendere*, resulting in less protection for borrowers. Similarly, the provision does not allow the Office to deny the application if there is a pending administrative enforcement action.
8. Lines 627: The provision directs the program licensee to provide a statement affirming that neither the access partner nor affiliated party were subjects of a felony conviction, guilty plea, or plea of nolo contendere. This could be expanded to include misdemeanors. Also limiting the pending criminal prosecutions to those involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude could be more effective as it would limit the reporting requirement to significant events and be consistent with other regulatory programs within the Office's jurisdiction.

9. Lines 616-639: The bill does not contemplate what the OFR would be able to do if a program licensee contracts with an access partner and the access partner or affiliated party was the subject of precluded actions outlined in this section.
10. Lines 144-152, 220-233, & 613-639. Overall, there appears to be a disparity between the licensing criteria for the consumer finance license issued (pursuant to s. 516.05), the program license, the program branch office branch license, and access partners. As written, the criteria for the program license and program branch office license appear to be the most restrictive, while the consumer finance license and access partner criteria are not as restrictive. This disparity could be alleviated by adjusting the licensing requirements so that program loan applicants, program branch office applicants, and access partners are required to conform to the same licensing criteria as consumer finance applicants.
11. The bill may need a companion public records bill. Information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Furthermore, lack of a public records exemption for open examinations or investigations could lead to a compromise of the Office's efforts to thwart possible unlawful activity and prosecute criminal activity.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---|---|
| Issues/concerns/comments: | Section 3 of the bill creates section 516.42 which addresses program license application requirements. Specifically, ss. 516.42(3)(a)9. & (7)(g) require the program branch office license application to contain the signature and certification of an authorized person of the applicant. The bill however, fails to define the term "authorized person", and the bill does not currently provide the agency with authority to implement a rule to define the term.<br><br>Section 4 of the bill creates section 516.43 which addresses the requirements for program loans. Section 516.43(1)(b)1. states that a program loan with a principal balance upon origination of at least $300, but not more than $3,000, must have a term of at least 120 days; however, the provision fails to address the maximum term for such loans. Without a maximum term in place, it is plausible that the loans could extend for a rather lengthy amount of time. Section 1 of the bill creates s. 516.405(1) which states the loan program was created to allow more Floridians to obtain responsible consumer finance loans. It is unclear whether allowing these loans to extend for a prolonged period would serve this purpose.<br><br>Section 5 of the bill creates sections 516.44(7)(d)3. & 4. to require program licensees, within 15 days after entering into a contract with an access partner, to notify the Office as to whether an access partner or ***affiliated party*** is the subject of a felony indictment or if an access partner or ***affiliated party*** is the subject of a felony conviction, guilty plea or plea of nolo contendere. The term "affiliated party" is defined in s. 516.44(7)(d)6., which states, "[a]s used in ***this paragraph***, the term "affiliated party" means…" The use of the term "this paragraph" implies that the definition is restricted to s. 516.44(7)(d)6., thus preventing application of the term to other parts of s. 516.44(7)(d), namely ss. 516.44(7)(d)3. & 4. Confusion surrounding the scope of the definition may create conflict for the Office in enforcing s. 516.44(7)(d). Substituting the term "subsection" would clarify the reach of the definition. |

The Florida Senate

# Committee Agenda Request

**To:** Senator Doug Broxson, Chair
Banking and Insurance Committee

**Subject:** Committee Agenda Request

**Date:** February 19, 2019

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I respectfully request that **Senate Bill # 874**, relating to Consumer Finance Loans, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office

S-020 (03/2004)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 908 |
| INTRODUCER: | Banking and Insurance Committee and Senator Hooper |
| SUBJECT: | Firesafety Systems |
| DATE: | March 18, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Knudson | BI | **Fav/CS** |
| 2. | | | CA | |
| 3. | | | RC | |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:


CS/SB 908 makes various changes as it relates to fire safety and residential condominiums.

The bill extends the deadlines for the following actions necessary for existing high-rise residential condominiums to comply with the Florida Fire Prevention Code requirements for fire sprinkler and engineered life safety systems:

- A final fire sprinkler permit application and supporting documents must be submitted to the authority having jurisdiction by July 1, 2020;
- All necessary permits must be obtained by July 1, 2021; and
- Final inspection must be passed by December 31, 2022.

Residential condominium associations that fail to timely comply are subject to a daily fine of $500. The bill removes the option for a condominium associations to vote to opt out of fire safety requirements.

The bill requires fire protection system reports be submitted pursuant to a statewide set of uniform procedures and gives the Division of State Fire Marshal rulemaking authority to establish those procedures.

The bill creates a uniform permit application for the installation of fire alarm systems and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

## II. Present Situation:

### The Department of Business and Professional Regulation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.[1]

### State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[2]

### Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

[1] Sections 718.103(11) and 718.104(2), F.S.
[2] Section 633.104, F.S.

The State Fire Marshal adopts a new edition of the Fire Code every 3 years. The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. When adopting the Fire Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code 1;
- Life Safety Code 101; and
- Guide on Alternative Approaches to Life Safety 101A.[3]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state. The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[4]

**Fire Safety Enforcement by Local Governments**

Current law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[5]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal. Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[6]

Section 633.208(5), F.S., states, "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

[3] Section 633.202, F.S.; Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on March 12, 2019).
[4] Sections 633.104(6) and 633.202, F.S.
[5] Sections 633.108, 633.208, & 633.214(4), F.S.
[6] Sections 633.118 and 633.216(1), F.S.

**Fire Sprinklers and Engineered Life Safety Systems**

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.[7] All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.[8]

The Fire Code allows a building to have an Engineered Lifesafety System (ELSS) as an alternative to a sprinkler system. The Fire Code defines an ELSS as a system that consists of a combination of:

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.[9]

The Fire Code also does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.[10]

For condominium and cooperative associations that complete retrofitting a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance of the units with the Fire Code.

**Licensed Fire Protection System Contractor Reports**

Currently, licensed fire protection system contractors are mandated to conduct inspections of fire protection systems pursuant to the Florida Fire Prevention Code. Section 633.312, F.S., mandates that the inspecting contractor provide the building owner and the local authority having jurisdiction a copy of the inspection report. There are no limitations on inspection report format or uniform submission requirements. Some local jurisdictions have contracted with third-party software vendors and require the submission of inspection reports to their jurisdiction to be done via these systems.

**Building Permits for Fire Alarm Installation**

Currently, in most jurisdictions a contractor licensed to install fire alarm systems must submit a permit application before beginning work or repairs. There is no uniform application form or process used by the various jurisdictions. As a result different information may be required by local permitting authorities having jurisdiction.

Section 553.792, F.S., contains the statutory process for submitting a building permit application for an alarm permit that is not a low-voltage system. Under the statute, the local government must advise the applicant what information, if any, is needed to deem the application properly

[7] Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[8] Section 553.895(2), F.S.
[9] 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).
[10] 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

completed; if the local government does not provide written notice that the applicant has not submitted the properly completed application, the application is deemed complete and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required to determine the sufficiency of the application. The applicant must submit the additional information or request the local government act without such information. The local government must approve, approve with conditions, or deny the application within 120 days of receiving a completed application.

An alternative process is provided under 553.793, F.S., for low-voltage alarm system permitting. A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system that meets statutory requirements. Instead, the contractor must submit to the local enforcement agency a Uniform Notice of a Low-Voltage Alarm System Project within 14 days after completing the project. The statute provides a standardized uniform notice.

**History and Current Law of Retrofitting**

In 2000, the State Fire Marshal adopted the national fire and life safety standards set forth by the NFPA into the Fire Code. This required existing multi-family buildings 75 feet or taller including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominium and cooperative associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- Associations could not vote to forego retrofitting a sprinkler system in any "common area" of a "high rise" building.
    - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.
    - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.[11]

In 2006, Governor Bush vetoed House Bill 391 of the 2006 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025.

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist, also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.[12]

[11] Sections 718.112(2)(l) and 719.1055(5) (2003), F.S.
[12] Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec'y of State (June 1, 2009), http://www.butler.legal/files/2009_sb714.pdf (last visited March 12, 2019).

In October 2009, DBPR completed their report. DBPR's report estimated that retrofitting a condominium with sprinklers would cost from $595 to $8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.[13] However, the cost to retrofit a building can range from $5,000 per unit to in excess of $20,000 per unit.[14] According to DBPR, they received 19 certificates from associations stating they completed retrofitting since 2004. Five of those certificates included the cost to complete retrofitting, which ranged from $908 per unit to $3,291 per unit with an average of $2,196 per unit.

DBPR's report also stated an association could expect to receive a 5 percent discount on the "all other perils" portion of their property and casualty insurance policy. DBPR stated that "many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses."[15]

In 2010, the Legislature amended the law regarding retrofitting by:
- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.[16]

In 2017, the Governor vetoed House Bill 653 of the 2017 legislative session, which included similar language to this bill, including the following:
- Provided that in addition to being able to forego retrofitting a building with a fire sprinkler system, associations may also vote to forego retrofitting a building with an ELSS.
- Provided that a vote to forego retrofitting required a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Extended the time that local governments may not require associations to retrofit.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting.
- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building.
- Required the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules may not require an association to post a sign that diminishes the aesthetic value of a building.

[13] Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009.
[14] Testimony from Representative Michael Grieco, *3/6/2019 Meeting of the House Business & Professions Subcommittee*, https://thefloridachannel.org/videos/3-6-19-house-business-and-professions-subcommittee/ (last visited March 12, 2019).
[15] Department of Business & Professional Regulation, *supra* note 15.
[16] Sections 718.112(2)(l), and 719.1055(5), F.S.

Governor Scott stated his reasons for vetoing were:
"Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections."[17]

Current law provides that:

- An association or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
  - The building has been certified for occupancy by the applicable government entity; and
  - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Current law only applies to fire sprinkler systems. An association may not vote to forego retrofitting a building with an ELSS.
- Local governments may not require an association to retrofit a fire sprinkler system before January 1, 2020.
- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.
  - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium. Residential cooperatives consist of units, which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.[18]

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height.

**Vote to Forego Retrofitting**

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. An association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the association.[19]

An association must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.[20]

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[17] Letter from Rick Scott, Governor of the State of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf (last visited March 12, 2019).
[18] Sections 718.112(2)(l), 719.103(22)-(23), & 719.1055(5), F.S.
[19] Sections 718.112(2)(l), & 719.1055(5), F.S.
[20] *Id.*

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be held at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.[21]

As part of the annual information collected from associations, the Division requires associations to report a membership vote to forego retrofitting, record a certificate if an association voted to forego, and, if retrofitting has been undertaken, the per-unit cost of such work. The Division must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.[22] According to the Division, they received 4,329 certificates to forego retrofitting since 2004. The Division also received 19 certificates stating retrofitting had been completed. Five of those certificates included the cost to complete retrofitting, which ranged from $908 per unit to $3,291 per unit with an average of $2,196 per unit.

## III. Effect of Proposed Changes:

### Fire Protection System Inspection Reports

Requires fire protection system inspection reports completed by fire protection system contractors to be submitted pursuant to a statewide uniform set of procedures. The procedures are to apply to a local authority having jurisdiction or a third-party vendor contracted for the collection of such reports. The State Fire Marshal is to adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

- A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.
- A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

### Building Permits for Fire Alarm Installation

The bill creates a uniform application for building permits to install fire alarm systems. It allows a local enforcement agency to require any drawings, plans and supporting documentation be included with the submission of the uniform permitting application. The bill states the submission of such an application may be done electronically or by facsimile. The bill clarifies fire alarm systems that do not need a plan review are not required to submit an application under s. 553.792(1), F.S., which contains the process for submitting to a local government a building permit application for an alarm system that is not a low-voltage alarm system. The bill also

[21] *Id.*
[22] *Id.*

allows a contractor to begin repair work immediately after submitting an application if the fire alarm system being repaired had been previously permitted by the local enforcement agency.

**Firesafety Requirements for Condominium Associations**

Requires an association ensure reasonable compliance with the Florida Fire Prevention Code. Under this section "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code.

Additionally, the local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023. A residential condominium association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

- By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;
- By July 1, 2021, obtain all necessary permits; and
- By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with such requirements, the authority having jurisdiction shall assess a penalty against the association in the amount of $500 per day until compliance in met. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such penalty payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135, F.S.

The section also repeals current law that allows Electrical Contractors licensed under ch. 633, F.S., to certify a building's fire sprinkler compliance. Furthermore this section repealed language that allows unit owners to vote to opt out of the required retrofitting for fire sprinkler systems. Under this repeal all applicable residential condominium buildings must comply with the new retrofitting deadline for fire sprinkler systems.

**Effective Date**

The effective date of the bill is upon becoming law.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All applicable condominium buildings must comply with the new deadlines for retrofitting fire sprinkler or life safety systems, including associations that voted in the past to exempt their building from current requirements.

C. Government Sector Impact:

The Department of Business and Professional Regulation states they would incur non-recurring cost of $46,352 the first year and a recurring cost of $40,503 for staffing and software updates relating to tracking association compliance and the collection of fines and penalties.[23]

## VI. Technical Deficiencies:

On line 140 “subsection (1)” should be replaced with “section” as fire alarm systems that do not require plans review are already covered by low-voltage alarm system installation permitting in s. 553.793(4), F.S.

## VII. Related Issues:

The uniform permit application for the installation of fire alarm systems appear to only create uniformity for part of the application. The bill allows the local enforcement agency to require any drawings, plans and supporting documentation with the submission of the Uniform Fire Alarm Permit Application. Allowing such additional documentation to be determined by the local enforcement agencies may defeat the stated purpose of creating a uniform permitting application.

[23] Department of Business and Professional Regulation, Agency Analysis SB 908, (February 28, 2019) (on file with Senate Committee on Banking and Insurance).

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 553.792, 633.216, 633.312, and 718.112.

## IX. Additional Information:

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

**CS by Banking and Insurance on March 18, 2019:**
The CS:

- Removes PACE funding for fire sprinklers and removes the alternatives to taxation on such improvements from the bill.
- Clarifies what the DFS rules should include as it relates to the creation on a uniform inspection form and submission process.
- Creates a uniform permit application for the installation of fire alarm systems and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

B. Amendments:

None.

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LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 03/18/2019 | . | |
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The Committee on Banking and Insurance (Hooper) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the

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State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. Except as provided in s. 633.312(2), ~~and~~ (3), and (4), the firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

Section 2. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and subsection (3) of that section is amended, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

(3)(a) The inspecting contractor shall provide to the

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building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable uniform summary inspection report established under this chapter. The local authority having jurisdiction may accept uniform summary inspection reports by United States mail, by hand delivery, by electronic submission, or through a third-party vendor that collects the reports on behalf of the local authority having jurisdiction.

(b) The State Fire Marshal shall adopt rules to implement a uniform summary inspection report and submission procedures to be used by all third-party vendors and local authorities having jurisdiction. For purposes of this section, a uniform summary inspection report must record the address where the fire protection system or hydrant is located, the company and person conducting the inspection and their license number, the date of the inspection, and the fire protection system or hydrant inspection status, including a brief summary of each deficiency, critical deficiency, noncritical deficiency, or impairment found. A contractor's detailed inspection report is not required to follow the uniform summary inspection report format. The State Fire Marshal shall establish by rule a submission procedure for each means provided under paragraph (a) by which a local authority having jurisdiction may accept uniform summary inspection reports. Each of the submission procedures must allow a contractor to attach additional documents with the submission of a uniform summary inspection report, including a physical copy of the contractor's detailed inspection report. A submission procedure may not require a contractor to submit information contained within the detailed inspection report unless the information is required to be included in the uniform

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summary inspection report.

(4) The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

Section 3. Paragraph (l) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(l) *Firesafety*.—An association must ensure reasonable compliance with the Florida Fire Prevention Code. For purposes of this paragraph, the term "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as

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specified in the Florida Fire Prevention Code ~~*Certificate of compliance.*— A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium~~.

1. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023 ~~2020~~. A residential condominium association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

a. By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;

b. By July 1, 2021, obtain all necessary permits; and

c. By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply

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with the requirements of this subparagraph, the authority having jurisdiction shall assess a penalty against the association in the amount of $500 per day until it attains compliance. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135 ~~By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019~~.

~~1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the~~

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~~current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

~~2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

~~3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.~~

2.~~4.~~ Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

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

================ 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

532288

and insert:

A bill to be entitled

An act relating to firesafety systems; amending s. 633.216, F.S.; conforming a cross-reference; amending s. 633.312, F.S.; authorizing local authorities having jurisdiction to accept uniform summary inspection reports of certain fire hydrants and fire protection systems by certain means; requiring the State Fire Marshal to adopt rules implementing a uniform summary inspection report and certain submission procedures; providing requirements for such uniform report and procedures; providing that such procedures may not require a contractor to submit certain information; amending s. 718.112, F.S.; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; defining the term "reasonable compliance"; providing construction; specifying authorized means of compliance for certain residential condominiums; deleting a requirement for association bylaws to contain a certain certificate of compliance provision; deleting an exemption from a requirement to retrofit certain condominium property with a fire sprinkler system; deleting procedures for such exemption; extending the date before which a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system; specifying the date before which a local authority having jurisdiction may not require

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completion of installation of an engineered life safety system; requiring a residential condominium association that is not in compliance with certain requirements to perform certain duties by specified dates; providing a penalty; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to collect such penalty payments and remit them to the Firefighter Assistance Grant Program within the Division of State Fire Marshal of the Department of Financial Services; deleting an obsolete provision; deleting requirements for condominium associations to report certain information to the Division of Florida Condominiums, Timeshares, and Mobile Homes and for the division to report certain information to the Division of State Fire Marshal; providing an effective date.

431804

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment to Amendment (532288) (with title amendment)**

Between lines 4 and 5
insert:

Section 1. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government; fire alarm permit applications.—

(1) Within 10 days of an applicant submitting an

application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(2) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public

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hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(3) For any project requiring a fire alarm permit, a uniform fire alarm permit application must be used and submitted to the local enforcement agency along with any required drawings, plans, and supporting documentation. The uniform fire alarm permit application may be submitted electronically or by facsimile and must be signed by the owner, contractor, or authorized representative of either such person. The uniform fire alarm permit application must contain the following information in substantially the following form:

UNIFORM FIRE ALARM PERMIT APPLICATION

Tax Folio No.: ....
Application No.: ....
Owner or Representative Name: ....
Property Address: ....
City: .... State: .... Zip: ....
Phone: ....
Fee Simple Titleholder’s Name (if other than owner): ....
Fee Simple Titleholder’s Address (if other than owner): ....
Description of Work: .... New Install .... Replacement .... Addition .... Other ....

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Construction Type: ....
Proposed Use: ....
Alarm Contractor's Name: ....
Alarm Contractor's Address: ....
City: .... State: .... Zip: ....
Phone: ....
Alarm Contractor's License No: ....

Application is hereby made to obtain a permit to do the work and installation as indicated. I certify that no work or installation has commenced before the filing of this permit application. I certify that all of the foregoing information is true and accurate.

...(Signature of Owner, Contractor, or Agent)...
Printed Name: ....

(4) The procedures set forth in subsection (1) do not apply to the installation or replacement of a fire alarm system if a plans review is not required by the local enforcement agency.

(5) For repairs to an existing fire alarm system that was previously permitted by the local enforcement agency, the contractor may begin the repair upon filing the uniform fire alarm permit application with the local enforcement agency.

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

And the title is amended as follows:

Between lines 187 and 188

insert:

431804

553.792, F.S.; requiring that a uniform fire alarm permit application, along with certain other information, be used and submitted to the local enforcement agency for any project requiring a fire alarm permit; providing that such application may be submitted by certain means; providing a signature requirement; specifying information required in, and a form for, such applications; providing applicability of certain building permit application procedures; authorizing contractors, under certain circumstances, to begin repairs of fire alarm system upon filing the uniform fire alarm permit application; amending s.

**By** Senator Hooper

16-00954A-19 2019908__

A bill to be entitled

An act relating to firesafety systems; amending s. 163.08, F.S.; revising the definition of the term "qualifying improvement" to include improvements to retrofit existing high-rise residential condominiums with certain fire sprinkler systems; amending s. 633.312, F.S.; requiring that certain fire protection system inspection reports be submitted pursuant to a statewide uniform set of procedures; authorizing local authorities having jurisdiction to accept such reports by certain means; requiring the State Fire Marshal to adopt a certain rule; providing that such inspection reports may not be subject to certain requirements; amending s. 718.112, F.S.; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; defining the term "reasonable compliance"; providing construction; specifying authorized means of compliance for certain residential condominiums; deleting a requirement for association bylaws to contain a certain certificate of compliance provision; deleting an exemption from a requirement to retrofit certain condominium property with a fire sprinkler system; deleting procedures for such exemption; extending the date before which a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system; specifying the date before which a local authority having jurisdiction may not require







16-00954A-19 2019908__

completion of installation of an engineered life safety system; requiring a residential condominium association that is not in compliance with certain requirements to perform certain duties by specified dates; providing a penalty; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to collect such penalty payments and remit them to the Firefighter Assistance Grant Program within the Division of State Fire Marshal of the Department of Financial Services; deleting an obsolete provision; deleting requirements for condominium associations to report certain information to the Division of Florida Condominiums, Timeshares, and Mobile Homes and for the division to report certain information to the Division of State Fire Marshal; amending s. 718.120, F.S.; authorizing condominium associations, under certain circumstances, to elect to be assessed certain taxes and assessments upon the condominium property as a whole; specifying when such election must be made; authorizing such associations to elect for condominium parcels to be assessed separately after certain conditions are met; reenacting s. 288.9606(7)(c), F.S., relating to the issuance of revenue bonds, to incorporate the amendment made to s. 163.08, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 163.08, Florida Statutes, is amended to read:

163.08 Supplemental authority for improvements to real property.—

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

(b) "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;





f. Installing storm shutters; or

g. Installing opening protections.

4. Improvement to retrofit an existing high-rise residential condominium with a fire sprinkler system in accordance with the Florida Fire Prevention Code adopted pursuant to s. 633.202, which includes:

a. Fire sprinkler systems and related improvements; or

b. Engineered life safety system improvements.

Section 2. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, a new subsection (4) is added to that section, and subsection (3) of that section is republished, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

(3) The inspecting contractor shall provide to the building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable inspection report established under this chapter. The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its

condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

(4) A fire protection system inspection report provided by a contractor in accordance with subsection (3) must be submitted pursuant to a statewide uniform set of procedures. A local authority having jurisdiction may accept such contractor inspection reports directly or through a third-party electronic submission vendor. The State Fire Marshal shall adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

(a) A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.

(b) A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

Section 3. Paragraph (l) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include





the following:

(l) *Firesafety.*—An association must ensure reasonable compliance with the Florida Fire Prevention Code. For purposes of this paragraph, the term "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code ~~*Certificate of compliance.* A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium~~.

1. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023 ~~2020~~. A residential condominium

association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

a. By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;

b. By July 1, 2021, obtain all necessary permits; and

c. By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with the requirements of this subparagraph, the authority having jurisdiction shall assess a penalty against the association in the amount of $500 per day until it attains compliance. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135 ~~By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019~~.

~~1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is~~





~~located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

~~2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

~~3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.~~

2.4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Section 4. Section 718.120, Florida Statutes, is amended to read:

718.120 Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates; assessment election after qualifying improvements.—

(1) Ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. No ad valorem tax, benefit tax, or special assessment, including those made by special districts, drainage districts, or water management districts, may be separately assessed against recreational facilities or other common elements if such facilities or common elements are owned by the condominium association or are owned jointly by the owners of the condominium parcels. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, upon foreclosure of an assessment, a





certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Condominium property divided into fee timeshare real property shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

(4) Notwithstanding subsection (1), a condominium association that elects to make a qualifying improvement under s. 163.08(2)(b)4. may elect to be assessed upon the condominium property as a whole, rather than assigning to each unit owner a portion of the common area's value. Such election must be made to the taxing authorities before implementing such improvements. Upon completion of the improvements and termination of any finance agreements under s. 163.08, a condominium association may elect that condominium property be assessed as provided under subsection (1).

Section 5. For the purpose of incorporating the amendment made by this act to section 163.08, Florida Statutes, in a reference thereto, paragraph (c) of subsection (7) of section 288.9606, Florida Statutes, is reenacted to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

Section 6. This act shall take effect upon becoming a law.

# 2019 AGENCY LEGISLATIVE BILL ANALYSIS

## AGENCY: Department of Business & Professional Regulation

| BILL INFORMATION | |
|---|---|
| **BILL NUMBER:** | SB 908 |
| **BILL TITLE:** | Firesafety Systems |
| **BILL SPONSOR:** | Sen. Hooper |
| **EFFECTIVE DATE:** | Upon becoming law |

| COMMITTEES OF REFERENCE |
|---|
| **1)** Banking & Insurance |
| **2)** Community Affairs |
| **3)** Rules |
| **4)** Click or tap here to enter text. |
| **5)** Click or tap here to enter text. |

| CURRENT COMMITTEE |
|---|
| N/A |

| SIMILAR BILLS | |
|---|---|
| **BILL NUMBER:** | HB 647 (compare); HB 723 (similar) |
| **SPONSOR:** | Rep. Grieco; Rep. Donalds |

| PREVIOUS LEGISLATION | |
|---|---|
| **BILL NUMBER:** | N/A |
| **SPONSOR:** | N/A |
| **YEAR:** | N/A |
| **LAST ACTION:** | N/A |

| IDENTICAL BILLS | |
|---|---|
| **BILL NUMBER:** | N/A |
| **SPONSOR:** | N/A |

| Is this bill part of an agency package? |
|---|
| No |

| BILL ANALYSIS INFORMATION | |
|---|---|
| **DATE OF ANALYSIS:** | February 28, 2019 |
| **LEAD AGENCY ANALYST:** | Boyd McAdams, Deputy Director CTMH |
| **ADDITIONAL ANALYST(S):** | Thomas Izzo, OGC Rules<br>Chevonne Christian, OGC CTMH<br>Tracy Dixon, Service Operations<br>Tom Coker, Technology |

| | |
|---|---|
| **LEGAL ANALYST:** | Robin E. Smith, Deputy General Counsel |
| **FISCAL ANALYST:** | Raleigh Close, AFM |

# POLICY ANALYSIS

## 1. EXECUTIVE SUMMARY

The bill amends chs. 163 and 633, F.S., authorizing certain local authorities to accept inspection reports by specified means, and requiring the State Fire Marshal to adopt rules to implement a uniform procedure for submitting inspection reports. The bill amends ch. 718, F.S., requiring associations to retrofit high-rise condominiums with a fire sprinkler system or an engineered life safety system, providing compliance deadlines as well as a penalty for non-compliance. It further authorizes a condominium association to elect an alternative assessment option while implementing a qualifying fire protection improvement.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

Condominium associations are not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. Condominium associations were to report this information to the Division of Condominiums, Timeshares and Mobile Homes (division) by December 31, 2016. Condominium associations not in compliance with the requirements for a fire sprinkler system, that had not voted to waive retrofitting, were required to demonstrate, by December 31, 2016, that they will become compliant by December 31, 2019. A certificate of compliance from certain professionals may be accepted as evidence of compliance with the applicable fire and life safety codes. Section 718.112(2)(l), F.S., also provides the procedure that associations are to follow when voting to forego retrofitting.

### 2. EFFECT OF THE BILL:

The bill amends chs. 163 and 633, F.S.; however the division does not have jurisdiction over these chapters so an analysis is not provided.

The bill provides that a condominium association must ensure reasonable compliance with the Florida Fire Prevention Code, with the ability to select alternative solutions to ensure the property meets the level of fire protection required. Residential high-rise building alternatives now include either a fire sprinkler system or an engineered life safety system. Deadlines have been extended, so the local authority having jurisdiction may not require completion of either of the alternatives before January 1, 2023, instead of January 1, 2020. An association not in compliance has until July 1, 2020, to submit a final fire sprinkler system permit application; until July 1, 2021, to obtain all necessary permits; and until December 31, 2022, pass final inspection.

Further, the authority having jurisdiction shall assess a penalty of $500 per day for an association that fails to comply with the new provisions, until compliance is reached. The division is tasked with collecting all such penalty payments assessed to an association and remitting it to the Firefighter Assistance Grant Program.

An association participating in a qualifying improvement may elect to be assessed on the condominium property as a whole instead of assigning a portion of the common area's value to each unit owner, with the requirement to notify the taxing authorities before the qualifying improvement is implemented.

The bill also removes the expired provision allowing a vote to approve forgoing the retrofitting requirement of fire safety equipment.

### 3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

| | |
|---|---|
| If yes, explain: | N/A |
| Is the change consistent with the agency's core mission? | Y☐ N☐ |

| | |
|---|---|
| Rule(s) impacted (provide references to F.A.C., etc.): | N/A |

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

| | |
|---|---|
| Proponents and summary of position: | Unknown |
| Opponents and summary of position: | Unknown |

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?** Y☐ N☒

| | |
|---|---|
| If yes, provide a description: | N/A |
| Date Due: | N/A |
| Bill Section Number(s): | N/A |

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y☐ N☒

| | |
|---|---|
| Board: | N/A |
| Board Purpose: | N/A |
| Who Appoints: | N/A |
| Changes: | N/A |
| Bill Section Number(s): | N/A |

## FISCAL ANALYSIS

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y☒ N☐

| | |
|---|---|
| Revenues: | N/A |
| Expenditures: | Unknown; however, local authorities will be tasked with issuing enforcement penalties for non-compliance. |
| Does the legislation increase local taxes or fees? If yes, explain. | N/A |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | N/A |

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y☒ N☐

| | |
|---|---|
| Revenues: | N/A |
| Expenditures: | Annual expenditures for one OPS position and the cost of developing a technology system beginning Fiscal Year 2022-23 to collect fees assessed by the local authority and remitting payments. See additional comments below. |
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | N/A |

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?** Y☒ N☐

| | |
|---|---|
| Revenues: | N/A |
| Expenditures: | Unknown; however, the cost of installing fire safety equipment and/or the cost of penalties for non-compliance. See additional comments below. |
| Other: | N/A |

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?** Y☒ N☐

| | |
|---|---|
| If yes, explain impact. | The local authority having jurisdiction may impose a daily penalty of $500 for a condominium association that has not met the obligation, until compliance is met. |
| Bill Section Number: | Section 3 |

## TECHNOLOGY IMPACT

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☒ N☐

| | |
|---|---|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | Current resources allow for the collection and payment of penalties noted in Section 3 of the bill by the condominium associations using Versa: Regulation and Versa: Online.<br><br>To create an online solution for local authorities to notify the division of noncompliance (see Additional Comments below), the department's web team could create an online form for submittal of this information. If a more robust solution is required, additional indeterminate costs will be incurred based on requirements.<br><br>Changes to website – 16 hours<br>These modifications can be made with existing resources.<br><br>Additional staffing required to implement the provisions of this bill would result in technology infrastructure and licensing costs.<br><br>For 1 OPS position to process penalty amounts:<br>• Non-recurring costs for software licenses and network drop – $1,844.15<br>• Recurring software license maintenance - $301.26 |

## FEDERAL IMPACT

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

| | |
|---|---|
| If yes, describe the anticipated impact including any fiscal impact. | N/A |

## ADDITIONAL COMMENTS

Associations that have previously voted to forego retrofitting may question whether the deletion of the vote to approve foregoing retrofitting with a fire sprinkler system will now require these associations to retrofit with a fire sprinkler system or an engineered life safety system. See lines 147-156 of Section 3 of the bill.

Lines 178-180 require an association to submit a final fire sprinkler permit to the local authority having jurisdiction by July 1, 2020, but is silent as to whether a deadline is required for a permit for those associations that choose an allowable engineered life safety system as an alternative to the fire sprinkler system. See lines 172-173.

Use of the term "assessed" on line 272 may create confusion with the term "assessment" as defined in s. 718.103(1), F.S., with regards to assessing unit owners for common expenses; common expenses are assessed based on the proportions or percentages provided in the declaration of condominium.

**Fiscal Impact:**

Fiscal Impact to State Government:

The provision for the division to collect the penalty described in lines 184-191, Section 3 of the bill, will require the addition of one OPS staff for the process of receiving, tracking, maintaining, and remitting the penalty amounts to the Firefighter Assistance Grant Program. The division does not currently accept fines or remit money to the Firefighter Assistance Grant Program and does not have staff to implement this new requirement. There may be an additional indeterminate cost to create a technological solution for online submission by a local authority to the division as notification of an association not in compliance. Note: the division does not track condominiums that are considered high-rise. As a result, the impact of how many condominiums are affected, or will be affected by this bill, is unknown.

Potential workload impact:

1. Workload: Number of condominiums anticipated to not be in compliance 1,295 (estimated at 5% of all 25,914 condominiums registered with the division)
2. Time to process (update database, prepare letters, process checks, etc.): 90 minutes each
3. Total hours required to accomplish workload: 116,550 minutes (1,295 X 90 minutes) divided by 60 minutes per hour = 1,942.5 hours
4. Number of FTE's required: 1,942.5 hours divided by 1,854 hours = 1.05 FTE
5. Number of FTE's required: 1 FTE

   Less: Current Staff Levels: 0

   Additional Staff Required (OPS): 1 FTE

Estimated Expenditures beginning in Fiscal Year 2022-23: Total $46,352 ($40,503 recurring).
OPS: $34,156 recurring
Expense: $12,088 ($6,240 recurring)
HR Services: $107 recurring

Fiscal Impact to the Private Sector:
Associations will have the potential cost of retrofitting a condominium with fire sprinklers or an engineered life safety system along with the potential cost of a penalty, $500 each day for non-compliance until in compliance. The impact is indeterminate.

**Division of Service Operations**: The impact to the division is indeterminate; however, any additional workload can be absorbed with existing resources.

**OGC Rules:** Rulemaking will be required to revise any existing rules, especially in Rule Chapters 61B-23 and 61B-78, F.A.C., which address fire safety retrofitting.

Section 3, lines 184-187, provides the authority having jurisdiction the ability to assess the association and the division the requirement to collect these payments. This may present potential issues in terms of regulation and enforcement by the division.

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---|---|
| Issues/concerns/comments: | It is unclear whether the division or the authority having jurisdiction would be responsible for the enforcement of an association's failure to pay the monetary assessment issued by the local authority and collected by the division. See lines 184-191. |

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ED HOOPER**
16th District

**COMMITTEES:**
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining, Alternating Chair
Joint Administrative Procedures Committee

February 20th, 2019

The Honorable Doug Broxson, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to request that Senate Bill 908, Firesafety Systems, be placed on the next meeting agenda of the Banking and Insurance Committee.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Ed Hooper

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

REPLY TO:
❒ 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3-18-19
*Meeting Date*

908
*Bill Number (if applicable)*

Topic ELSS

*Amendment Barcode (if applicable)*

Name JAMES VAN DRUNEN

Job Title FORMER FIRE CHIEF & FIRE MARSHAL

Address 2100 S. OCEAN LANE #1404
*Street*
FORT LAUDERDALE FL 33316
*City* *State* *Zip*

Phone 954-290-6901

Email frostfree1@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FACTSS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

908
*Bill Number (if applicable)*

Topic Fire Safety Systems

*Amendment Barcode (if applicable)*

Name Jim Tolley

Job Title President

Address 343 West Madison St. Phone 850 224 7333
*Street*

Tallahassee FL 32301 Email Jimt@fpfp.org
*City* *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

908
*Bill Number (if applicable)*

Topic Fire Safety Systems

*Amendment Barcode (if applicable)*

Name Jim Millican

Job Title Division Chief

Address 4360-55 TH N
*Street*
St Pete FL 33714
*City* *State* *Zip*

Phone 727-525 5670

Email jmillican@leelmanfire.com

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

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

Representing Florida Fire Chiefs Association & Florida Fire Marshals & Inspectors Assn.

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

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

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

908
*Bill Number (if applicable)*

Topic Firesafety Systems

*Amendment Barcode (if applicable)*

Name Travis Moore

Job Title

Address P.O. Box 2020
*Street*

St. Petersburg FL 33731
*City* *State* *Zip*

Phone 727.421.6902

Email travis@moore-relations.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Community Associations Institute + First Service Residential

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

For Bill and for Amdt

March 18
*Meeting Date*

908
*Bill Number (if applicable)*

Topic For Amdt 532288 and For Bill.

532288
*Amendment Barcode (if applicable)*

Name Tim Meenan

Job Title

Address 400 S. Duval Street
*Street*

Phone (850) 425-4000

Email Tim@meenanfirm.com

*City* *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

908
*Bill Number (if applicable)*

431804
*Amendment Barcode (if applicable)*

Topic Fire Permits

Name Melissa Ramba

Job Title lobbyist

Address 108 S Monroe St.
*Street*

Tallahassee FL 32311
*City* *State* *Zip*

Phone 850-570-0269

Email Melissa@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ADT alarm

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

908
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Firesafety Systems

Name Annette Brown

Job Title Division Chief

Address 911 Easterwood Dr
*Street*

Tall FLa 32311
*City* *State* *Zip*

Phone 850-891 6615

Email annette.brown@talgov.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Fire Department & Florida Fire Marshals & Inspectors Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

3/18/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 908

*Meeting Date* *Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic ELSS

Name Pio Ieraci

Job Title PRESIDENT - FACTSS.org

Address _____ Phone 954-347-5500

*Street*

FORT LAUDERDALE FL 33308 Email PIORE@BELLSOUTH.NET

*City* *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing FACTSS.ORG

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/15
*Meeting Date*

908
*Bill Number (if applicable)*

431804
*Amendment Barcode (if applicable)*

(Amdmt to Amdmt # 532288)

Topic Fire Alarm Permits

Name Jim Millican

Job Title Division Chief

Address 4360 - 55 AV N
*Street*

St Pete FL 33714
*City* *State* *Zip*

Phone 727-526-5650

Email jmillican@pcfr.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Fire Chiefs Association

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 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/2019
*Meeting Date*

908
*Bill Number (if applicable)*

~~SB~~ 431804
*Amendment Barcode (if applicable)*

Topic Fire safety Systems

Name Jeff Branch

Job Title Legislative Advocate

Address _____ Phone 701-3701
*Street*

Tallahassee FL 32302 Email jbranch@flcities
*City* *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1024 |
| INTRODUCER: | Senator Gruters |
| SUBJECT: | Blockchain Technology |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Knudson | Knudson | BI | **Favorable** |
| 2. | | | IT | |
| 3. | | | RC | |

## I. Summary:

SB 1024 establishes the Florida Blockchain Working Group comprised of government and industry representatives to study the ways in which the state, county and municipal governments can benefit from transitioning to a blockchain-based system for recordkeeping, security, and service delivery. The working group is established within the Agency for State Technology. It will explore and develop a master plan for fostering the expansion of the blockchain industry in this state, recommend policies and state investments to help make Florida a leader in blockchain technology, and issue a report to the Legislature. The working group will develop and submit recommendations to the Governor and Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

## II. Present Situation:

### Blockchain

A blockchain is a digital ledger that allows parties to transact without the use of a third party that acts as a central authority to validate those transactions.[1] In a blockchain, the identities of each party to the transaction are verified, and as each transaction occurs and the parties agree to its details, it is permanently encoded into a block of data and given a unique digital signature.[2] Each block of data is permanently connected to the one before and after it.[3] The ledger is distributed to all parties to the transaction.

[1] Congressional Research Service, Blockchain: Background and Policy Issues R45116, pg. 1 (February 28, 2018).
[2] IBM, What is Blockchain? https://www.ibm.com/blockchain/what-is-blockchain (last accessed March 15, 2019).
[3] See id.

The ledger may be audited because each block of transactions is dependent upon the previous block, and changes to the ledger would alert other users of a change to the transaction history.[4] Blockchain is designed to allow transacting parties to avoid the use of a third-party, central validating authority, an example of which is a bank in a financial transaction between two persons.[5] Blockchain may reduce the costs associated with verifying transactions to the extent that it obviates the need for intermediaries in transactions that charge fees for their services.[6] To the extent blockchain reduces costs for parties to a transaction, it may allow individuals and small startup businesses to directly compete with more entrenched businesses. Security for the ledger is usually accomplished through cryptography.[7]

Promoters of blockchain technology point to a number of potential uses. Perhaps the most prevalent use currently is in the transfer of cryptocurrency. Cryptocurrency is digital currency that has no central issuing or regulating authority, uses a decentralized system such as blockchain to record transactions and manage the issuance of new units of currency, and relies on cryptography to prevent counterfeiting and fraud.[8]

A variety of other uses of the technology have been proposed. Blockchain may enable greater use of digital "smart contracts" that validate that the conditions of the contract are met and then transfer assets.[9] Blockchain may be a useful tool to verify the ownership of real property as a smart contract executed to the purchase of a home or automobile could update governmental title records. Blockchain technology may have useful applications within the insurance industry to facilitate the claims process, allow insurers to gather reliable loss histories, and enable efficient payments between insurers and third parties.[10] The healthcare industry may be able to use blockchain for purposes such as managing patient health information.[11]

Florida has begun addressing cryptocurrency issues that use blockchain technology. In 2017, the Florida Money Laundering Act was amended to include virtual currency.[12] The Chief Financial Officer announced the appointment of a cryptocurrency chief for the purpose of ensuring that cryptocurrencies are reliable forms of payment that do not expose Floridians to financial fraud.[13]

---

[4] See Congressional Research Service, fn. 1 at pg. 1.
[5] See Congressional Research Service, fn. 1 at pg. 1.
[6] Christian Catalini and Joshua S. Gans, Some Simple Economics of the Blockchain (September 21, 2017). Rotman School of Management Working Papter No. 2874598; MIT Sloan Research Paper No. 51.91-16. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874598 (last accessed March 15, 2019).
[7] MIT Sloan School of Management, Blockchain, Explained (May 25, 2017). http://mitsloan.mit.edu/ideas-made-to-matter/blockchain-explained (last accessed March 15, 2019).
[8] Merriam-Webster, Cryptocurrency. https://www.merriam-webster.com/dictionary/cryptocurrency (last accessed March 15, 2019).
[9] See Congressional Research Service fn. 1 at pg. 7.
[10] Jim Struntz, Ultimate Guide to Blockchain in Insurnace (Dec. 5, 2018). https://insuranceblog.accenture.com/ultimate-guide-to-blockchain-in-insurance (last accessed March 15, 2019).
[11] See Congressional Research Service, fn. 1 at pg. 6.
[12] Ch. 2017-155, L.O.F.
[13] Department of Financial Services, CFO Jimmy Patronis: Florida Needs Cryptocurrency Oversight (June 26, 2018) https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5057 (last accessed March 15, 2019).

The Seminole County Tax Collector's Office in April 2018, began accepting bitcoin and bitcoin cash as payment for new identification cards, license plates, and property taxes.[14]

Aspects of blockchain may hinder its use in various industries. Data portability is a significant issue, for instance if a person chooses to use one blockchain, the records may not be transferred to a new system.[15] Also, users of a blockchain access their funds using a private digital key. If the key is lost or the computer containing the key is corrupted, the user will be unable to access the resource tied to the encrypted key.[16] Also, blockchain is a new technology, and thus there are different versions of the technology and its attributes may not prove apt for some of the purposes being proposed for it.

## III. Effect of Proposed Changes:

The bill establishes the Florida Blockchain Working Group (Working Group) comprised of government and industry representatives to study the ways in which the state, county and municipal governments can benefit from transitioning to a blockchain-based system for recordkeeping, security, and service delivery. The working group is established within the Agency for State Technology.

The Working Group will explore and develop a master plan for fostering the expansion of the blockchain industry in this state, recommend policies and state investments to help make Florida a leader in blockchain technology, and issue a report to the Legislature. The working group will develop and submit recommendations to the Governor and Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

The Working Group consists of 19 members who must demonstrate an interest, familiarity with, or knowledge of blockchain technology. At least 10 of the 19 members must have knowledge and experience in blockchain technology. Membership is as follows:

- Two members appointed by the Governor.
- Two members appointed by the President of the Senate.
- Two members appointed by the Speaker of the House of Representatives.
- One member appointed by the Minority Leader of the Senate.
- One member appointed by the Minority Leader of the House.
- One member appointed by the Chief Financial Officer.
- One member appointed by the Attorney General.
- The Secretary of the Department of Management Services or his or her designee.
- The executive director of the Agency for State Technology or his or her designee.
- One member of the Florida Technology Council, appointed by the council.
- One member appointed by the Florida League of Cities.

[14] Martin E. Comas, Seminole Tax Collector Joel Greenberg Hires Blockchain Director as Legislators Study Technology, Orlando Sentinel (March 4, 2019) https://www.orlandosentinel.com/news/seminole/os-ne-seminole-tax-collector-greenberg-blockchain-20190304-story.html (last accessed March 15, 2019).
[15] See Congressional Research Service, fn. 1 at pg. 8.
[16] See Congressional Research Service, fn. 1 at pg. 9.

- One member appointed by the Florida Association of Counties.
- One member appointed by the Florida Local Government Information Systems Association.
- One member appointed by the Florida City and County Management Association.
- One member of the Florida Chamber of Commerce, appointed by that entity.
- One member appointed by the Chancellor of the State University System.

The Working Group will hold its first meeting no later than 90 days after the effective date of the act. Members of the working group will serve without compensation but are allowed per diem and travel expenses as provided in s. 112.061, F.S.

Specific topics the Working Group must study include, but are not limited to:

- The opportunities and risks associated with using blockchain and distributed ledger technology for state and local government.
- Different types of blockchains, both public and private, and different consensus algorithms.
- Projects and cases currently under development in other states and local governments, and how these cases could be applied in Florida.
- Ways the Legislature can amend general law to support secure, paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for businesses in Florida.
- Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state.
- Recommending projects for potential blockchain solutions, including, but no limited to, use cases for state agencies that would improve services for citizens or business.
- Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at secondary and postsecondary educational institutions in this state.

The working group must, within 180 days of its first meeting, submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives, and present its findings to the appropriate legislative committees. The report must include:

- A general description of the costs and benefits of state and local government agencies using blockchain technology.
- Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance implementation costs.
- Recommendations for specific implementations to be developed by relevant state agencies.
- Any draft legislation the working group deems appropriate to implement blockchain technologies.
- Identification of one pilot project that may be implemented in Florida.
- Any other information the Working Group deems relevant.

The Agency for State Technology must provide support staff for the working group and any relevant studies, data, and materials in its possession to assist the working group in the performance of its duties.

The working group terminates upon submission of the report and the presentation of findings.

The act is effective upon becoming a law.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Agency for State Technology indicates the bill does not have a fiscal impact.[17]

## VI. Technical Deficiencies:

Line 84 should include a reference to the Governor as a recipient of the Working Group report.

## VII. Related Issues:

None.

[17] Agency for State Technology, 2019 Agency Legislative Bill Analysis SB 1024 (Feb. 29, 2019) (on file with the Senate Banking and Insurance Committee).

## VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

## IX. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Gruters

23-01936-19 20191024__

A bill to be entitled

An act relating to blockchain technology; providing legislative findings; establishing the Florida Blockchain Working Group in the Agency for State Technology; providing for membership and duties of the working group; requiring the working group to submit a report to the Governor and the Legislature and make presentations; requiring the agency to provide support staff and other assistance to the working group; providing for termination of the working group; providing an effective date.

WHEREAS, blockchain has the ability to improve processes, increase efficiency, and promote transparency in government, in businesses, and for consumers, and it is imperative that blockchain benefits and applications are studied so that its potential can be fully realized, and

WHEREAS, investments in blockchain companies and projects have skyrocketed from millions of dollars in 2015 to billions of dollars in 2018, with venture capital funds and other private investors investing $1.3 billion between January and May of 2018 in blockchain and blockchain-adjacent early stage companies, and

WHEREAS, increasing legislative activity has occurred at the state and federal levels examining and supporting the benefits of blockchain technology, and a working group is an important first step in coordinating information and technology among industry and legislators to develop real proposals that can be acted upon, and

WHEREAS, a cornerstone of any blockchain initiative is the







23-01936-19 20191024__

exploration and understanding of blockchain and distributed ledger technology, as these technologies are often complex and must be properly understood and tested before implementation, and a working group can determine applications of blockchain that could cut costs for taxpayers and provide a gateway for entrepreneurs to best understand the laws of their state and surrounding blockchain and virtual currencies, and

WHEREAS, establishing a working group is the first step in unlocking the transformative possibilities of blockchain and its tremendous positive impact for economic advancement, NOW, THEREFORE,

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

Section 1. (1) The Legislature finds that:

(a) Blockchain technology and distributed ledger technology allow the secure recording of transactions through cryptographic algorithms and distributed record sharing, and such technology has reached a point where the opportunities for efficiency, cost savings, and cybersecurity deserve study.

(b) Blockchain technology is a promising way to facilitate more efficient government service delivery models and economies of scale, including facilitating safe paperless transactions and recordkeeping that are nearly impervious to cyberattacks and data destruction.

(c) Blockchain technology can reduce the prevalence of disparate government computer systems, databases, and custom-built software interfaces; reduce costs associated with maintenance and implementation; streamline information sharing;

and allow more areas of the state to electronically participate in government services.

(d) Nations, other states, and municipalities across the world are studying and implementing government reforms that bolster trust and reduce bureaucracy through verifiable open source blockchain technology in a variety of areas, including, but not limited to, medical and health records, land records, banking, tax and fee payments, smart contracts, professional accrediting, and property auctions.

(e) It is in the public interest to establish a Florida Blockchain Working Group comprised of government and industry representatives to study the ways in which state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, security, and service delivery and to develop and submit recommendations to the Governor and the Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

(2) There is established in the Agency for State Technology the Florida Blockchain Working Group to explore and develop a master plan for fostering the expansion of the blockchain industry in the state, to recommend policies and state investments to help make this state a leader in blockchain technology, and to issue a report to the Legislature. The working group shall study if and how state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, data security,





financial transactions, and service delivery and to identify ways to improve government interaction with businesses and the public. The working group shall comply with the requirements of s. 20.052, Florida Statutes, except as otherwise provided in this section.

(a) The master plan shall:

1. Identify the economic growth and development opportunities presented by blockchain technology.

2. Assess the existing blockchain industry in the state.

3. Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for state applications.

4. Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries.

5. Make recommendations to the Governor and the Legislature that will promote innovation and economic growth by reducing barriers to and expedite the expansion of the state's blockchain industry.

(b) The working group shall consist of 19 members. Members must demonstrate an interest in, familiarity with, or knowledge of blockchain technology. Membership shall be as follows:

1. Two members appointed by the Governor.

2. Two members appointed by the President of the Senate.

3. Two members appointed by the Speaker of the House of Representatives.

4. One member appointed by the Minority Leader of the Senate.

5. One member appointed by the Minority Leader of the House

of Representatives.

6. One member appointed by the Chief Financial Officer.

7. One member appointed by the Attorney General.

8. The Secretary of the Department of Management Services or his or her designee.

9. The executive director of the Agency for State Technology or his or her designee.

10. One member of the Florida Technology Council, appointed by the Florida Technology Council.

11. One member appointed by the Florida League of Cities.

12. One member appointed by the Florida Association of Counties.

13. One member appointed by the Florida Local Government Information Systems Association.

14. One member appointed by the Florida City and County Management Association.

15. One member of the Florida Chamber of Commerce, appointed by the Florida Chamber of Commerce.

16. One member appointed by the Chancellor of the State University System.

(c) At least 10 members of the working group must have knowledge and experience in blockchain technology.

(d) Within 90 days after the effective date of this act, a majority of the members of the working group must be appointed and the working group shall hold its first meeting. The working group shall elect one of its members to serve as chair. Members of the working group shall serve for the duration of the existence of the working group. Any vacancy that occurs shall be filled in the same manner as the original appointment. Working







group members shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties and shall be allowed per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(e) The working group shall study blockchain technology, including, but not limited to, the following:

1. Opportunities and risks associated with using blockchain and distributed ledger technology for state and local government.

2. Different types of blockchains, both public and private, and different consensus algorithms.

3. Projects and cases currently under development in other states and local governments, and how these cases could be applied in this state.

4. Ways the Legislature can modify general law to support secure, paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for businesses in the state.

5. Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state.

6. Recommending projects for potential blockchain solutions, including, but not limited to, use cases for state agencies that would improve services for citizens or businesses.

7. Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at secondary and postsecondary educational institutions in this state.

(3) The working group shall submit a report to the

Governor, the President of the Senate, and the Speaker of the House of Representatives and present its findings to the appropriate legislative committees in each house of the Legislature within 180 days after the initial meeting of the working group. The report must include:

(a) A general description of the costs and benefits of state and local government agencies using blockchain technology.

(b) Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance the cost of implementation.

(c) Recommendations for specific implementations to be developed by relevant state agencies.

(d) Any draft legislation the working group deems appropriate to implement such blockchain technologies.

(e) Identification of one pilot project that may be implemented in the state.

(f) Any other information deemed relevant by the working group.

(4) The working group is entitled to the assistance and services of any state agency, board, bureau, or commission as necessary and available for the purposes of this act.

(5) The Agency for State Technology shall provide support staff for the working group and any relevant studies, data, and materials in its possession to assist the working group in the performance of its duties.

(6) The working group shall terminate upon submission of the report and the presentation of findings.

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

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance

**JOINT COMMITTEE:**
Joint Committee on Public Counsel Oversight

**SENATOR JOE GRUTERS**
23rd District

March 11, 2019

The Honorable Doug Broxson, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to request that Senate Bill 1024, Blockchain Technology, be placed on the agenda of the next Banking and Insurance Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

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

REPLY TO:
☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

| Meeting Date | Bill Number (if applicable) |
|---|---|
| | 1024 |

Amendment Barcode (if applicable)

Topic Blockchain

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough Street

Phone

TLH FL 32301

City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 1024
*Bill Number (if applicable)*

Topic BLOCKCHAIN

*Amendment Barcode (if applicable)*

Name KEN ARMSTRONG

Job Title PRESIDENT/CEO

Address 350 E. COLLEGE
*Street*

Phone 850-459-1256

TALLAHASSEE FL 32301
*City* *State* *Zip*

Email ken@FLTrucking.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

03/18/19
*Meeting Date*

SB 1024
*Bill Number (if applicable)*

Topic Blockchain Technology

*Amendment Barcode (if applicable)*

Name Samuel Armes

Job Title Executive Director

Address _____ Phone _____
*Street*

_____ Email _____
*City* *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Blockchain Business Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

3/18/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date*

SB1024

*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic Blockchain Technology

Name Cyway Loomis

Job Title

Address 1215 Jeffrey Road

*Street*

Tallahassee FL 32312

*City* *State* *Zip*

Phone 8506887682

Email Cywayloomis@outlook.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Individual

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 1024
*Bill Number (if applicable)*

Topic BLOCKCHAIN TECHNOLOGY

*Amendment Barcode (if applicable)*

Name JEFFREY SHARKEY

Job Title CEO, CMO

Address 106 E College Ave
*Street*

Phone 224 1660

TLH FL
*City* *State* *Zip*

Email JEFFREY SHARKEY@gmail

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA BLOCKCHAIN ALLIANCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/2019
*Meeting Date*

SB 1024
*Bill Number (if applicable)*

*Amendment Barcode (if applicable)*

Topic SB 1024 - Blockchain Technology - 2019

Name Kim McDougal

Job Title Senior Government Affairs Consultant

Address 301 S Bronough Street, Ste 500
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 850.577.9090

Email kim.mcdougal@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/13
*Meeting Date*

1024
*Bill Number (if applicable)*

Topic SB 1024

*Amendment Barcode (if applicable)*

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757
*Street*

Tallahassee FL 32302
*City* *State* *Zip*

Phone 850 701 3701

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 1024
*Bill Number (if applicable)*

Topic BLOCKCHAIN

*Amendment Barcode (if applicable)*

Name NANCY STEPHENS

Job Title

Address 1625 SUMMIT LAKE DR, SUITE 300
*Street*

Phone 850 4022954

TALLAHASSEE FL 32317
*City* *State* *Zip*

Email nancy@nstephens.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1034 |
| INTRODUCER: | Senator Gruters |
| SUBJECT: | Assignment of Consumer Debts |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Knudson | BI | **Pre-meeting** |
| 2. | | | JU | |
| 3. | | | RC | |

## I. Summary:

SB 1034 provides that when a creditor issues an assignment to an assignee to collect on a debt the assignee must give the debtor 30 days' notice of the assignment before bringing a legal action.

Current law requires 30-days' notice of the assignment before an assignee debt collector may take any action to collect on the debt.

## II. Present Situation:

### Consumer Debt Collection Agencies

Chapter 559, part VI ("Part VI"), F.S., regulates the collection of consumer debts and requires consumer collection agencies to be registered with the Office of Financial Regulation (Office). Part VI enumerates the powers and duties of the Office; sets forth licensure requirements; specifies prohibited practices; prescribes grounds for disciplinary action and administrative remedies; and authorizes civil and enforcement actions. The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act[1]. The provisions of part VI are in addition to the requirements and regulations of the Federal Act. In the event of any inconsistency between any provision of part VI and any provision of the Federal Act, the provision which is most protective of the consumer or debtor will prevail.

[1] Many of the provisions of the Fair Debt Collection Practices Act are similar to the Florida Consumer Collection Agency Act. There are some key consumer and regulatory provisions not included under Florida's act: such provisions pertain to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

**Assignment of Consumer Debts:**

Section 559.715, F.S., allows a creditor to assign a consumer debt to another for collection; however, the assignee must give the debtor written notice of the assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. Pursuant to s. 559.715, F.S., the assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default. Actions triggering the 30-day notification requirement would include both informal and formal actions. Hence, actions ranging from filing a civil action in court to collect the debt to simply communicating with the debtor to collect the debt would trigger this requirement.

The Federal Fair Debt Collections Practices Act requires a debt collector, within 5 days after the initial communication with a consumer in connection with the collection of any debt, to notify the debtor of the details of the debt including, amount, name of creditor, and rights to dispute the debt.[2] Furthermore, in each communication to a debtor, a debt collector is required to include a statement that the "debt collector is attempting to collect a debt…". Under federal law, the consumer has the right to dispute the validity of the debt within 30 days after receipt of the notice; otherwise the debt is assumed valid by the debt collector.
The Florida Consumer Collections Practices Act requires a debt collector to give notice of an assignment at least 30 days before any action to collect a debt.

The Florida Consumer Collections Practices Act creates a conflict for the debt collector that require the debt collector to provide notice of an assignment of debt at least 30 days before taking any action to collect the debt. However, the Federal Fair Debt Collections Practices Act requires a debt collector to give a debtor notice within 5 days which includes information about the debt and their rights to dispute the debt. The Office believes the notice required in the Federal Fair Debt Collections Practices Act is a violation of the Florida Consumer Collections Practices Act because it is considered "any action" and is sent within the 30-day window of unallowable action.[3]

## III. Effect of Proposed Changes:

Currently, when a creditor issues an assignment to an assignee to collect on a debt the assignee must give 30 days' notice before taking action to collect on the debt. The bill would allow assignees to begin collection on a debt immediately and the assignee would only need to give notice of their assignment to the debtor 30 days prior to bringing a legal action. The bill would appear to allow an assignee to immediately begin taking action to collect on a debt without having given notice to the debtor as to their assignment.

The effective date of the bill is July 1, 2019.

[2] 15 U.S.C. Section 1692g
[3] Office of Financial Regulation, *Bill Analysis of SB 1034*, March 14, 2019 (on file with the Banking and Insurance Committee).

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

In the case of Bank of Am., N.A. v. Siefker, 201 So.3d 811 (Fla. 4th DCA 2016), the courts addressed the question of whether the notice of assignment requirement in s. 559.715, F.S., operates as a condition precedent to bringing a mortgage foreclosure suit. The court in Siefker agreed with the Second District Court of Appeal before it in concluding that the notice of assignment requirement is not a condition precedent to bringing a mortgage foreclosure suit. Both courts stated that "the Legislature knows how to condition the filing of a lawsuit on a prior occurrence . . . . 'Because the Legislature declined to be more specific when enacting

section 559.715, we will not expand the statute to include language the Legislature did not enact.'" Siefker, 201 So.3d at 816.

The change proposed in SB 1034 to s. 559.715, F.S., would specifically state, in relation to legal action, that the notice to the debtor must be given at least 30 days prior. Therefore, a court could conclude that the Legislature intended to create a condition precedent to legal action on the debt, which would mean that a debtor could defend against the suit based on the failure to provide the notice of assignment at least 30 days before the legal action was commenced.

## VIII. Statutes Affected:

This bill substantially amends section 559.715 of the Florida Statutes.

## IX. Additional Information:

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

None.

B. Amendments:

None.

671276

LEGISLATIVE ACTION

Senate . House

. . . . .

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical

671276

after the assignment is made, but at least 30 days before any action to collect the debt. The term "action" does not include a communication that is in compliance with 15 U.S.C. ss. 1692e and 1692g, or any communication or payment initiated by the debtor ~~The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default~~.

Section 2. This act shall take effect July 1, 2019.

========== 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 assignment of consumer debts; amending s. 559.715, F.S.; specifying that certain communications or payments do not constitute an action; deleting a provision authorizing assignees to bring certain actions as a real party in interest; providing an effective date.

805758

LEGISLATIVE ACTION

Senate . House

. . . . .

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

**Senate Substitute for Amendment (671276) (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the

805758

debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The term "action" does not include a communication required by 15 U.S.C. s. 1692e(11) or 15 U.S.C. s. 1692g, or any communication or payment initiated by the debtor. ~~The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default~~.

Section 2. This act shall take effect July 1, 2019.

========== 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 assignment of consumer debts; amending s. 559.715, F.S.; specifying that certain communications or payments do not constitute an action; deleting a provision authorizing assignees to bring certain actions as a real party in interest; providing an effective date.

**By** Senator Gruters

23-01788-19 20191034__

A bill to be entitled

An act relating to assignment of consumer debts; amending s. 559.715, F.S.; clarifying that an assignee must give a debtor certain notice within a specified timeframe before the assignee brings legal action to collect the debt; providing an effective date.

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

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Section 2. This act shall take effect July 1, 2019.

# 2019 AGENCY LEGISLATIVE BILL ANALYSIS
# Florida Office of Financial Regulation

| BILL INFORMATION | |
|---|---|
| **BILL NUMBER:** | SB 1034 |
| **BILL TITLE:** | Assignment of Consumer Debts |
| **BILL SPONSOR:** | Senator Gruters |
| **EFFECTIVE DATE:** | 7/1/2019 |

| COMMITTEES OF REFERENCE |
|---|
| **1)** Banking and Insurance |
| **2)** Judiciary |
| **3)** Rules |
| **4)** |
| **5)** |

| CURRENT COMMITTEE |
|---|
| |

| SIMILAR BILLS | |
|---|---|
| **BILL NUMBER:** | |
| **SPONSOR:** | |

| PREVIOUS LEGISLATION | |
|---|---|
| **BILL NUMBER:** | |
| **SPONSOR:** | |
| **YEAR:** | |
| **LAST ACTION:** | |

| IDENTICAL BILLS | |
|---|---|
| **BILL NUMBER:** | HB 1039 |
| **SPONSOR:** | Representative Latvala |

| Is this bill part of an agency package? |
|---|
| No |

| BILL ANALYSIS INFORMATION | |
|---|---|
| **DATE OF ANALYSIS:** | March 7, 2019 |
| **LEAD AGENCY ANALYST:** | Alexander J. Anderson, Director of Legislative Affairs<br>(850) 410-9601 |
| **ADDITIONAL ANALYST(S):** | Gregory C. Oaks, Director, Division of Consumer Finance<br>(850) 410-9601 |
| **LEGAL ANALYST:** | Tony Cammarata, General Counsel<br>(850) 410-9601 |
| **FISCAL ANALYST:** | Mark Hammett, Budget Director<br>(850) 410-9601 |

# POLICY ANALYSIS

## 1. EXECUTIVE SUMMARY

The proposed legislation will amend section 559.715, Florida Statutes, to require assignees to provide debtors written notice of an assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt in default.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

**Relevant Definitions:**

Section 559.55(3), Florida Statutes, defines a "consumer collection agency" as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts.

Section 559.55(5), Florida Statutes, defines a "creditor" as any person who offers or extends credit creating a debt or to whom a debt is owed, but does not include any person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Section 559.55(6), Florida Statutes, defines "debt" or "consumer debt" as any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

Section 559.55(7), Florida Statutes, defines "debt collector" as any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts.

Section 559.55(8), Florida Statutes, defines "debtor" or "consumer" as any natural person obligated or allegedly obligated to pay any debt.

Section 559.55(9), Florida Statutes, defines "Federal Fair Debt Collection Practices Act" or "Federal Act" as the federal legislation regulating fair debt collection practices, as set forth in Pub. L. No. 95-109, as amended and published in 15 U.S.C. ss. 1692 et seq.

**Scope of Chapter 559, part VI, Florida Statutes:**

Chapter 559, part VI ("Part VI"), Florida Statutes, regulates the collection of consumer debts and requires consumer collection agencies to be registered with the Office.

Part VI enumerates the powers and duties of the Office; sets forth licensure requirements; specifies prohibited practices; prescribes grounds for disciplinary action and administrative remedies; and authorizes civil and enforcement actions.

**Relationship between state and federal law:**

The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act ("Federal Act"). The provisions of Part VI are in addition to the requirements and regulations of the Federal Act. In the event of any inconsistency between any provision of Part VI and any provision of the Federal Act, the provision which is most protective of the consumer or debtor will prevail.

**Assignment of Consumer Debts:**

Section 559.715, Florida Statutes, allows a creditor to assign a consumer debt to another for collection; however, the assignee must give the debtor written notice of the assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. Pursuant to section 559.715, Florida Statutes, the

assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Actions triggering the 30-day notification requirement would include both informal and formal actions. Hence, actions ranging from filing a civil action in court to collect the debt to simply communicating with the debtor to collect the debt would trigger this requirement.

**2. EFFECT OF THE BILL:**

The proposed legislation will amend section 559.715, Florida Statutes, to allow assignees to attempt to collect the debt from the debtor, such as sending letters and calling the debtor, without giving a prior notice as is required under current law. However, the assignee would be required to provide debtors written notice of an assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt in default.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒**

| | |
|---|---|
| If yes, explain: | |
| Is the change consistent with the agency's core mission? | Y☐N☐ |
| Rule(s) impacted (provide references to F.A.C., etc.): | |

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

| | |
|---|---|
| Proponents and summary of position: | Unknown |
| Opponents and summary of position: | Unknown |

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒**

| | |
|---|---|
| If yes, provide a description: | |
| Date Due: | |
| Bill Section Number(s): | |

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒**

| | |
|---|---|
| Board: | |
| Board Purpose: | |
| Who Appoints: | |
| Changes: | |
| Bill Section Number(s): | |

## FISCAL ANALYSIS

**1. FISCAL IMPACT TO LOCAL GOVERNMENT** Y☐ N☒

| | |
|---|---|
| Revenues: | |
| Expenditures: | |
| Does the legislation increase local taxes or fees? If yes, explain. | |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | |

**2. FISCAL IMPACT TO STATE GOVERNMENT** Y☐ N☒

| | |
|---|---|
| Revenues: | |
| Expenditures: | |
| Does the legislation contain a State Government appropriation? | |
| If yes, was this appropriated last year? | |

**3. FISCAL IMPACT TO THE PRIVATE SECTOR** Y☐ N☐

| | |
|---|---|
| Revenues: | Unknown |
| Expenditures: | Unknown |
| Other: | |

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?** Y☐ N☒

| | |
|---|---|
| If yes, explain impact. | |
| Bill Section Number: | |

## TECHNOLOGY IMPACT

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☒

| | |
|---|---|
| If yes, describe the anticipated impact to the | |

| | |
|---|---|
| agency including any fiscal impact. | |

## FEDERAL IMPACT

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

| | |
|---|---|
| If yes, describe the anticipated impact including any fiscal impact. | |

## ADDITIONAL COMMENTS

## LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---|---|
| Issues/concerns/comments: | OGC has reviewed the agency's bill analysis concerning SB 1034. The proposed amendment to section 559.715, Florida Statutes, allowing assignees to attempt to collect the debt from the debtor, such as sending letters and calling the debtor, without giving a prior notice would not supersede any provision in the federal Fair Debt Collection Practices Act.<br><br>The analysis sufficiently details the bill's effect and areas of impact. OGC has no issues, concerns or further comments regarding the bill. |

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance

**JOINT COMMITTEE:**
Joint Committee on Public Counsel Oversight

**SENATOR JOE GRUTERS**
23rd District

March 11, 2019

The Honorable Doug Broxson, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to request that Senate Bill 1034, Assignment of Consumer Debts, be placed on the agenda of the next Banking and Insurance Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

Joe Gruters

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

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 1180 |
| INTRODUCER: | Banking and Insurance Committee and Senator Mayfield |
| SUBJECT: | Consumer Protection from Nonmedical Changes to Prescription Drug Formularies |
| DATE: | March 15, 2019 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Fav/CS** |
| 2. | | | HP | |
| 3. | | | RC | |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

CS/SB 1180 amends the Insurance Code to provide additional consumer protections by prohibiting health insurance policies and health maintenance organization contracts, which provide major medical coverage, from removing a covered prescription drug from its formulary while an insured is taking the a medically necessary prescription drug prescribed by a treating physician, except during the renewal period. The bill also generally prohibits an insurer or HMO from reclassifying a drug to a more restrictive tier, increasing the cost sharing of an insured, or reclassifying a drug to higher-cost sharing tier during the policy year. Under current law, only HMOs offering group contracts are prohibited from increasing the copayment for any benefit or removing, amending or limiting any of the contract benefits except at renewal time with some exceptions.

Often, insureds with chronic, disabling conditions select a health insurance policy or contract based on the availability of certain drugs on the formulary at a preferred cost. Typically, health insurers and pharmacy benefit managers (PBMs) may change their prescription drug formularies during the year in response to the availability of new drugs or changes in prices by drug manufacturers. As a result, certain prescription drugs may become more costly or unavailable, thereby restricting an insured's access to these drugs during a plan year. However, the insured is unable to enroll in a different health insurance plan until the next open enrollment

According to the Division of State Group Insurance (DSGI) of the Department of Management Services, their pharmacy benefit managers anticipates that implementation of the bill would

result in an increase costs of approximately $1.7 million due to the absence of quarterly drug list tier changes; $1.5 million due to lost rebates (1 percent of current rebates), $75,000 from maintaining lower cost share (not moving drug to non-preferred when a generic becomes available), and approximately $100,000 in administrative charges associated with a custom formulary.

The bill does not have a fiscal impact on the Florida Medicaid program since it does amend any of the provisions relating to the program.

## II. Present Situation:

Access to affordable health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have conditions with the potential to cause death, disability, or serious discomfort unless treated with the most appropriate medical care in a timely manner. In recent years, many innovative treatments for diseases that affect large populations, such as cancer, hepatitis C, diabetes, and multiple sclerosis have been approved. Some of the benefits of these innovative drugs include fewer side effects, convenience (oral solids instead of injectables), and greater efficacy.[1] However, the financial burden resulting from out-of-pocket drug costs can lead patients with chronic illnesses to forgo prescribed drugs, ultimately affecting their health.

### Prescription Drug Cost Containment

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027, reaching nearly $6.0 trillion by 2027.[2] Prescription drug spending is projected to have grown 3.3 percent in 2018. This acceleration is due to faster anticipated utilization growth partially driven by an increase in new drug introductions. Prescription drug spending growth is expected to increase to 4.6 percent in 2019, because of faster utilization growth from both existing and new drugs, as well as a modest increase in drug price growth. For the remainder of the projection, 2020-27, prescription drug spending is projected to grow by 6.1 percent per year on average, influenced by higher use anticipated from new drugs and efforts by employers and insurers that encourage patients with chronic conditions to consistently treat their disease.[3]

Due to increasing health care expenditures, public and private employers and insurers continue to look for cost containment methods, including the reduction of prescription drug costs. Many employer-sponsored health plans and insurers contract with pharmacy benefit managers (PBMs). The PBMs negotiate drug prices with pharmacies and drug manufacturers on behalf of health plans and, in addition to other administrative, clinical, and cost containment services, process drug claims for the health plans. The PBM generally manages the list of preferred drug products (formulary) for each of its plan sponsors. Insurers and self-insured employers provide insureds with financial incentives, such as lower copayments, to use formulary drugs.

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[1] *See* HEALTH AFFAIRS 35, No. 9 (2016): 1595-1603.
[2] Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), National Health Expenditure Projections 2018-2027, available at https://www.cms.go v/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf (last viewed March 2, 2019).
[3] *Id.*

**Non-Medical Switching or Substitution of Prescription Drugs**

Non-medical switching or substitution of prescription drugs occurs when there may be multiple options available within a treatment class and a less expensive or patient-preferred medicine is substituted, often for cost containment reasons. Non-medical switching may be as simple as the substitution of a brand name drug for its generic equivalent. Generic drugs are copies of brand-name drugs and are the same in dosage form, safety, strength, route of administration, performance characteristics, and intended use.[4] A generic drug must pass the same safety standards as a brand-name drug. The second method of switching or substitution involves dispensing drugs that are therapeutically equivalent to but chemically different from the originally prescribed drug.[5]

Some research indicates that the biologic therapy medications of some patients are being switched for nonclinical reasons, despite the lack of data to support this practice and an abundance of data demonstrating clinically meaningful differences among biologics.[6] For example, one study reviewing the reason for adjusting anti-tumor necrosis (TNF) agents involving patients primarily with rheumatoid arthritis, psoriasis, psoriatic arthritis, ankylosing spondylitis, Crohn's disease, or ulcerative colitis found that non-medical switching of anti-TNF agents was associated with an increase in side effects and lack of efficacy that also led to an increase in health care utilization.[7]

**Federal Patient Protection and Affordable Care Act**

The federal Patient Protection and Affordable Care Act (PPACA)[8] requires health insurers and HMOs to make coverage available to all individuals and employers, without exclusions for preexisting conditions, and mandates that issuers (insurers and HMOs) provide 10 essential health benefits;[9] which includes prescription drugs.

***Current Prescription Drug Coverage Requirements***

To comply with the essential health benefit requirement for prescription drugs, issuers must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's

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[4] Federal Food and Drug Administration, *Understanding Generic Drugs available at* http://www.fda.gov/drugs/resourcesforyou/consumers/buyingusingmedicinesafely/understandinggenericdrugs/default.htm (last visited Mar. 13, 2019).

[5] Rachel Chu, et al, *Patient Safety and Comfort - The Challenges of Switching Medicines* (2010) *available at* http://www.patients-rights.org/uploadimages/Patient_Safety_and_Comfort_The_Challenges_of_Switching.pdf (last viewed Mar. 13, 2019).

[6] *See* Alan Reynolds, et al, *When is switching warranted among biologic therapies in rheumatoid arthritis?* Medscape.com, http://www.medscape.com/viewarticle/768031_5 (last viewed Mar. 13, 2019).

[7] D.T. Rubin, et al, *Analysis of outcomes after non-medical switching of anti-tumor necrosis factor agents*, European Crohn's and Colitis Organisation (2015) *available at* https://www.ecco-ibd.eu/index.php/publications/congress-abstract-s/abstracts-2015/item/p354-analysis-of-outcomes-after-non-medical-switching-of-anti-tumor-necrosis-factor-agents.html?category_id=430 (last viewed Mar. 13, 2019).

[8] The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

[9] 42 U.S.C. s. 18022.

EHB benchmark plan. Issuers must have a Pharmacy and Therapeutics Committee to design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. Plans providing EHBs must have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not included on the plan's formulary drug list. Such procedures must include a process to request an expedited review.[10]

***Proposed Changes to Prescription Drug Coverage for the 2020 Plan Year***

The proposed federal rules[11] for the 2020 plan year would allow individual, small group, and large group market health insurance issuers to adopt mid-year formulary changes to optimize the use of new generic drugs as they become available, consistent with the approach to Medicare Part D.[12] At that time, the issuer also would be permitted to remove the equivalent brand drug from the formulary or move the equivalent brand drug to a different cost-sharing tier on the formulary. Issuers would also be required to provide enrollees the option to request coverage for a brand drug that was removed from the formulary through the applicable coverage appeal process or the drug exception request process.

The proposed rule also revises the requirements for how such issuers treat cost-sharing for brand drugs when a generic equivalent is available. The proposed rule would exempt certain cost-sharing from the maximum out-of-pocket limit if an insured selects a brand drug when a medically appropriate generic drug is available. Insurers would be required to provide notice to the patient and the treating provider of the patient. Insurers would be required to provide enrollees the option to request coverage for a brand drug that was removed from the formulary through the applicable coverage appeal process or the drug exception request process.

**Regulation of Insurers and Health Maintenance Organizations in Florida**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[13] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.[14]

Currently, an HMO may increase the copayment for any benefit, or delete, amend, or limit any of the benefits under a group contract only upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The HMO may amend the contract with the

[10] 45 C.F.R. s. 156.122.
[11] U.S. Department of Health and Human Services, *Proposed HHS Notice of Benefit and Payment Parameters for 2020 Fact Sheet*, available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Proposed-2020-HHS-Fact-Sheet.PDF (last viewed Mar. 9, 2019).
[12] The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, P.L. 108-173) established a voluntary, outpatient prescription drug benefit under Medicare Part D, effective January 1, 2006. Medicare Part D provides coverage through private prescription drug plans (PDPs) that offer only drug coverage, or through Medicare Advantage (MA) prescription drug plans (MA-PDs) that offer coverage as part of broader, managed care plans.
[13] Section 20.121(3), F.S.
[14] Section 641.21(1), F.S.

contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period, which will be included in the group contract upon renewal. This provision does not apply to any increases in benefits. The notice requirements do not apply if benefits are amended, deleted, or limited, pursuant to a request of the contract holder.[15]

**Florida's State Group Insurance Program**

Under the authority of s. 110.123, F.S., the DMS, through the DGSI, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators for self-insured health plans, insured HMOs, and a pharmacy benefit manager (PBM) for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list).[16] Generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most expensive and have the highest member cost share. Contractually, the PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.[17]

**Regulation in Other States of Changes to Prescription Drug Formularies**

Staff conducted a limited survey of some states that had enacted legislation addressing formulary benefit changes or cost-sharing limits. In Louisiana, the formulary change must occur at the time of coverage renewal and prior notice must be given to each affected covered employer and enrollee, or individual.[18] California prohibits changes in cost sharing designs during the plan or policy year, except when such change is required by state or federal law.[19] Nevada generally prohibits a health insurer that offers individual coverage from removing prescription drugs from a formulary or moving a drug to a higher cost-sharing tier during the plan year with some exceptions.[20] New Mexico generally limits when health insurance policies may change prescription drug coverage, with exceptions, and requires prior notification of all affected

[15] Section 641.31(36), F.S.
[16] Department of Management Services, *State Employees' Prescription Drug Plan, available at https://www.mybenefits.myflorida.com/content/download/142818/952917/2019_Benefits_at_a_Glance_PPO_Standard_FINAL_073118.pdf* (last viewed Mar. 13, 2019).
[17] CVS caremark, *2019 Plan Year-State Employees' Prescription Drug Plan,* available at https://www.mybenefits.myflorida.com/content/download/142756/952578/OE_for_2019_Brochure_two_-_page_FINAL_rev_081518.pdf (last viewed Mar. 13, 2019).
[18] La Admin. Code title 37, pt. XIII, ss. 14111, 14115, and 14117.
[19] CAL. INS. Code, §10199.449; Effective Jan. 1, 2017; Approved by the Governor August 25, 2016.
[20] Nevada Division of Insurance, *Adopted Regulation R074*-14 (uncodified).

enrollees.[21] Virginia requires insurers to establish a process for insureds to obtain continued access to drugs that they have been receiving for at least 6 months prior to a formulary change at a cost-sharing level that is no higher than the level imposed on formulary drugs.[22] Since 2012, Texas has prohibited insurers and HMOs from making mid-year formulary benefit and cost-sharing changes.[23] Advocates or the bill note that the following states have implemented a similar protection to SB 1180, too. These include:

- Louisiana: Health plans can only modify a policy's drug coverage at renewal, and with approval by the insurance commissioner. Prohibited modifications during the plan year include: removing a drug, adding prior authorization requirements, imposing a quantity limit, imposing a new step-therapy restriction, moving the drug to a higher tier, unless a generic is available.
- Illinois: The law generally protects patients who have previously had coverage approved for a drug to continue at the same benefit level for the duration of a plan year.[24]

## III. Effect of Proposed Changes:

**Section 1** creates s. 627.42393, F.S., and **Sections 2 and 3** amend s. 627.6699, F.S., and s. 641.31, F.S., respectively.

The bill amends the Insurance Code to provide additional consumer protections by prohibiting a health insurer or HMO from removing a medically necessary covered drug from its formulary during the policy year except during coverage renewal with some limited exceptions. These provisions would apply to individual and group policies or contracts providing medical, major medical, or similar comprehensive coverage. An insurer or HMO may remove a prescription drug from its list of covered drugs during the policy year if:

- The U.S. Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug; or
- The manufacturer of the drug has notified the U.S. Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

The bill also prohibits an insurer or HMO from reclassifying a medically necessary drug to a more restrictive drug tier; increasing the amount that an insured must pay out-of-pocket for a copayment, coinsurance, or deductible for prescription drugs; or reclassifying a drug to a higher cost-sharing tier during the policy year.

The bill also:

- Does not prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.
- Does not amend s. 465.025, F.S., which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

[21] N.M. Stat. ss. 59A-22-49.4, 59A-23-7.13, 59A-46-50.4, and 59A-47-45.4.
[22] *See* Va. Code Ann. s. 38.2-3407.9.01.
[23] Tex. Ins. Code ss. 1369.0541 and 1501.108.
[24] Correspondence on file with Senate Banking and Insurance Committee.

- Does not amend s. 465.0252, F.S., which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

The provisions of the bill do not apply to grandfathered health plans, as defined in s. 627.402, F.S., or to limited benefits set forth in s. 627.6513(1)-(14), F.S.

**Section 4** provides that the act fulfills an important state interest.

**Section 5** provides the bill is effective January 1, 2020.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Article VII, section 18 of the Florida Constitution may apply if the bill requires local governments to spend funds. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector health plans to limit drug changes in the formulary and insureds' cost sharing, it appears the bill applies to all persons similarly situated (state, counties, and municipalities).

The bill includes a finding that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

By limiting changes to the prescription drug formulary, the bill would provide continuity of care for insureds receiving brand drugs for the entire plan year.

The prohibition on mid-policy year changes to drug formularies may increase the claim costs for health insurers and HMOs providing prescription drug benefits. Any increased costs would likely be passed along to insureds. The provisions of the bill would not apply to ERISA (Employee Retirement Income Security Act of 1974)[25] self-insured plans, which represent approximately 50 percent of the insureds in Florida. ERISA preempts the regulation of such plans by the states.

According to advocates[26] of the bill, the bill will not increase coverage of drug benefits or the total cost of health care. The bill should reduce costs because non-medical switches generally increase healthcare resource utilizations. A study of patients with complex chronic conditions in Medicare Part B found that payments for patients who were switched from their therapy for non-medical reasons increased by $8,711.52.[27] The bill creates transparency for consumers to know that the coverage benefit they sign up for is the coverage benefit they will receive for the plan year. The bill addresses the practice of some insurers and HMOs marketing certain pharmacy benefits to consumers at open enrollment, only to change the benefits during the plan year when insureds are generally unable to change plans. Further, advocates report that physicians, pharmacists, and other healthcare administrators have reported that nonmedical switching increases administrative time, increases side effects or new unforeseen effects, and increases downstream costs to plans.

### C. Government Sector Impact:

**Division of State Group Insurance Program**

The PBM for the Division of State Group Insurance (program) projects moderate-to-high fiscal impact to the program due to its inability to move a preferred brand name drug to non-preferred when a generic product becomes available; less member movement to lower cost generic alternatives and less rebate pass through.

The program's PBM anticipates additional operational burden to hold the program's preferred drug lists constant throughout the year instead of current quarterly updates and

[25] 29 U.S.C. 1001 et seq. (1974).
[26] .Correspondence on file with the Senate Committee on Banking and Insurance.
[27] *Cost-Motivated Treatment Changes: Implications for Non-Medical Switching*, Institute for Patient Access (Oct. 2016), http://allianceforpatientaccess.org/wp-content/uploads/2016/10/IfPA_Cost-Motivated-Treatment-Changes_October-2016.pdf

keeping the drug list constant would require a custom drug list. Based on calendar year 2018 utilization, the program's PBM projected approximately $1.7M impact from not making quarterly drug list tier changes: $1.5M from lost rebates (1 percent of current rebates), $75K from maintaining lower cost share (not moving drug to non-preferred when a generic becomes available), and approximately $100K in administrative charges associated with a custom formulary.[28]

Likewise, the implementation of this bill may result in an indeterminate negative fiscal impact on local governments.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699 and 641.31.

This bill creates section 627.42393 of the Florida Statutes.

## IX. Additional Information:

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

**CS by Banking and Insurance on March 18, 2019:**
The CS prohibits health insurance policies and health maintenance organization contracts, which provide major medical coverage, from removing or reclassifying to a more restrictive drug tier, a covered prescription drug from its formulary while an insured is taking a medically necessary prescription drug prescribed by a treating physician, except during the renewal period

B. Amendments:

None.



[28] Department of Management Services, *Senate Bill 1180 Analysis* (Mar. 6, 2019) (on file with the Senate Committee on Banking and Insurance).

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LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: WD | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 627.42393, Florida Statutes, is created to read:

627.42393 Individual health insurance policies; limiting changes to prescription drug formularies.—

(1) Other than at the time of coverage renewal, an individual insurance policy that is delivered, issued for

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delivery, renewed, amended, or continued in this state and that provides medical, major medical, or similar comprehensive coverage may not, while the insured is taking a prescription drug:

(a) Remove the prescription drug from its list of covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

(b) Reclassify the drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits or reclassify the drug to a higher cost-sharing tier during the policy year.

(2) This section does not:

(a) Prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(b) Apply to a grandfathered health plan as defined in s. 627.402, to benefits set forth in s. 627.6513(1)-(14), or to any individual policy issued or delivered between March 23, 2010, and December 31, 2013, inclusive.

(c) Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(d) Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological

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product for the prescribed biological product.

(e) Apply to a Medicaid managed care plan under part IV of chapter 409.

(f) Apply if the drug manufacturer increases the list price of the prescription drug on the health insurer's formulary to the health insurer or the pharmacy benefit manager after November 1 of the year before the health insurer's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. Any changes in the health insurer's formulary must be documented for internal purposes.

Section 2. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) A health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) With respect to individual health maintenance contracts only, other than at the time of coverage renewal, a health maintenance contract that provides medical, major medical, or similar comprehensive coverage may not, while the subscriber is taking a prescription drug:

1. Remove the prescription drug from its list of covered drugs during the contract year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

2. Reclassify the drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits or reclassify the drug to a higher cost-sharing tier during the contract year.

(b) This subsection does not:

1. Prohibit the addition of prescription drugs to the list of drugs covered during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.


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5. Apply to a Medicaid managed care plan under part IV of chapter 409.

6. Apply if the drug manufacturer increases the list price of the prescription drug on the health maintenance organization's formulary to the health maintenance organization or the pharmacy benefit manager after November 1 of the year before the health maintenance organization's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. Any changes in the health maintenance organization's formulary must be documented for internal purposes.

7. Apply to group health maintenance organization contracts.

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

========== 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 consumer protection from nonmedical changes to prescription drug formularies; creating s. 627.42393, F.S.; prohibiting specified changes to certain individual health insurance policy prescription drug formularies, except under certain circumstances; providing construction and applicability; providing that such prohibition does not apply for certain prescription drug price increases; requiring that formulary changes be

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documented for internal purposes; amending s. 641.31, F.S.; prohibiting certain health maintenance organizations from making specified changes to individual health maintenance contract prescription drug formularies, except under certain circumstances; providing construction and applicability; providing that such prohibition does not apply for certain prescription drug price increases; requiring that formulary changes be documented for internal purposes; providing an effective date.

287190

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment**

Delete lines 30 - 140
and insert:
drug that the insured's treating physician determines is medically necessary:

(a) Remove the prescription drug from its list of covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug or the

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manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

(b) Reclassify the drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits or reclassify the drug to a higher cost-sharing tier during the policy year.

(2) This section does not:

(a) Prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(b) Apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

(c) Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(d) Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

(e) Apply to a Medicaid managed care plan under part IV of chapter 409.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late


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enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

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4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier must limit changes to prescription drug formularies as required by s. 627.42393.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) A health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) Other than at the time of coverage renewal, a health maintenance contract that provides medical, major medical, or similar comprehensive coverage may not, while the subscriber is taking a prescription drug that the subscriber's treating physician determines is medically necessary:

**By** Senator Mayfield

17-00101A-19 20191180__

A bill to be entitled

An act relating to consumer protection from nonmedical changes to prescription drug formularies; creating s. 627.42393, F.S.; prohibiting specified changes to certain insurance policy prescription drug formularies, except under certain circumstances; providing construction and applicability; amending s. 627.6699, F.S.; requiring small employer carriers to limit specified changes to prescription drug formularies under certain health benefit plans; amending s. 641.31, F.S.; prohibiting certain health maintenance organizations from making specified changes to health maintenance contract prescription drug formularies, except under certain circumstances; providing construction and applicability; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 627.42393, Florida Statutes, is created to read:

627.42393 Insurance policies; limiting changes to prescription drug formularies.—

(1) Other than at the time of coverage renewal, an individual or group insurance policy that is delivered, issued for delivery, renewed, amended, or continued in this state and that provides medical, major medical, or similar comprehensive coverage may not, while the insured is taking a prescription







17-00101A-19 20191180__

drug:

(a) Remove the prescription drug from its list of covered drugs during the policy year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug or the manufacturer of the drug has notified the United States Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

(b) Reclassify the drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits or reclassify the drug to a higher cost-sharing tier during the policy year.

(2) This section does not:

(a) Prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(b) Apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

(c) Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(d) Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

(e) Apply to a Medicaid managed care plan under part IV of chapter 409.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group



insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier must limit changes to prescription drug formularies as required by s. 627.42393.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) A health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) Other than at the time of coverage renewal, a health maintenance contract that provides medical, major medical, or similar comprehensive coverage may not, while the subscriber is taking a prescription drug:

1. Remove the prescription drug from its list of covered drugs during the contract year unless the United States Food and Drug Administration has issued a statement about the drug which calls into question the clinical safety of the drug or the manufacturer of the drug has notified the United States Food and





Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s. 356c.

2. Reclassify the drug to a more restrictive drug tier or increase the amount that an insured must pay for a copayment, coinsurance, or deductible for prescription drug benefits or reclassify the drug to a higher cost-sharing tier during the contract year.

(b) This subsection does not:

1. Prohibit the addition of prescription drugs to the list of drugs covered during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits set forth in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

5. Apply to a Medicaid managed care plan under part IV of chapter 409.

Section 4. The Legislature finds that this act fulfills an important state interest.

Section 5. This act shall take effect January 1, 2020.

**States that have implemented a similar protection to SB 1180 to date:**

California: Insurers are prohibited from changing cost-sharing requirements, including for prescription drugs, during the plan year.
Louisiana: Health plans can only modify a policy's drug coverage at renewal, and with approval by the insurance commissioner. Prohibited modifications during the plan year include: removing a drug, adding prior auth requirements, imposing a quantity limit, imposing a new step-therapy restriction, moving the drug to a higher tier, unless a generic is available. (Title 37, pt. XIII, 14111 & 14117).
Nevada: Prohibits health insurers offering individual health benefit plans from removing a prescription drug form a formulary, moving it to a higher cost-sharing tier during the plan year.
Texas: Health plans can only modify a policy's drug coverage at the policy's renewal. Prohibited modifications: removing a drug, adding prior auth requirements, quantity limit, new step-therapy restrictions, moving the drug to a higher tier. **Applies to both individual and group health insurance plans.** This law has been on the books since 2012, which offers strong evidence that mid-year formulary protections do not have an outsized impact on premiums/ costs.
Illinois: We're not partial to the senate amendment on this one, but it generally protects patients who have previously had coverage approved for a drug to continue at the same benefit level for the duration of a plan year.

**Other Items:**

**Medicare Part D**
Currently provides beneficiaries protection from mid-year formulary changes. 30.3.2.

**Costs of Non-Medical Switching**
SB 1180 should reduce costs due to the fact that non-medical switches generally increase healthcare resource utilizations. The bill prevents non-medical switching within the plan year.

A study of patients with complex chronic conditions in Medicare Part B found that payments for patients who were switched from their therapy for non-medical reasons increased by $8,711.52.
(*Cost-Motivated Treatment Changes: Implications for Non-Medical Switching*, Institute for Patient Access (Oct. 2016), http://allianceforpatientaccess.org/wp-content/uploads/2016/10/IfPA_Cost-Motivated-Treatment-Changes_October-2016.pdf)

Physicians, pharmacists, and other healthcare administrators have reported that nonmedical switching increases administrative time, increases side effects or new unforeseen effects, and increases downstream costs to plans.

*(E.g.*, D.T. Rubin, et al., P354 Analysis of Outcomes After Non-Medical Switching of Anti-Tumor Necrosis Factor Agents, Eur. Crohn's & Colitis Organisation (2015), https://www.ecco-ibd.eu/index.php/publications/congress-abstract-s/abstracts-2015/item/p354-analysis-of-outcomes-after-non-medical-switching-of-anti-tumor-necrosis-factor-agents.html. Bryan R. Cote & Elizabeth A. Petersen, Impact of Therapeutic Switching in Long-Term Care, 14 Am. J. Managed Care SP23 (2008).)

**Other evidence that displays increased costs or utilization as a result of switching:**

Alliance for Patient Access, February 2019. "A Study of the Qualitative Impact of Non-Medical Switching."

Liu Y, Skup M, Lin J, Chao J. Impact of non-medical switching on healthcare costs: a claims database analysis. Abstract submitted to 20th Annual Meeting of the International Society for Pharmacoeconomics and Outcomes Research; Philadelphia, PA; 16-20 May 2015.

Gibofsky A, Skup M, Johnson S, Chao J, Rubin DT. Analysis of Outcomes After Non-Medical Switching of Anti–Tumor Necrosis Factor Agents. Abstract submitted to European League Against Rheumatism (EULAR) Annual Meeting; Rome; 10–13 June 2015.

The Moran Company, "Cost-Motivated Treatment Changes & Non-Medical Switching; Commercial Health Plans Analysis" August 2017.

Lebwohl M, Skup M, Yang H, Faust E, Kageleiry A, Chao J, Wolf D. Clinical Outcomes Associated With Switching or Discontinuation of AntiTNF Inhibitors for Non-Medical Reasons. Abstract submitted to European League Against Rheumatism (EULAR) Annual Meeting; Rome; 10– 13 June 2015. vi Feldman, Steven, Haijun Tian, Xinyue Wang, and Rebecca Germino. "Health Care Utilization and Cost Associated with Biologic Treatment Patterns Among Patients with Moderate to Severe Psoriasis: Analyses from a Large U.S. Claims Database." Journal of Managed Care & Specialty Pharmacy, December 2018. https://www.jmcp.org/doi/full/10.18553/jmcp.2018.18308.

## Biosimilars

A common counterargument from PBMs and Health plans will be what about biosimilars?
Even patients who were switched from a reference product to a biosimilar saw increased costs in a recent study of patients in the UK:
(Costs Associated with Non-Medical Switching from Originator to Biosimilar Etanercept in Patients with Rheumatoid Arthritis in the UK, Kateryna Onishchenko[1], Stamatia Theodora Alexopoulos[1], Cinzia Curiale[2] and Miriam Tarallo[2], [1]Consulting at McCann Health, London, United Kingdom, [2]Pfizer, Rome, Italy(https://acrabstracts.org/abstract/costs-associated-with-non-medical-switching-from-originator-to-biosimilar-etanercept-in-patients-with-rheumatoid-arthritis-in-the-uk/)

It is important to note that Florida has updated their generic substitution laws to allow substitution of interchangeable biosimilars once they are on the market. Health plans should not treat regular biosimilar products as interchangeable biosimilars when the FDA has not designated them as such.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

**SENATOR DEBBIE MAYFIELD**
17th District

March 3, 2019

The Honorable Doug Broxson
Chair, Banking and Insurance
318 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 1180

Dear Chair Broxson,

I am respectfully requesting Senate Bill 1180, a bill relating to Nonmedical Changes to Prescription Drug Formularies, be placed on the agenda for your Banking and Insurance Committee.

I appreciate your consideration of this bill and I look forward to working with you and the Banking and Insurance Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

Debbie Mayfield
State Senator, District 17

Cc: James Knudson, Sheri Green, Kevin Brown, Kaly Fox

REPLY TO:
❒ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
❒ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
❒ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 1180
*Bill Number (if applicable)*

675178
*Amendment Barcode (if applicable*

Topic Frozen Formulary

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee FL 32301
*City* *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/1

Duplicat

**THE FLORIDA SENATE**

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Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee FL 32301
*City* *State* *Zip*

Email bbevis@aif.com

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Waive Speaking: ☐ In Support ☐ Against
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Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/1

**THE FLORIDA SENATE**

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3/18/19
*Meeting Date*

1180
*Bill Number (if applicable)*

675178
*Amendment Barcode (if applicable)*

Topic Nonmedical Changes

Name Mary Thomas

Job Title Assistant Gen. Counsel

Address 1430 Piedmont Dr E
*Street*

Phone 850 224 4196

TLH FL 32308
*City* *State* *Zip*

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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*Meeting Date*

SB 1180
*Bill Number (if applicable)*

675178
*Amendment Barcode (if applicable*

Topic Frozen Formulary

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
*Street*

Phone 224-7173

Tallahassee FL 32301
*City* *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/1

**THE FLORIDA SENATE**

# APPEARANCE RECORD

3/18/19
*Meeting Date*

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

1180
*Bill Number (if applicable)*

Topic Consumer Protection - Nonmedical Changes

*Amendment Barcode (if applicable)*

Name Monica Gonzalez

Job Title Epilepsy Advocate

Address 16134 SW 83rd Terrace
*Street*
Miami FL 33193
*City* *State* *Zip*

Phone 786-444-3926

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Herself and Epilepsy Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

4pm - 412 K

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1180
*Bill Number (if applicable)*

Topic Consumer Protection - Nonmedical Changes

*Amendment Barcode (if applicable)*

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 878-7364

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3-JB-2019
*Meeting Date*

SB 1180
*Bill Number (if applicable)*

Topic CONSUMER PROTECTION FROM NON-MEDICAL-PRESCRIPTION DRUG FORMULARIES

*Amendment Barcode (if applicable)*

Name RICHARD THACKER, DO

Job Title PHYSICIAN

Address 2544 BLANKSTONE PINES ROAD
*Street*

Phone 878-7364

TALLAHASSEE FL
*City* *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

3-18-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1180

*Meeting Date* *Bill Number (if applicable)*

Topic Consumer Protection... Formulary *Amendment Barcode (if applicable)*

Name Joy Ryan

Job Title Moeman Law Firm

Address 300 S. Duval St, #410 Phone 425-4000

*Street*

Tallahassee, FL 32301 Email joy@moemanlaw firm.com

*City* *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing AHIP, Primetherapeutics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3-18
*Meeting Date*

1160
*Bill Number (if applicable)*

Topic Non Med Switching

*Amendment Barcode (if applicable)*

Name Matt Jordan

Job Title GRD

Address 1922 Dellwood Drive
*Street*

Phone 850-519-2801

Tallahassee FL 32303
*City* *State* *Zip*

Email matt.jordan@cancer.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing American Cancer Society

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1180
*Bill Number (if applicable)*

Topic Consumer Protection

*Amendment Barcode (if applicable)*

Name Doug Bell

Job Title

Address 119 S. Monroe
*Street*

Phone 205 9000

TLH
*City* *State* *Zip*

Email doug.bell@ruhdfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AIDS Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1180
*Bill Number (if applicable)*

Topic non-medical switching (don't just switch)

*Amendment Barcode (if applicable)*

Name DR. Bob Levin

Job Title Rheumatologist

Address 1831 N. Belcher Rd
*Street*
Clearwater, FL 33765
*City* *State* *Zip*

Phone (727) 643-5850

Email rwlevin@msn.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Society of Rheumatology

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1180
*Bill Number (if applicable)*

Topic Nonmedical changes

*Amendment Barcode (if applicable)*

Name Mary Thomas

Job Title Assistant Gen. Counsel

Address 1430 Piedmont Dr E
*Street*

Phone 850 224 6496

TLH FL 32308
*City* *State* *Zip*

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

SB 1180
*Bill Number (if applicable)*

Topic Consumer Protection from Non Medical Drug Formularies

*Amendment Barcode (if applicable)*

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave, Suite 304 A
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 850-228-6387

Email dobarker@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1422 |
| INTRODUCER: | Senator Gruters |
| SUBJECT: | Health Plans |
| DATE: | March 15, 2019 |
| REVISED: | 3/19/19 |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Favorable** |
| 2. | | | CM | |
| 3. | | | RC | |

## I. Summary:

SB 1422 revises regulatory provisions relating to alternative coverage arrangements, such as, short-term limited duration insurance policies and association health plans. The bill codifies 2018 federal regulations to provide consumers and employers with more affordable coverage options and choices for health insurance coverage.

An association health plan, which is a type of multiple employer welfare association, is a legal arrangement that allows business associations or unrelated employer groups to jointly offer health insurance and other fringe benefits to their members or employers. Changes in federal rules allow small employers, through associations, to gain regulatory and economic advantages that were previously only available to large employers. As a result of the federal regulatory changes, small employers, including working owners without employees, can form an association health plans that would be treated as a large group rather than a small group for insurance purposes, which would lower insurance costs and regulatory burdens. In addition, the federal rule allows an AHP to form, based on a geographic test, such as a common state, city, county, or a metropolitan area across state lines. Working owners without employees, including sole proprietors, can join.

The bill also provides that short-term limited duration insurance is an individual or group health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and has a duration of no longer than 36 months in total. Short-term, limited-duration insurance was designed primarily to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage. Currently, a short-term limited duration insurance policy must expire within 12 months of the date of the contract, taking into account any extensions. The bill requires disclosure in the short term limited duration insurance contract regarding the scope of the coverage.

## II. Present Situation:

### *Health Care Spending*

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027, reaching nearly $6.0 trillion by 2027.[1] Consumers are becoming responsible for a growing proportion of this spending, as demonstrated in the increased use of high deductible health plans, and other forms of cost sharing. Since 2012, the percentage of workers covered by a plan with a deductible of $1,000 or greater has grown from 34 to 51 percent.[2]

### Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[3] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S., and before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[4]

### *Individual and Small Group Markets*

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018. In August 2018, the OIR announced that premiums for the individual PPACA compliant plans would increase an average of 5.2 percent effective January 1, 2019.[5] The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield offers individual coverage in all 67 counties.[6] During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.[7]

The OIR approved the 2019 rates for 14 small group insurers.[8] The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and UnitedHealthCare (and affiliates) offer small group plans in every county.

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[1] Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), National Health Expenditure Projections 2018-2027, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf (last viewed March 2, 2019).
[2] North Carolina Medical Journal, 79. 1.34.
[3] Section 20.121(3)(a), F.S.
[4] Section 641.21(1), F.S.
[5] Office of Insurance Regulation, Individual PPACA Market Monthly Premiums for Plan Year 2019, available at https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf (last viewed February 11, 2019). See also OIR Press Release, OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates, available at https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234 (last viewed February 11, 2019).
[6] OIR, Individual Market County Offerings, available at https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf, (last viewed February 11, 2019).
[7] CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period*, January 3, 2019, at https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period (last viewed February 14, 2019).
[8] OIR, Small Group PPACA Market Monthly Premiums for Plan Year 2019, dated August 22, 2018, available at OIR https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf (last viewed February 14, 2019).

***State Regulation of Short-term Limited Duration Insurance Policies***

In Florida, short-term limited duration insurance is an individual health insurance coverage with an issuer or insurer that has specified in the contract an expiration date that is within 12 months of the contract's effective date.[9]A STLDI policy that is renewable or is for a term longer than 6 months cannot exclude preexisting conditions for more than 24 months.[10]

Currently in Florida there are two licensed insurers (Blue Cross Blue Shield and Integon Indemnity Corporation) offering short term limited duration individual policies providing coverage for an estimated 10,000 members.

***Florida Regulation of Association Health Plans or Multiple Employer Welfare Arrangements***

In Florida, an association health plan (AHP) consisting of multiple employers is referred to as a multiple employer welfare arrangement (MEWAs).[11] A multiple employer welfare arrangement is an employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health insurance benefits or any other benefits described in s. 624.33, F.S., other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries.[12] Current state law requires AHPs or MEWAs to be based on a common industry. Associations may not have less than 25 members and must have been organized and maintained in good faith for at least 1 year.[13] A small group health alliance must be organized as a not-for-profit corporation under ch. 617, F.S.[14]

In the Florida, there are two AHPs/MEWAs licensed by the OIR. They are the Independent Colleges and Universities Benefits Association, which is comprised of 26 employers with approximately 15,000 members. The second one is the Florida Bankers Association comprised of 64 employers with approximately 6,000 members.

**Federal Regulation of Health Insurance Products**

The federal Patient Protection and Affordable Care Act (PPACA)[15] requires health insurers to make major medical or comprehensive coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits,[16] rating and underwriting standards, and other provisions. The PPACA requires insurers and HMOs that offer qualified

[9] Rule 69O-154.104, F.A.C. The Insurance Code does not prohibit the OIR from approving a short term limited duration rider that offered a guaranteed renewability option for up to 36 months. However, Rule 69O-154.104 prevents guaranteed renewability.
[10] Section 627.6045, F.S.
[11] See ss. 624.436-624.446, F.S, which may be cited as the "Florida Nonprofit Multiple Welfare Arrangement Act."
[12] Section 627.437, F.S. This section does not apply to a multiple-employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer, to an arrangement which is exempt from state insurance regulation in accordance with Pub. L. No. 93-406, the Employee Retirement Income Security Act, or to the state group health insurance program administered pursuant to s. 110.123.
[13] Section 627.438, F.S.
[14] *Id.*
[15] The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.
[16] 42 U.S.C. s.18022.

health plans to provide ten categories of essential health.[17] The PPACA preempts any state law that prevents the application of a provision of PPACA.[18]

In 2017, the federal Tax Cuts and Jobs Act[19] reduced the tax penalty for individuals who fail to comply with PPACA's individual mandate to maintain minimum essential health coverage to zero beginning tax year 2019.[20] However, the act did not repeal the individual mandate.

***Federal Regulation of Short-Term Limited Duration Plans***

Federal law[21] defines individual health insurance coverage as health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance. Short-term limited duration insurance (STLDI) policies do not need to meet the essential health benefits requirements, and are not subject to the prohibitions on preexisting condition exclusions or lifetime and annual dollar limits. A STLDI policy is also not subject to requirements regarding guaranteed availability, guaranteed renewability, and rating requirements based on health status. As a result, an insurer would be able to offer short-term limited duration insurance policies to individuals who are in good health at substantially lower premium than available in the individual market.

In 2018, the U.S. Department of Health and Human Services adopted final rules[22] which revised the definition of STLDI to specify that STLDI is health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total, which could promote consumer choice and enhance the affordability of coverage for individuals. The rule requires disclosures in the STLDI insurance contract regarding the scope of the coverage. Previously, the policy term of a STLDI policy was limited to 3 months.[23] The federal regulations are effective for STLDI policies issued on or after October 1, 2018.[24]

***Federal Regulation of Association Health Plans***

The federal Employee Retirement Income Security Act (ERISA) gives states regulatory authority over self-insured multiple employer welfare arrangements (MEWAs) and some authority over fully insured MEWAs to ensure solvency, require state licensure, and require financial reporting. An association health plan (AHP) is one type of MEWA. Further, ERISA authorizes the

[17] See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed Nov. 5, 2017) for Florida's benchmark plan.
[18] The PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. PPACA s. 1321(d).
[19] Public L. No. 115-97, Stat. 2054 (2017).
[20] Prior to tax year 2019, PPACA required that, for each month during the year, an individual must have minimum essential coverage (MEC) or individual mandate; qualify for an exemption; or pay a penalty or shared responsibility payment when filing the federal income tax return. 26 U.S.C. s. 5000A. See https://www.irs.gov/taxtopics/tc561 (last viewed February 14, 2019).
[21] Section 2791(b)(5) of the PHS Act.
[22] 45 CFR Parts 144, 146, and 148.
[23] 81 FR 75316.
[24] 83 FR 38212.

U.S. Department of Labor to require fully insured and self-insured MEWAs to register with the department.

Under current federal law and regulations, health insurance coverage offered or provided through an employer trade association, chamber of commerce, or similar organization, to individuals and small employers is generally regulated under the same federal standards that apply to insurance coverage sold by health insurance issuers[25] directly to these individuals and small employers, unless the coverage sponsored by the group or association constitutes a single ERISA covered plan.

Generally, unless the arrangement sponsored by the group or association constitutes a single ERISA covered plan, the current regulatory framework disregards the group or association in determining whether the coverage obtained by any particular participating individual or employer is individual, small group, or large group market coverage. Instead, the test for determining the type of coverage focuses on whether the coverage is offered to individuals or employers. If the coverage is offered to employers, whether the group coverage is large group or small group coverage depends on the number of employees of the particular employer obtaining the coverage. As a result, associations that want to form AHPs and existing AHPs currently face a complex and costly compliance environment, insofar as the various employer members of the association and the association's health insurance coverage arrangement may simultaneously be subject to large group, small group, and individual market regulation, which undermines one of the core purposes and advantages of an association forming and its employer members joining an AHP.

In June 2018, the U.S. Department of Labor issued its final rule on the regulation of AHPs.[26] The final rule maintained the existing regulatory framework in place but also created a second option for both new and existing AHPs/MEWAs that may elect to follow the new regulations. The second option contains the following key differences to the previous federal regulations:

- Allows for AHPs/MEWAs to be based on a common geography area or a common industry.
- Allows small employers to join together to form an AHP/MEWA and be treated as a large employer for the purposes of buying insurance. Current federal law has a look-through provision that treats small employers that are part of an AHP/MEWA as part of the small employer market, and are subject to coverage requirements of the PPACA. Insurance purchased by large employers is not subject to essential health benefit requirements (such as providing mental health, maternity benefits, etc.).
- The rules provide nondiscrimination protections that prohibit associations from conditioning membership based on a health factor but does not prohibit other factors such as gender, age, geography, and industry. The association may not charge higher premiums or deny coverage to people because of preexisting conditions, or cancel coverage because an employee becomes ill.

[25] A ''health insurance issuer'' or ''issuer'' is an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). Such term does not include a group health plan. 29 CFR 2590.701–2. The terms ''health insurance issuer'' and ''issuer'' are used interchangeably in this preamble.
[26] 29 CFR Part 2510, available at https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf (last viewed Mar. 13, 2019).

- Self-funded MEWAs that are recognized as bona fide associations or groups under previously issued guidance from the U.S. Department of Labor remain eligible under federal law in accordance with 29 CFR part 2510.3-5(a).
- Self-employed individuals with no other employees can also join an AHP, along with their families. Self-employed individuals who employ other individuals have always been eligible to join an AHP.
- The new rule eliminates a provision that required a group or association acting as an employer to exist for purposes other than providing health benefits. The rule requires that a group or association of employers have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees, even if the primary purpose of the group or association is to offer such coverage to its members
- States will continue to have regulatory oversight of AHPs and share enforcement authority with the federal government.

The new rule does not affect previously existing AHPs, which were authorized under prior guidance**.** Such plans can continue to operate as before, or elect to follow the new requirements if they want to expand within a geographic area, regardless of industry, or to cover the self-employed. New plans can also form and elect to follow either the old guidance or the new rules. New and existing plans may use experience rating by underwriting premiums for individual employer members based on health status. However, the AHPS that wish to do so must continue to meet the prior federal regulations, which are more stringent standards in areas such as commonality of interest; and they could not enroll working owners in an AHP coverage.

Many experts are evaluating the impact of the new federal rules. Four million Americans, including 400,000 who otherwise would lack insurance, are expected to join an AHP by 2023 according to Congressional Budget Office report.[27] Some large employers could be a part of an association health plan; however, it is anticipated that many AHPs will draw the majority of their membership primarily from the small-group market and, to a lesser extent, the individual market. Both markets have shown a high degree of price sensitivity, particularly in the nonsubsidized segment of the individual market (i.e. those individuals with income above 400 percent of the federal poverty level) who pay full costs with no employer contribution or government subsidy.[28] Low price will still be a key consideration and AHPs will need to have comprehensive strategies that produce the best chance of being competitive with the small-group ACA market as well as with other alternative offerings, such as small group level-funded (self-insured) products. Price will be a significant consideration for employers, but features unrelated to price, such as payment reform, benefits, value-added features, and branding may be significant factors in the choice between AHP coverage and other options.

With the implementation of the new federal rule, all associations (new or existing) may establish a fully-insured AHP on September 1, 2018. Existing associations that sponsored an AHP on or

[27] U.S. Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028*, (May 2018).
[28] Milliman, Association health plans after the final rule, (Aug. 22, 2018) available at http://www.milliman.com/insight/2018/Association-health-plans-after-the-final-rule/ (last viewed Mar. 13, 2019).

before the date the Final Rule was published may establish a self-funded AHP on January 1, 2019. All other associations (new or existing) may establish a self-funded AHP on April 1, 2019.

## III. Effect of Proposed Changes:

**Section 1** amends s. 624.438, F.S., to revise the eligibility requirements for a MEWA to codify the new, expanded eligibility requirements contained in the federal rule. The section removes provisions relating to eligibility requirements that were in effect prior to the adoption of the new federal rules, including being organized and maintained in good faith for a continuous period of 1 year for purposes other than obtaining or providing insurance, and commonality of trades or profession.

**Section 2** amends s. 624.6045, F.S., to provide that short-term health insurance policies are not required to cover preexisting conditions. Currently, short-term policies that are renewable for a term longer than 6 months cannot exclude preexisting conditions for more than 24 months.

**Section 3** amends s. 627.6425, F.S., to require that individual short-term policies must be guaranteed renewable at the option of the individual by including such policies in the definition of health insurance.

**Sections 4 and 5** amend ss. 627.6426 and 627.654, F.S., to define "short term health insurance" to mean health insurance coverage provided by an issuer with an expiration date that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months. Section 4 applies the new definition of short term health insurance to the individual market; Section 5 applies it to group, blanket, or franchise policies of health insurance. Sections 4 and 5 each codify the federal disclosure notice requirement for short term policies for individual and group policies into state law, which would allow the OIR to enforce this provision.

**Section 6** amends s. 627.654, F.S., to codify the federal rule that allows an association to be insured under a group policy purchased from a licensed insurer. The section also removes the requirements that an association may not have less than 25 members and have been organized and maintained in good faith for a period of 1 year. Lastly, it removes the requirement that a small group health alliance must be organized as a not-for-profit corporation under ch. 617, F.S., and meet other requirements.

**Section 7** provides that the bill takes effect July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers and employers will have a greater choice of health insurance options with lower costs. Many consumers unable to afford major medical insurance coverage may be able to afford other coverage options now available.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

Self-funded MEWAs that were recognized to be bona fide associations or groups under previously issued guidance from the United States Department of Labor remain eligible under federal law in accordance with 29 CFR part 2510.3-5(a). However, this provision is not included in Section 1 of the bill. It may be beneficial to include such groups under Section 1 as the two currently licensed MEWAs are organized under this prior federal guidance and new MEWAs have the option under federal law to follow this guidance rather than the recently expanded Federal definition of bona fide group or association.

There is an apparent conflict between sections 3 and 4 of the bill. In particular, Section 3 requires guaranteed renewability for short-term plans at the option of the individual whereas Section 4 limits short term plans to 36 months as is required by federal law. It is unclear what would happen if a consumer has had a short-term plan for 36 months and wants to renew as Section 3 would require an insurer to renew the same policy but would be prohibited from renewing the same policy by Section 5 and federal law.

It appears that the primary purpose of adding a bona fide group or association of employers as defined in 29 CFR part 2510.3-5 to Section 6 is to allow health insurers to sell comprehensive, major medical policies to these types of groups. However, as written, the bill would allow health

insurers to offer other types of health insurance products to these newly included groups such as accident policies, hospital indemnity policies, and specified disease policies.

Under federal law, employee leasing companies, also known as professional employer organizations or PEOs, are considered a form of a MEWA. Employee leasing companies are licensed under s. 468.529, F.S. Section 468.529(1), F.S., states in part that "no licensed employee leasing company shall sponsor a plan of self-insurance for health benefits, except as may be permitted by the provisions of the Florida Insurance Code." Employee leasing companies are typically comprised of employers from disparate trades or industries. Since the bill would allow MEWAs that consist of employers from disparate trades or industries, it would be beneficial to clarify the OIR's role in the regulation of health plans of self-insured employee leasing organizations.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.438, 627.6045, 627.6425, and 627.654.

This bill creates the following sections of the Florida Statutes: 627.6426 and 627.6525.

## IX. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Gruters

23-01636-19 20191422__

A bill to be entitled

An act relating to health plans; amending s. 624.438, F.S.; revising eligibility requirements for multiple-employer welfare arrangements; amending s. 627.6045, F.S.; revising applicability of requirements relating to preexisting conditions; revising the font size for a certain disclosure; amending s. 627.6425, F.S.; revising the definition of the term "individual health insurance" relating to renewability of individual coverage; creating ss. 627.6426 and 627.6525, F.S.; defining the term "short-term health insurance"; providing disclosure requirements for short-term individual, group, blanket, and franchise health insurance policies; amending s. 627.654, F.S.; revising requirements for, and applicability relating to, association and small employer policies; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement:

(b) ~~1.~~ Must be established by a bona fide group ~~trade association, industry association,~~ or ~~professional~~ association of employers as defined in 29 C.F.R. s. 2510.3-5 ~~or~~





**Florida Senate - 2019** **SB 1422**

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~~professionals~~ which has a constitution or bylaws specifically stating its purpose and which has been organized ~~and maintained in good faith for a continuous period of 1 year~~ for purposes in addition to ~~other than that of~~ obtaining or providing insurance.

~~2. Must not combine member employers from disparate trades, industries, or professions as defined by the appropriate licensing agencies, and must not combine member employers from more than one of the employer categories defined in sub-subparagraphs a.-c.~~

~~a. A trade association consists of member employers who are in the same trade as recognized by the appropriate licensing agency.~~

~~b. An industry association consists of member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by sub-subparagraph a. or sub-subparagraph c.~~

~~c. A professional association consists of member employers who are of the same profession as recognized by the appropriate licensing agency.~~

The requirements of this paragraph ~~subparagraph~~ do not apply to an arrangement licensed before ~~prior to~~ April 1, 1995, regardless of the nature of its business. However, an arrangement exempt from the requirements of this paragraph ~~subparagraph~~ may not expand the nature of its business beyond that set forth in the articles of incorporation of its sponsoring association as of April 1, 1995, except as authorized in this paragraph ~~subparagraph~~.



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

Section 2. Subsection (3) of section 627.6045, Florida Statutes, is amended to read:

627.6045 Preexisting condition.—A health insurance policy must comply with the following:

(3) This section does not apply to short-term~~, nonrenewable~~ health insurance ~~policies of no more than a 6-month policy term~~, provided that it is clearly disclosed to the applicant in the advertising and application, in 14-point ~~10-point~~ contrasting type, that "This policy does not meet the definition of qualifying previous coverage or qualifying existing coverage as defined in s. 627.6699. As a result, if purchased in lieu of a conversion policy or other group coverage, you may have to meet a preexisting condition requirement when renewing or purchasing other coverage."

Section 3. Subsection (1) of section 627.6425, Florida Statutes, is amended to read:

627.6425 Renewability of individual coverage.—

(1) Except as otherwise provided in this section, an insurer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the option of the individual. For the purpose of this section, the term "individual health insurance" means health insurance coverage, as described in s. 624.603, offered to an individual in this state, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include ~~short-term limited duration insurance or~~ excepted benefits specified in s. 627.6513(1)-(14).

Section 4. Section 627.6426, Florida Statutes, is created







to read:

627.6426 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and an individual seeking coverage shall include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Section 5. Section 627.6525, Florida Statutes, is created to read:

627.6525 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health

insurance" means a group, blanket, or franchise policy of health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and a party seeking coverage shall include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Section 6. Subsection (1) of section 627.654, Florida Statutes, is amended to read:

627.654 Labor union, association, and small employer health alliance groups.—

(1)(a) A bona fide group or association of employers, as defined in 29 C.F.R. s. 2510.3-5, or a group of individuals may





be insured under a policy issued to an association, including a labor union, which association has a constitution and bylaws ~~and not less than 25 individual members~~ and which has been organized ~~and has been maintained in good faith for a period of 1 year~~ for purposes in addition to ~~other than that of~~ obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least 15 individual members of the association for the benefit of persons other than the officers of the association, the association, or trustees.

(b) A small employer, as defined in s. 627.6699 and including the employer's eligible employees and the spouses and dependents of such employees, may be insured under a policy issued to a small employer health alliance by a carrier as defined in s. 627.6699. ~~A small employer health alliance must be organized as a not-for-profit corporation under chapter 617. Notwithstanding any other law, if a small employer member of an alliance loses eligibility to purchase health care through the alliance solely because the business of the small employer member expands to more than 50 and fewer than 75 eligible employees, the small employer member may, at its next renewal date, purchase coverage through the alliance for not more than 1 additional year. A small employer health alliance shall establish conditions of participation in the alliance by a small employer, including, but not limited to:~~

~~1. Assurance that the small employer is not formed for the purpose of securing health benefit coverage.~~

~~2. Assurance that the employees of a small employer have not been added for the purpose of securing health benefit~~

~~coverage.~~

Section 7. This act shall take effect July 1, 2019.



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

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1422
*Bill Number (if applicable)*

Topic Association Health Plans

*Amendment Barcode (if applicable)*

Name Mike Cusick

Job Title Lobbyist

Address 200 W. College Ave
*Street*

Tallahassee FL 32301
*City* *State* *Zip*

Phone 850-222-5620

Email Mike@MichaelCusick.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Opportunity Solutions

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

1422
*Bill Number (if applicable)*

Topic Health Plans

*Amendment Barcode (if applicable)*

Name Chris Chaney

Job Title Lobbyist

Address 204 South Monroe
*Street*

Phone 222-8900

Tallahassee FL 32301
*City* *State* *Zip*

Email cc@cardenasparthers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Health Insurance Innovations

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1464 |
| INTRODUCER: | Senator Brandes |
| SUBJECT: | Fair Settlement Act |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Billmeier | Knudson | BI | **Pre-meeting** |
| 2. | | | JU | |
| 3. | | | RC | |

## I. Summary:

SB 1464 revises the civil remedy statute in s. 624.155, F.S., whereby any person may bring a civil action for extra-contractual damages when such person is damaged because an insurer acted in bad faith.

The bill requires the insured or claimant, when giving the required 60 days' written notice to the insurer and the Department of Financial Services before filing a bad faith action under s. 624.155, F.S., specify the amount of money necessary to cure the alleged violation. The bill repeals the requirement that the Department of Financial Services review notices and return those which lack required information.

The bill creates a separate notice requirement for statutory or common-law bad faith actions for failure to settle a liability insurance claim. Instead, as a condition precedent to a statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or anyone on behalf of the insured or the claimant must provide the insurer a written notice of loss.

The bill provides that the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle if the insurer complies with a request for a disclosure statement as described in s. 627.4137, F.S., and, within 45 days after receipt of the written notice of loss, offers to pay the claimant the lesser of the limits of liability coverage applicable to the claimant's insurance claim or the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability arising from the incident and the written notice loss.

The bill allows an insurer to avoid liability beyond available policy limits if two or more third-party claimants in a liability claim make competing claims arising out of a single occurrence which in total exceed the available policy limits. To limit liability, the insurer must, within

90 days after receiving notice of the competing claims in excess of the available policy limits, file an interpleader action under the Florida Rules of Civil Procedure. The bill provides that the competing third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. The bill provides that an insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured.

The bill requires the trier of fact, in evaluating whether an insurer did not attempt in good faith to settle claims when it could and should have done so, to consider whether the insured, claimant, or representative of the insured or claimant made good faith efforts to cooperate with the insurer in the investigation of the claim.

## II. Present Situation:

### Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim.The duty to defend refers to the insurer's duty to provide a defense for the insured in court against a third party with respect to a claim within the scope of the insurance contract.[1] The Florida Supreme Court explained the difference between indemnity policies and liability policies:

> Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.[2]

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.[3] As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.[4]

### Common Law and Statutory Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.[5] The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as

[1] *See* 16 Williston on Contracts s. 49:103 (4th Ed.).
[2] *See State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[3] *Id.*
[4] *Id*.
[5] *See Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).

the result of the acts of one of the parties to the contract.[6] This is known as a third-party claim of bad faith.

At common law, the insured cannot raise a bad faith claim against the insurer outside of the third-party claim context.[7] In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155, F.S., provides that any party may bring a bad faith civil action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.[8]

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation.[9] The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[10] Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.[11] Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.[12]

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.[13] If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.[14] Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad

[6] *See Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).
[7] *See Laforet*, 658 So.2d at 58-59.
[8] *See* s. 624.155(1)(b)1.-3., F.S.
[9] *See* s. 624.155(3)(a), F.S. The notice must be on a form approved by the Department of Financial Services. If the Department returns the notice for lack of specificity, the day period does not begin until a proper notice is filed. The notice form can be found at https://apps.fldfs.com/CivilRemedy/ (last accessed on March 13, 2019).
[10] *See* s. 624.155(3)(d), F.S.
[11] *See Talat Emterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).
[12] *See Macola v. Government Employees Insurance Company*, 953 So.2d 451 (Fla. 2006).
[13] *See Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
[14] *Id*.

faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.[15]

**Third-Party Claims of Bad Faith**

A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.[16] The Florida Supreme Court has described an insurer's duty to its insureds:

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Because the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith. The question of failure to act in good faith with due regard for the interests of the insured is for the jury.[17]

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.[18] Whether an insurer acted in bad faith is determined by the totality of the circumstances:

> In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.[19]

The focus in a bad faith case is on the conduct of the insurer but the conduct of the claimant is relevant to whether there was a realistic opportunity for settlement.[20] A court, for example, will

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[15] *See DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).
[16] *See Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).
[17] *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).
[18] *See Berges v. Infinity Insurance Company*, 896 So.2d 665, 677 (Fla. 2005)(explaining that "the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured").
[19] *See Berges*, 896 So.2d at 680 (internal quotations and citations omitted).
[20] *See Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that "[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle limiting acceptance to 10 days made it virtually impossible to make an intelligent acceptance."[21] Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

In *Berges v. Infinity Insurance Company*, dissenting justices expressed concern that there "is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met."[22] It was argued that it is a "common practice for a party contemplating litigation to submit a settlement offer that remains outstanding for only a finite period and that a person injured by a policyholder may set any deadlines he desires—even an arbitrary or unreasonable one."[23] Justice Wells concluded that set time periods in which all insurers must make decisions on claims and issue payments are needed.[24]

The majority in *Berges* held that courts must look to the totality of the circumstances. "The question of bad faith in this case extends to [the insurer's] entire conduct in the handling of the claim, including the acts or omissions [of the insurer] in failing to ensure payment of the policy limits within the time demands."[25] Another court argued that setting a "minimum amount of time before any finding of bad faith is possible runs counter to the analysis of ordinary care and prudent business practice… Juries are empaneled to apply the appropriate criteria to the particular facts of a given situation and to decide whether the insurer acted prudently."[26]

In *Harvey v. Geico General Insurance Company*,[27] the Florida Supreme Court explained that the critical inquiry in a bad faith case is whether "the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment."[28] The court said an insurer has an affirmative duty to initiate settlement negotiations in cases where liability is clear and a judgment in excess of policy limits is likely.[29] The court said the lower court misapplied precedent when it said an insurer cannot be liable for bad faith when the insured's own actions were at least in part responsible for the excess judgment.[30]

[21] *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).
[22] *Berges*, 896 So.2d at 685 (Wells, J., dissenting).
[23] *Id.* at 692 (Cantero, J., dissenting).
[24] *Id*. at 686 (Wells, J., dissenting).
[25] *Berges*, 896 So.2d at 627.
[26] *Snowden ex. rel. Estate of Snowden v. Lumbermans Mutual Casualty Company*, 358 F.Supp.2d 1125, 1129 (N.D. Fla. 2003).
[27] 259 So.3d 1 (Fla. 2018).
[28] *Harvey*, 259 So.3d at 7.
[29] *Harvey*, 259 So.3d at 7.
[30] *Harvey*, 259 So.3d at 11.

**The Good Faith Duty in a Multiple Claimant Situation**

In 2003, the Fourth District Court of Appeal considered how an insurer should carry out its duty of good faith in a case with multiple claimants where the total damages far exceeded policy limits.[31] In that case, the insured caused an automobile accident where five teens were killed and seven more were seriously injured. The insurance company settled with three of the claimants and exhausted policy limits on those settlements. Numerous claimants filed third-party bad faith claims against the insurer alleging the insurer entered into settlements without due regard for the interests of the insured.[32]

The court held that the same duties of good faith set forth in *Boston Old Colony* applied when there were multiple claimants. The insurer must investigate all claims, keep the insured informed, and minimize the amount of excess judgments by reasoned claim settlement. The insurer may still decide to settle some claims and exclude others but the decision must be made "in keeping with its good faith duty."[33]

In *Hernandez v. Travelers Insurance Co.*,[34] the court considered whether an insurance company, which may be liable to several persons because of the negligence of its insured, could file an interpleader action (an action where the court determines the distribution of the funds up to policy limits). The court held that interpleader is not allowed under such circumstances. The court explained:

> The plaintiff insurance company has only the derivative liability from its insured. One of its liabilities is to defend its insured in the courts. It may not discharge that liability by depositing a sum of money and saying to the courts, "divide it up." If the defendants were all claiming the proceeds of a single fund and liability could exist as to only one of the claimants, an interpleader would be appropriate. In the present cause, one action cannot determine the entire controversy and liability may exist as to more than one claimant.[35]

**Disclosure Statements**

Section 627.4137, F.S., requires an insurer to provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

[31] *Farinas v. Florida Farm Bureau General Ins. Co.*, 850 So.2d 555 (Fla. 4th DCA 2003).
[32] *Farinas*, 850 So.2d at 557-558.
[33] *Farinas*, 850 So.2d at 561.
[34] 356 So.2d 1342 (Fla. 3rd DCA 1978).
[35] *See Hernandez*, 356 So.2d at 1344.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, must disclose the name and coverage of each known insurer to the claimant and shall forward such request for information on all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

## III. Effect of Proposed Changes:

The bill revises the requirement that an insured or claimant give 60 days' written notice to the insurer and the Department of Financial Services before filing an action for bad faith failure to settle. The bill amends s. 624.155(3)(b), F.S., to require that the notice required under s. 624.155(3)(a), F.S., contain the specific amount of money necessary to cure the alleged violation. This would require, for example, an insured in a first-party claim to notify the insurer and the Department of Financial Services of the specific amount necessary to cure the alleged violation. The bill repeals the requirement that the Department of Financial Services review the notices and return those which lack required information.

Under the bill, the notice requirements of s. 624.155(3), F.S., no longer apply to statutory or common-law bad faith actions for failure to settle a liability insurance claim. Instead, this bill provides that, as a condition precedent to a statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or anyone on behalf of the insured or the claimant must provide the insurer a written notice of loss.

If the insurer complies with a request for a disclosure statement as described in s. 627.4137, F.S., and, within 45 days after receipt of the written notice of loss, offers to pay the claimant the lesser of the limits of liability coverage applicable to the claimant's insurance claim or the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability arising from the incident and the written notice loss, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle. Current law provides that bad faith is determined based on the totality of the circumstances. This bill would provide that an insurer is not liable for bad faith failure to settle if the insurer complies with the provisions of this bill.

The bill requires the trier of fact, in evaluating whether an insurer committed an act under subparagraph (1)(b)1., to consider whether the insured, claimant, or representative of the insured or claimant made good faith efforts to cooperate with the insurer in the investigation of the claim. Subparagraph (1)(b)1 is the statutory provision authorizing a person to bring a bad faith civil action when damaged by an insurer's not attempting in good faith to settle claims when it could and should have done so. The bill does not make clear how the trier of fact should weigh the insured's conduct against the insurer's conduct.

The bill provides that if two or more third-party claimants in a liability claim make competing claims arising out of a single occurrence which in total exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available

policy limits to one or more of the third-party claimants, if within 90 days after receiving notice of the competing claims in excess of the available policy limits, the insurer files an interpleader action under the Florida Rules of Civil Procedure. The competing third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. The bill provides that an insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured. This will allow an interpleader action similar to what the court rejected in *Hernandez v. Travelers Insurance Co.*

This act shall take effect July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

Lines 98-99 toll the statute of limitations for the mailing of a "subsequent" notice required by subsection (3). The bill removes the ability of the Department of Financial Services to return notices so there should not be "subsequent" notices.

Lines 104 and 110 require that the claimant file a "written" notice of loss. It is not clear how that would operate with insurers that handle claims filing via telephone.

Lines 121-126 provides that the insurer can limit liability by filing an interpleader action within 90 days of receiving notice of competing claims in excess of policy limits. It is unclear when and how an insurer would receive such notice.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 624.155 of the Florida Statutes.

## IX. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Brandes

24-00373B-19 20191464__

A bill to be entitled

An act relating to the Fair Settlement Act; providing a short title; amending s. 624.155, F.S.; revising circumstances under which the Department of Financial Services and an authorized insurer must be given a certain presuit notice; deleting a provision that tolls the period for providing the notice under certain circumstances; requiring such notices to include the specific amount of money constituting a cure of the violation; deleting a provision authorizing the department to return deficient notices; requiring insureds, claimants, or any person acting on their behalf to provide insurers with written notices of loss as a condition precedent to bad faith actions; providing that an insurer does not violate its good faith duty to settle claims and is not liable for a certain failure if it meets certain conditions; providing a limitation on an insurer's liability to third-party claimants, under certain circumstances, if it files an interpleader action within a certain timeframe; providing construction; requiring triers of fact, under certain circumstances, to consider whether insureds, claimants, or their representatives made good faith efforts to cooperate with insurers' investigations; providing an effective date.

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







24-00373B-19 20191464__

Section 1. This act may be cited as the "Fair Settlement Act."

Section 2. Subsection (3) of section 624.155, Florida Statutes, is amended, subsections (10), (11), and (12) are added to that section, and paragraph (b) of subsection (1) of that section is republished, to read:

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer when such person is damaged:

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or

3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(3)(a) Except as provided in subsection (10), as a

condition precedent to bringing an action under this section, the department and the authorized insurer must be ~~have been~~ given 60 days' written notice of the violation. ~~If the department returns a notice for lack of specificity, the 60-day time period shall not begin until a proper notice is filed.~~

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.

2. The facts and circumstances giving rise to the violation.

3. The name of any individual involved in the violation.

4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third-party ~~third party~~ claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third-party ~~third party~~ claimant pursuant to written request.

5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

6. The specific amount of money that constitutes a cure of the alleged violation.

(c) ~~Within 20 days of receipt of the notice, the department may return any notice that does not provide the specific information required by this section, and the department shall indicate the specific deficiencies contained in the notice. A determination by the department to return a notice for lack of specificity shall be exempt from the requirements of chapter 120.~~







~~(d)~~ No action shall lie if, within 60 days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) ~~(c)~~ The authorized insurer that is the recipient of a notice filed pursuant to this section shall report to the department on the disposition of the alleged violation.

(e) ~~(f)~~ The applicable statute of limitations for an action under this section shall be tolled for a period of 65 days by the mailing of the notice required by this subsection or the mailing of a subsequent notice required by this subsection.

(10) As a condition precedent to a statutory or common law action for a bad faith failure to settle a liability insurance claim, the insured, the claimant, or any person acting on behalf of the insured or the claimant must provide the insurer with a written notice of loss. The insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for a bad faith failure to settle under this section or the common law if the insurer:

(a) Complies with a request for a disclosure statement described in s. 627.4137; and

(b) Within 45 days after receipt of the written notice of loss, offers to pay the insured or the claimant the lesser of the amount the insured or the claimant is willing to accept or the limits of the liability coverage applicable to the insured's or the claimant's claim in exchange for full release of the insured from any liability arising from the incident and the notice of loss.

(11) If two or more third-party claimants in a liability claim make competing claims arising out of a single occurrence which in total exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants, if within 90 days after receiving notice of the competing claims in excess of the available policy limits, the insurer files an interpleader action under the Florida Rules of Civil Procedure. The competing third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. An insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured.

(12) In evaluating whether an insurer committed an act under subparagraph (1)(b)1., the trier of fact must consider whether the insured, claimant, or representative of the insured or claimant made good faith efforts to cooperate with the insurer in the investigation of the claim.

Section 3. This act shall take effect July 1, 2019.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 1520 |
| INTRODUCER: | Banking and Insurance Committee and Senator Bean |
| SUBJECT: | Direct Health Care Agreements |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Knudson | BI | **Fav/CS** |
| 2. | | | HP | |
| 3. | | | RC | |

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

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:


CS/SB 1520 expands the scope of the current exemption from the Florida Insurance Code (code) for direct primary care agreements to apply to all direct health care agreements, which would include dentists. The bill would expand the current law relating to direct primary care agreements to apply to other health care providers, thus removing regulatory uncertainty whether such providers could use a direct contracting model.

In 2018, legislation was enacted to provide that a direct primary care (DPC) agreement is not insurance and is not subject to regulation under the code if certain conditions are met, which removed regulatory uncertainty for DPC providers. Direct primary care is a type of direct contracting that eliminates third party payers from the provider-patient relationship and the associated administrative costs associated with filing and resolving insurance claims. Through a direct health care agreement, a patient pays a monthly fee, usually between $50 and $100 per individual, to the primary care provider for defined primary care services.

As of March 2019, 25 states have adopted some form of direct physician contracting agreement statutory provisions, such as DPC laws that define such agreements provided by physicians are outside the scope of state insurance regulation.

The bill does not impact state revenues or expenditures.

The effective date of the bill is July 1, 2019.

## II. Present Situation:

### Direct Contracting with Health Care Providers

Direct primary care is a type of direct contracting that eliminates third party payers from the provider-patient relationship.[1] Through a direct contractual agreement with a health care provider, a patient generally pays a monthly retainer fee, on average $77 per individual,[2] to the health care provider for defined primary care services, such as office visits, preventive care, annual physical examination, and routine laboratory tests.

After paying the monthly fee, a patient can access all services under the agreement at no extra charge based on the terms of the agreement. Typically, direct contracting practices provide routine preventive services, screenings, or tests, like lab tests, mammograms, Pap screenings, and vaccinations. A direct health care provider agreement can be designed to address most health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management. A direct contracting agreement may also include specialty physicians.

Individuals and employers may enter into such direct contracting agreements. More large employers with 1,000 or more employees are contracting directly with providers. A recent Willis Towers Watson survey found that only 6 percent of employers were contracting directly with providers in 2017, but 22 percent are considering it for 2019 to obtain greater savings for the delivery of health care services.[3]

Some of the potential benefits of the direct contracting model for providers include reducing patient volume, minimizing administrative and staffing expenses; increasing time with patients; and increasing revenues. The direct contracting provider eliminates administrative costs associated with filing and resolving insurance claims. Existing direct primary care practices claim to reduce expenses by more than 40 percent by eliminating administrative staff resources associated with third-party costs.[4]

In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients outside of standard insurance coverage. According to the AAPP, that number has increased

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[1] The direct primary care or direct contracting model is compared to the concierge practice model. However, while both provide access to physician services for a periodic fee, the concierge model generally continues to bill third party payers, such as insurers on a fee for service basis, in addition to the collection of membership and retainer fees. *See* Phillip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of Family Med. (Nov.-Dec. 2015) Vol. 28, No. 6, p. 797, *available at:* http://www.jabfm.org/content/28/6/793.full.pdf (last viewed Mart 9, 2019).

[2] *Id.* A study of 141 DPC practices found the average monthly retainer fee to be $77.38. Of the 141 practices identified, 116 (82 percent) have cost information available online. The average monthly cost to the patient was $93.26 (median monthly cost, $75.00; range, $26.67 to $562.50 per month) for these 116 practices. Of the 116 DPCs noted, 36 charged a one-time enrollment fee and the average enrollment fee was $78. Twenty-eight of 116 DPCs charged a fee for office visits in addition to the retainer fee, and the average visit fee was $16.

[3] Willis Towers Watson, *Best practices in health care employer survey* (2018), available at https://www.willistowerswatson.com/-/media/WTW/PDF/Insights/2018/01/2017-best-practices-in-health-care-employer-survey-wtw.pdf (last viewed Mar. 11, 2019).

[4] Lisa Zamosky, Direct-Pay Medical Practices Could Diminish Payer Headaches, MEDICAL ECONOMICS (Apr. 24, 2014).

around 25 percent per year since 2010.[5] The Direct Primary Care Coalition has adopted model state legislation for direct primary care agreements (DPC).[6] As of March `1, 2019, 25 states have adopted some type of direct contracting agreement provisions, such as DPC legislation, which defines a DPC agreement as an agreement between a primary care physician and a patient, and such agreement is outside the scope of state insurance regulation.[7] Missouri enacted a law in 2015, which provides that medical retainer agreements was an agreement between a licensed physician and an individual patient was not insurance, thereby not limiting the application of the law to direct primary care physicians.[8]

**Federal Health Care Reform and Direct Primary Care**

The federal Patient Protection and Affordable Care Act (PPACA)[9] requires health insurers to make guaranteed issue coverage available to all individuals and employers without exclusions for preexisting conditions. The PPACA also mandates that insurers that offer qualified health plans provide 10 categories of essential health benefits.[10]

An individual can enroll in a direct health care provider agreement and obtain coverage through a high deductible health plan (HDHP),[11] which would provide coverage for severe injuries or chronic conditions. Such an individual may benefit from enrolling in a direct health care provider agreement since it may provide a greater degree of access to health care for a monthly fee that is substantially less than the annual deductible of the HDHP.

**State Regulation of Insurance**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities. These specified entities must meet certain requirements for licensure. Before receiving a certificate of authority from the OIR, a HMO and a prepaid health clinic must receive a Health Care Provider Certificate[12] from the Agency for Health Care Administration pursuant to part III of ch. 641, F.S.[13]

Currently, Florida law exempts direct primary care (DPC) agreements from regulation under the Insurance Code. Section 624.27, F.S., provides the following definitions and requirements for a DPC agreement to be exempt from the Insurance Code.

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[5] David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, Family Practice Management, No. 3, (May-June 2014), *available at:* http://www.aafp.org/fpm/2014/0500/p10.html (last viewed Oct. 19, 2017).
[6] Direct Primary Care Coalition Model State Legislation, *available at* http://www.dpcare.org/dpcc-model-legislation. (last viewed Mar. 9, 2019).
[7] See https://www.dpcare.org/state-level-progress-and-issues (last viewed Mart. 12, 2019).
[8] Missouri L. 2015 H.B. 769.
[9] Pub. Law No. 111-148 (Mar. 23, 2010) amended by Pub. Law. No. 111-152 (Mar. 30, 2010).
[10] 42 U.S.C. s. 18022.
[11] A high deductible health plan (HDHP) has a higher deductible than typical plans and a maximum limit on the amount of the annual deductible and out-of-pocket medical expenses an insured must pay for covered services. For 2019, for self-only coverage, the annual minimum deductible is $1,350 and the maximum is $6,650. See https://www.irs.gov/publications/p969#en_US_2016_publink1000204030 (last viewed Mar. 9, 2019).
[12] Section 641.49, F.S.
[13] Section 641.48, F.S., provides that the purpose of part III of ch. 641, F.S., is to ensure that HMOs and prepaid health clinics deliver high-quality care to their subscribers.

Section 624.47, F.S., defines the following terms:

- A direct primary health care agreement is a contract between a health care provider and a patient, the patient's legal representative, or an employer which must satisfy the requirements regarding contract terms and disclosures within this section and does not indemnify for services provided by a third party.
- A primary care provider is a licensed health care practitioner under ch. 458, F.S., (medical doctor or physician assistant); ch. 459, F.S., (osteopathic doctor or physician assistant); ch. 460, F.S., (chiropractic physician); or ch. 464, F.S., (nurses and advanced registered nurse practitioners); or a primary care group practice, who provides primary care services to patients.
- Direct primary care services are screening, assessment, diagnosis, and treatment conducted within the competency and training of the primary care provider for the purpose of promoting health or detecting and managing disease or injury.

A DPC agreement must meet the following minimum requirements and disclosures:

- Be in writing and signed by the provider or the provider's agent and the patient, the patient's legal representative, or the patient's employer;
- Allow a party to terminate the agreement with 30 days' advance written notice and provide for the immediate termination of the agreement if the physician-patient relationship is violated or a party breaches the terms of the agreement;
- Describe the scope of health care services covered by the monthly fee;
- Specify the monthly fee and any fees for health care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund of monthly fees paid in advance if the provider ceases to offer health care services for any reason; and
- Contain the following statements in contrasting color and 12-point or larger type on the same page as the applicant's signature:

> This agreement is not health insurance, and the health care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A.This agreement is not workers' compensation insurance and does not replace an employer's obligations under ch. 440, F.S.

***Prepaid Health Clinics***

Prepaid health clinics[14] are required to obtain a certificate of authority from the OIR pursuant to part II of ch. 641, F.S. The entity must meet minimum surplus requirements[15] and comply with

[14] Section 641.402, F.S., defines the term, "prepaid health clinic," to mean any organization authorized under part II that provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health. However, no clinic that provides or contracts for, either directly or indirectly, inpatient hospital services, hospital inpatient physician services, or indemnity against the cost of such services shall be a prepaid health clinic.

[15] Section 641.406, F.S.

solvency protections for the benefit of subscribers by securing insurance or filing a surety bond with the OIR.[16] Part II also provides that the procedures for offering basic services and offering and terminating contracts to subscribers may not unfairly discriminate based on age, health, or economic status.[17]

**State Regulation of Health Care Practitioners**

The Department of Health (DOH) is responsible for the licensure and regulation of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for each profession or occupation, ch. 456. F.S., provides the general regulatory provisions for health care professions within the DOH through the Division of Medical Quality Assurance.

Section 456.001, F.S., defines "health care practitioner" as any person licensed under chs. 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy); F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.[18]

## III. Effect of Proposed Changes:

**Section 1** amends s. 624.27, F.S., to expand the current exemption of direct primary care agreements from the Insurance Code to apply to all direct health care agreements, including dentists licensed under ch. 466, F.S. The existing provisions of the section are revised to replace the term, "primary care" with the term, "health care." As a result, the terms, "direct primary care agreement," "primary care provider," which includes dentist, and "primary care services," are replaced with the terms, "direct health care agreement," "health care provider," and "health care services," respectively. As a result, the section provides that the act of entering into a direct health provider agreement does not constitute the business of insurance and is not subject to the Florida Insurance Code.

**Section 2** provides that the bill takes effect July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[16] Section 641.409, F.S.
[17] Section 641.406, F.S.
[18] The miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill removes regulatory uncertainty for health care providers who are not primary care providers that contract directly with individuals or employers by providing that the direct health care agreement is not insurance if certain conditions are met, and as a result, the OIR does not regulate the agreements.

Additional health care providers may elect to pursue a direct health care model and establish direct health care practices that may increase patients' access to affordable health care services.

Many individuals have high deductible policies and must meet a significant out of pocket cost to access many types of medical care. The direct health care agreement may provide a less expensive option for accessing certain services. For many patients, the greater use of direct health care agreements may decrease reliance on emergency rooms as a source of routine care.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 624.27 of the Florida Statutes.

## IX. Additional Information:

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

**Banking and Insurance Committee, March 18, 2019:**
The CS provides that a direct health care agreement could include agreements with dentists.

B. Amendments:

None.

240842

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/18/2019 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Delete line 23

and insert:

~~or~~ chapter 464, or chapter 466, or a health ~~primary~~ care group practice, who

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

And the title is amended as follows:

Delete lines 3 - 6

240842

and insert:

amending s. 624.27, F.S.; expanding the scope of direct primary care agreements that are exempt from the Florida Insurance Code and renaming them direct health care agreements; adding health care providers who may market, sell, or offer to sell such agreements;

**By** Senator Bean

4-01641-19 20191520__

A bill to be entitled

An act relating to direct health care agreements; amending s. 624.27, F.S.; expanding the applicability of provisions relating to direct primary care agreements exempt from the Florida Insurance Code to direct health care agreements; revising definitions; providing an effective date.

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

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

624.27 Direct health ~~primary~~ care agreements; exemption from code.—

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

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

(b) "Health ~~Primary~~ care provider" means a health care provider licensed under chapter 458, chapter 459, chapter 460, or chapter 464, or a health ~~primary~~ care group practice, who provides health ~~primary~~ care services to patients.

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







4-01641-19 20191520__

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

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

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

(a) Be in writing.

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

(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

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

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

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

(g) Offer a refund to the patient, the patient's legal representative, or the patient's employer of monthly fees paid in advance if the health ~~primary~~ care provider ceases to offer

health ~~primary~~ care services for any reason.

(h) Contain, in contrasting color and in at least 12-point type, the following statement on the signature page: "This agreement is not health insurance and the health ~~primary~~ care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any health ~~primary~~ care services covered by the agreement. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the Patient Protection and Affordable Care Act, 26 U.S.C. s. 5000A. This agreement is not workers' compensation insurance and does not replace an employer's obligations under chapter 440."

Section 2. This act shall take effect July 1, 2019.

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/19
*Meeting Date*

Topic Direct Health Care Agreements Bill Number SB 1520

Name Alexandra Abboud Amendment Barcode 240842
*(if applicable)* *(if applicable)*

Job Title Governmental Affairs Liaison

Address 118 E. Jefferson st Phone 850-224-1089
*Street*

Tallahassee FL 32301 E-mail aabboud@floridadental.org
*City* *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Dental 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)

3/18/19
*Meeting Date*

SB 1520
*Bill Number (if applicable)*

Topic Direct Health Care Agreements

*Amendment Barcode (if applicable)*

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave, Suite 304 A
*Street*

Phone 850-228-6387

Tallahassee FL 32301
*City* *State* *Zip*

Email dobarker@aarp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**

# APPEARANCE RECORD

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

3/18/2019
*Meeting Date*

SB 1520
*Bill Number (if applicable)*

Topic DIRECT HEALTHCARE AGREEMENTS

*Amendment Barcode (if applicable)*

Name CESAR GRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 W COLLEGE AVE
*Street*

Phone 786.260.9283

TALLAHASSEE FL. 32301
*City* *State* *Zip*

Email cgrajales@thelibre.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE LIBRE INITIATIVE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1690 |
| INTRODUCER: | Senator Broxson |
| SUBJECT: | Warranty Associations |
| DATE: | March 15, 2019 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Matiyow | Knudson | BI | **Pre-meeting** |
| 2. | | | CM | |
| 3. | | | RC | |

## I. Summary:

SB 1690 makes changes to home and service warranty associations. The bill:

- Requires a separate and auditable reserve account equal to a minimum of 25 percent of the gross written premiums received for home and service warranty contracts that are issued in Florida. Current law requires such reserves amounts be set aside for all policies written by the company, whether in Florida or other states.
- Prohibits the exclusion of coverage due to the presence of rust if such rust or corrosion was not a contributing cause of the mechanical breakdown or failure of the covered appliance, unit, or system.
- Home warranty companies that cover the replacement of components of an HVAC system but do not cover compatibility or efficiency requirements recommended by the manufacturer must:
  - State in conspicuous boldface type that the contract does not provide replacement coverage for components necessary to maintain the compatibility and efficiency requirements recommended by the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage; and
  - Provide the consumer with the option, at an additional cost, to purchase replacement coverage for components necessary to maintain the compatibility and efficiency requirements.

The effective date of the bill is July 1, 2019.

## II. Present Situation:

### Warranty Associations

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).[1] A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.[2] A home warranty is a contract that either indemnifies the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement of a structural component of, or an appliance in, a home.[3]

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[4] Home and service warranty associations must be licensed by OIR[5] and must maintain certain minimum financial standards in order to do warranty business in Florida.[6]

The following chart reflects the number of licensed home and service warranty associations in Florida as of March 15, 2019:[7]

| Type of Association/Company | Number of Licensees |
|---|---|
| Home Warranty Association | 30 |
| Service Warranty Association | 91 |
| **Total** | **121** |

### Licensing and Financial Requirements for Warranty Associations

#### *Home Warranty Association*

Florida law prohibits any person from providing, offering to provide, or holding oneself out as providing or offering to provide home warranties in Florida or from Florida without holding a license issued by OIR.[8] Thus, even if a home warranty association wished to locate in Florida but only sell home warranties to consumers outside of Florida, it would still need a home warranty association license issued by OIR.[9] Home warranties are often purchased over the internet and may be purchased by a seller and transferred to the buyer at the closing on the sale of a home.

[1] *See* ch. 634, F.S.
[2] S. 634.402, F.S.
[3] S. 634.302, F.S.
[4] *See* ch. 634, F.S.
[5] Ss. 634.303 and 634.403, F.S.
[6] Ss. 634.3077 and 634.406, F.S.
[7] Data retrieved from OIR Active Company Search application, https://floir.com/CompanySearch/index.aspx (last visited March 15, 2019).
[8] S. 634.303, F.S.
[9] *See id.*

Florida law requires that all home warranty associations maintain a funded, unearned premium[10] account, consisting of unencumbered assets,[11] equal to a minimum of 25 percent of the gross written premiums[12] received by it from all warranty contracts it has in force, regardless of whether those contracts are written to consumers in Florida or in another state.[13]

***Service Warranty Associations***

Florida law prohibits any person from providing, offering to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the office.[14] Florida law requires that all service warranty associations maintain a funded, unearned premium account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts it has in force regardless of whether those contracts are written to consumers in Florida or in another state.[15]

**Coverage and Form Requirements for Home Warranty Associations**

OIR's authority to regulate home warranty associations allows it to specify the contents of the forms that the associations provide to home warranty consumers and certain procedures that associations must follow when issuing warranties.[16] Currently, home warranties issued in Florida vary with regard to coverage exclusions due to rust or corrosion to otherwise covered appliances, units, or systems. Some warranties exclude coverage due to the presence of rust or corrosion regardless of whether the rust or corrosion causes a mechanical breakdown of the appliance, unit, or system.[17] Other home warranties provide coverage even if a system has malfunctioned due to rust or corrosion.[18] The lack of consistency in the wording of the home warranty contracts may lead consumers to be confused about the coverage that is actually provided for their appliances, units, or systems. Additionally, home warranties with broad coverage exclusions for the presence of any rust or corrosion, eliminate coverage where the rust or corrosion is cosmetic only and in no way affects the functionality of the appliance, unit, or system.

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[10] An unearned premium is a premium that a customer pays in advance, but that the warranty association has not yet earned. If a contract is canceled, the customer is generally entitled to a full refund of the unearned amount. Business Dictionary, http://www.businessdictionary.com/definition/unearned-premium.html (last visited March 15, 2019).
[11] An unencumbered asset is one that is free from debt and can be easily sold or mortgaged. Business Dictionary, http://www.businessdictionary.com/definition/unencumbered.html (last visited March 15, 2019).
[12] Gross written premium is the amount of premium written by a warranty association before deductions for commissions and other expenses. *See* IRMI, https://www.irmi.com/term/insurance-definitions/gross-written-premium (last visited March 15, 2019).
[13] S. 634.3077(1), F.S.
[14] S. 634.403(1), F.S.
[15] S. 634.406, F.S.
[16] S. 634.312, F.S.
[17] *See, e.g.*, Select Home Warranty, *Terms and Conditions/Service Contract Agreement*, https://selecthomewarranty.com/termsconditions (last visited March 15, 2019).
[18] *See, e.g.*, First American Home Warranty, *Sample Contract & Coverage* Overview, https://homewarranty.firstam.com/media/contracts/8J.B.pdf (last visited March 15, 2019).

***The Florida Building Code***

The Florida Building Code specifies rules and standards for constructed structures, including the HVAC systems in those structures.[19] Under the Florida Building Code, certain energy efficiency requirements must be met when an HVAC system is installed, repaired, or replaced.[20] Meeting the energy efficiency requirements when an HVAC system is repaired may require the replacement of various components to maintain a "matched system."[21] In keeping with these requirements, manufacturers of air conditioning units have certain compatibility and efficiency requirements that must be met.

Home warranties that provide coverage for repair or replacement of HVAC systems do not always provide coverage that extends to the matching of HVAC system components so that compatibility and efficiency requirements will be met. Under existing home warranty contracts, consumers may not be made aware of this coverage limitation when they purchase home warranties. Furthermore, upon completion of repairs covered by home warranties, consumers may be left with mismatched systems that do not meet building code requirements and may have to pay for additional repairs in order to maintain manufacturers' compatibility and efficiency requirements and to meet building code requirements.

## III. Effect of Proposed Changes:

The bill revises the requirement that all home warranty and service warranty associations maintain a funded, unearned premium reserve account equal to a minimum of 25 percent of the gross written premiums received from all warranty contracts in force to require only that they maintain an account containing a minimum of 25 percent of the gross written premiums received from all warranty contracts in force in Florida. All assets held to satisfy this requirement must be maintained in a separate auditable account.

The bill provides that home warranties sold in Florida may not exclude coverage because of rust or corrosion to an otherwise covered appliance, unit, or system, unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of that appliance, unit, or system.

The bill establishes that, if a home warranty covers the replacement of components of an HVAC system due to wear and tear, but does not cover functional components of the systems necessary to maintain the compatibility or efficiency requirements of the manufacturer, the contract must:

- State in conspicuous boldface type that the contract does not provide replacement coverage for functional components of an HVAC system necessary to maintain the compatibility or efficiency requirements of the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage; and

[19] *See, e.g.*, International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, https://codes.iccsafe.org/content/FBC2017 (last visited March 15, 2019).
[20] International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, S. R 501.7, https://codes.iccsafe.org/content/FEC2017/chapter-5-re-existing-buildings (last visited March 15, 2019).
[21] *Id.*

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for the functional components of an HVAC system necessary to maintain the compatibility and efficiency requirements of the manufacturer.

The effective date of the bill is July 1, 2019.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 634.3077, 634.346, and 634.406.

## IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 634.3077, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of



unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force in this state. Such assets must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written, provided the association has net assets of not less than $500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force in this state, which must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(5) An association operating in this state that issues home warranty or home service contracts in other states must comply with all financial requirement laws of such other states.

Section 2. Effective January 1, 2020, section 634.346, Florida Statutes, is created to read:

634.346 Home warranty coverage requirements.-

(1) A home warranty sold in this state may not exclude coverage because of the presence of rust or corrosion unless the rust or corrosion was a contributing cause of the mechanical



breakdown or failure of a covered appliance, unit, or system.

(2) A home warranty contract providing coverage for wear and tear failures of components of an HVAC system, which contains an exclusion of replacement coverage for any other functional components of the HVAC system on the basis of operational compatibility or operational efficiency requirements as set by the manufacturer, must:

(a) Set forth a disclosure in conspicuous boldfaced type that the home warranty contract does not cover replacement of functional components of HVAC systems for reasons of compatibility or efficiency requirements of the manufacturer unless additional coverage for such circumstance is purchased, and provide the website or telephone number for the consumer to contact to add such additional coverage to the home warranty contract; and

(b) Provide consumers the option to purchase additional coverage, for an additional charge, for the replacement of otherwise functional components of an HVAC system necessary to maintain the compatibility and operating efficiency requirements of the manufacturer.

Section 3. Subsections (1), (2), and (5) of section 634.406, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

634.406 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received on all warranty contracts in force which are~~, wherever~~ written in this state. Such reserve

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account must be a separate auditable account for contracts in force in this state. Such assets must ~~shall~~ be held as prescribed under ss. 625.301-625.340. For contracts in excess of 2 years which are offered by associations having net assets of less than $500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years must ~~shall~~ be placed in the funded, unearned premium reserve account.

(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit for contracts in force in this state equal to 10 percent of the gross written premium received on all warranty contracts in force in this state. Such reserve deposit must ~~shall~~ be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office has received and approved the association's current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part must ~~shall~~ be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) must ~~shall~~ be included in calculating the reserve requirements of this section.

(5) No warranty seller may allow its gross written premiums in force for contracts written in this state to exceed a 7-to-1 ratio to net assets.

(8) An association operating in this state that issues service warranty or service contracts in other states must

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comply with all financial requirement laws of such other states.

Section 4. Except as otherwise provided in this act, this act shall take effect July 1, 2019.

========== 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 warranty associations; amending s. 634.3077, F.S.; revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; requiring certain home warranty associations to comply with other states' laws; creating s. 634.346, F.S.; prohibiting home warranties from excluding coverage because of the presence of rust or corrosion, except under certain circumstances; specifying requirements for certain home warranties providing coverage for HVAC system components; amending s. 634.406, F.S.; revising the basis for calculating the required assets in a service warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; revising the basis for calculating a certain reserve deposit with the Department of Financial Services; revising the requirements regarding the

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ratio of gross written premiums to net assets for service warranties; requiring certain service warranty associations to comply with other states' laws; providing effective dates.

**By** Senator Broxson

1-01137B-19 20191690__

A bill to be entitled

An act relating to warranty associations; amending s. 634.3077, F.S.; revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account; creating s. 634.346, F.S.; prohibiting home warranties from excluding coverage solely because of the presence of rust or corrosion, except under certain circumstances; specifying requirements for certain home warranties providing coverage for HVAC system components; amending s. 634.406, F.S.; revising the basis for calculating the required assets in a service warranty association's premium reserve account; requiring that such reserve account be a separate auditable account; revising the basis for calculating a certain reserve deposit with the Department of Financial Services; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 634.3077, Florida Statutes, are amended to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force in this state. Such assets must ~~shall~~ be held







1-01137B-19 20191690__

in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written, provided the association has net assets of not less than $500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force in this state, which must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account.

Section 2. Section 634.346, Florida Statutes, is created to read:

634.346 Home warranty coverage requirements.—

(1) A home warranty sold in this state may not exclude coverage solely because of the presence of rust or corrosion unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of a covered appliance, unit, or system.

(2) A home warranty contract providing coverage for wear and tear failures of components of a heating, ventilation, and air conditioning (HVAC) system, and which contains an exclusion of replacement coverage for any other functional components of the HVAC system on the basis of operational compatibility or operational efficiency requirements as set by the manufacturer,

must:

(a) Set forth a disclosure in conspicuous boldface type that the home warranty contract does not cover replacement of functional components of HVAC systems for reasons of compatibility or efficiency requirements of the manufacturer unless additional coverage for such circumstance is purchased, and provide the website or telephone number for the consumer to contact to add such additional coverage to the home warranty contract; and

(b) Provide consumers the option to purchase additional coverage, for an additional charge, for the replacement of otherwise functional components of an HVAC system necessary to maintain the compatibility and operating efficiency requirements of the manufacturer.

Section 3. Subsections (1) and (2) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received on all warranty contracts in force which are~~, wherever~~ written in this state. Such reserve account must be a separate auditable account. Such assets must ~~shall~~ be held as prescribed under ss. 625.301-625.340. For contracts in excess of 2 years which are offered by associations having net assets of less than $500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years must ~~shall~~ be placed in the funded, unearned premium reserve account.







(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit equal to 10 percent of the gross written premium received on all warranty contracts in force in this state. Such reserve deposit must ~~shall~~ be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office has received and approved the association's current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part must ~~shall~~ be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) must ~~shall~~ be included in calculating the reserve requirements of this section.

Section 4. This act shall take effect July 1, 2019.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**
Appropriations Subcommittee on Criminal and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Innovation, Industry, and Technology
Rules

**JOINT COMMITTEES:**
Joint Legislative Auditing Committee, *Alternating Chair*
Joint Legislative Budget Commission

**SENATOR JEFF BRANDES**
24th District

March 18, 2019

Dear Chair Broxson,

I am writing to request respectfully that I be excused from the Banking and Insurance Committee Meeting on February 4th due to a prior commitment.

If you have any questions regarding this request, please feel free to contact my office, or myself. Thank you for time and consideration of this matter.

Kind Regards,

Jeff Brandes

REPLY TO:
❒ 9800 4th Street North, Suite 200, St. Petersburg, Florida 33702 (727) 563-2100
❒ 416 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

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

**BILL GALVANO**
**President of the Senate**

**DAVID SIMMONS**
**President Pro Tempore**

# CourtSmart Tag Report

**Room:** KN 412 **Case No.:** **Type:**
**Caption:** Senate Banking and Insurance Committee **Judge:**

**Started: 3/18/2019 4:11:40 PM**
**Ends: 3/18/2019 5:59:56 PM Length: 01:48:17**

**4:11:38 PM** Meeting called to order - quorum present.
**4:12:42 PM** TAB 11 - Sen. Bean - Direct Health Care Agreements
**4:12:58 PM** Senator Bean recognized to present the bill.
**4:13:59 PM** Amd. 240842 - Sen. Bean explains the amd.
**4:14:46 PM** Sen. Bean closes on bill.
**4:14:52 PM** Voice vote on amendment -favorable
**4:18:16 PM** Senator Bean to close on bill.
**4:18:24 PM** Roll call vote on SB 1520 - Favorable
**4:18:58 PM** TAB 8 - Senator Mayfield - Consumer Protection
**4:19:16 PM** Sen. Mayfield recognized to present the bill.
**4:20:48 PM** Delete all amend. by Sen. Gruters (675178)
**4:21:13 PM** Senator Gruters recognized to explain delete all amd.
**4:23:28 PM** Sen. Gruters withdraws amendment
**4:23:51 PM** Late Filed Amd. - w/o objection - amendment introduced
**4:25:04 PM** Late Filed Amd. - w/o objection - amendment introduced
**4:25:05 PM** Senator Mayfield explains late filed amendment.
**4:28:25 PM** Amendment adopted.
**4:30:01 PM** Monica Gonzales representing self
**4:31:01 PM** Joy Ryan - AHIP
**4:37:07 PM** Dr. Bob Levin - Florida Society of Rheumatology
**4:42:49 PM** Brewster Bevis speaking against bill
**4:43:49 PM** Paul Sanford - FL Insurance Council & FL Blue apeaking against
**4:47:14 PM** Senator Mayfield recognized to close on bill.
**4:49:34 PM** Roll call vote on S 1180 - Favorable
**4:53:02 PM** TAB 3 - Sen. Stargel - Ins. Coverage for Vehicle Leases
**4:53:35 PM** Sen. Stargel explains amendment
**4:54:31 PM** William Cotteral - FL Justice Assoc.
**4:55:33 PM** Voice vote - amendment adopted.
**5:07:09 PM** George Meros - Attorney- US Chamber
**5:10:34 PM** Sen. Stargel recognized to close on bill.
**5:10:52 PM** Roll call vote on S 862 - Favorable
**5:11:27 PM** TAB 1 -S 358 - Health Ins. coverage for Enteral Formulas
**5:11:56 PM** Sen. Stargel explains the bill
**5:13:16 PM** Stephanie and Remington Walls
**5:14:16 PM** Sen. Stargel to close on bill.
**5:14:37 PM** Roll call vote on SB 358 - Favorable
**5:15:50 PM** TA 6 - S 1024 - Blockchain Tech.
**5:16:08 PM** Senator Gruters explains the bill.
**5:18:13 PM** Cyndy Loomis
**5:19:55 PM** Senator Gruters closes on bill.
**5:20:05 PM** Roll call vote on S 1024 - Favorable
**5:20:49 PM** TAB 5 - S 908 - Hooper - Firesafety Systems
**5:21:06 PM** Sen. Hooper recognized to present the bill.
**5:22:03 PM** Amd. 532288 - explanation of amd. by Sen. Hooper
**5:22:31 PM** Amd. to Amd. (431804)
**5:23:24 PM** Jim Millican - FL Fire Chief
**5:24:32 PM** Sen. Perry recognized to close on amd. to amd.
**5:25:33 PM** Voice vote on amd. to amd. -- vv-adopted
**5:25:48 PM** Back on delete Amd. as amended - voice vote - favorable
**5:29:18 PM** Roll call vote on S 908 --
**5:36:04 PM** Pio Leraci --FACTSSS.org
**5:37:05 PM** James Van Drunen - FACTSS

**5:41:41 PM** Jim Millican, FL Fire Chief Assoc.
**5:42:42 PM** Senator Hooper recognized to close on bill.
**5:43:42 PM** Roll call vote on S 908 - Favorable
**5:44:14 PM** TAB 2 - S 572 - Baxley - Ins. Coverage for Hearing Aids
**5:45:12 PM** Senator Baxley recognized to explain the bill.
**5:47:40 PM** Susan Nowlin - FL Academy of Audiology
**5:50:12 PM** Garrett Campbell representing self
**5:53:15 PM** Paul Sanford - FL Insurance Council and Florida Blue
**5:54:04 PM** Sen. Baxley waives close.
**5:54:15 PM** Roll call vote S 572 - FAV
**5:54:37 PM** Roll call vote S 572 - FAV
**5:54:40 PM** TAB 9 -Sen. Gruters - Health Plans
**5:56:29 PM** Sen. Gruters recognized to explain bill.
**5:59:10 PM** Roll call vote on S 1422 - Favorable
**5:59:36 PM** Motion to adjourn